

The future(s) of work: Unpacking the relationship between work from home and gender

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1. Introduction

The future is now, and remote work is here to stay. Remote work has quickly transitioned from being the newfound to the new normal. Pandemic-induced lockdowns and the need for distancing have normalised work from home (WFH). Work from home started off as being a gradual adaptation by markets to account for specific needs pre-pandemic but became the norm soon.

In the post-pandemic era, questions of the future of work which only distantly considered work from home now centre it, and several employers are actively weighing the long-term benefits of remote working as against traditional office setups. The pandemic has broken down employer stereotypes associated with remote work, leading to an evaluation of its viability and feasibility. Increased productivity, and reduced operational costs are few of the striking benefits of remote working (Lund et al., 2020).

However, despite the attractiveness of work from home models, not all kinds of work are adaptable to remote work structures. Front line workers (healthcare workforce, and national and state security personnel), geographically- tethered platform work like app delivery partners and other on-site skilled and unskilled work, such as domestic work - are some kinds of work that cannot move to a different model. In effect, this excludes more than half of the workforce from availing the opportunity to work from home (Lund et al., 2020). However, this frontline and domestic work is often feminised thus disproportionately excluding a major portion of the workforce (Beri, 2020).

The preference for home based work, an integral part of the unorganized sector in India, has always been higher for women considering decreasing opportunities for formal employment, growth in sub-contracting and increased value to employers (CEC India, n.d.) proving to be an important source of income for women (Vanek et al., 2013).

In this context, the entire female workforce and the concept of work from home for them needs a deeper look. Continuing their unpaid working models from the pre-pandemic times (The Economic Times, 2016), women do more during work from home. Though women are more likely to work from home compared to men in the near future, they have also had a

hard time adapting to it as witnessed in the last year (Molla, 2021). This is due to the unfair patriarchal division of labour forced on them by the society such as domestic work, caregiving, child rearing responsibilities.

Our paper aims to explore the intersection of ideas of work from home with gender realities and their implications for imagining the future of work from home. In doing so, we hope to complicate the idea of work from home, which risks being evaluated, and therefore designed from the perspective of the average male worker.

This paper is structured as follows: first, we explore the gender based divides which have crept as a result of the existing socio-cultural discrimination against women and the occupational segregation of the female labour force in India. In the next section, we trace the impact of the pandemic on the female labour force in the context of non-work settings. Three prominent realms of unpaid work - domestic responsibilities, caregiving responsibilities and child rearing responsibilities - are explored. Following up with that, the third section sketches the impact of the pandemic on the female workforce in the context of work settings. The differentiated impact on women in the case of white collar and blue collar jobs are seen here. In the fourth section, the legal context in which work from home(WFH) can be situated is studied with a specific scan on problems faced by women.

1.1 Methodology

Through a combination of desk research, interviews and doctrinal analysis, we hope to unpack notions of 'work from home', we hope to build that case that we will have futures of work, and not one single future, necessitating varied approaches from firms as well as regulators. This inquiry is critical not only to gain an enhanced understanding of patterns of work, but also to inform regulatory and policy approaches as they highlight areas for intervention for equitable working conditions for women.

To study the pandemic induced effects on women in the workforce with high paying wages, we undertook a qualitative approach where the issues related to work from home and caregiving responsibilities were explored. A short digital survey¹ was circulated to female office workers. The questions related to the benefits and the challenges of WFH and their support systems. We obtained 19 responses. . The sampling method for the digital survey was convenience-sampling where the survey was shared across several large work-based groups. . The interviews were coded and a manual analysis was done to identify emerging themes. Researchers sought consent from the participants, and all respondents were informed of the nature of the research and the purpose. In the survey, an introductory paragraph contained this information.

¹ Survey in Appendix

2. Structural inequities and landscape of women workers in India

The first part of the subsection traces the inequalities faced by women in the context of the pandemic. The second part of the subsection addresses the structural patterns of the women workforce in India.

2.1 Divides influenced by the pandemic

Numerous structural inequalities exist in our society for a long time which have been operating against women (Singh et al., 2021). These barriers of discrimination have reared their heads in the worst ways during the pandemic. Two areas where it has been most disadvantageous to women have been in deepening divides along gender lines in accessing vaccines and digital devices. While the gender digital divide has already been existing pre-pandemic, it has exacerbated in recent times (Aggarwal, 2020). The gender based vaccine divide is a culmination of various structural inequities and digital divide, as a result of the pandemic. This subsection looks at those two divides.

2.1.1 Digital divide

Economic and socio-cultural barriers engage in creating gender based barriers for women with respect to accessing digital devices (Guermazi, 2020). This gendered digital divide is added on to the hierarchy of discrimination and inequality faced by women. For instance, Indian women are 15 % less likely to own a mobile phone, and 33 % less likely to use mobile internet services than men (Mitali & Uppadhyay, 2021)

During the pandemic, several quotidian activities, such as providing information, banking services, learning, and conducting businesses shifted online due to social isolation and lockdown measures. Research shows that women's inability to access banking and other financial services can lead to challenges for women to engage in economic activity (CWEEE, n.d.). They are also excluded from the growing digital economy, especially when aspiring for training and work opportunities (Mitali & Uppadhyay, 2021)

2.1.2 Vaccine divide

Though India is achieving strides in getting its population vaccinated, scores of women are being left behind in getting access to their vaccines (Bhargava, 2021). On top of their existing socio-economic barriers of access to vaccines, women are also disadvantaged by their lack of access to digital devices (Jairath, 2021). As of September 2021, women are 4% less likely to

get vaccinated in comparison to their male counterparts with the data accessed from the COWIN dashboard².

This gender based vaccine divide complicates the return to work for women. People from disadvantaged socio-economic backgrounds who have not secured their vaccine thus far are unwelcome in their previous places of employment. With women already being at a disparity in having digital capabilities, permitting booking vaccine slots only via CoWin led to women also being at disparity with respect to vaccination. (Apti Institute, 2021b). There were also other causes associated with vaccine divide such as monetary capability, vaccine hesitancy, which were complicated by misinformation (Sinha, 2021) about the implications of the vaccine on fertility and women's health (Apti Institute, 2021b). The state's failure to account for the offline mechanisms are deepening the vaccine divide.

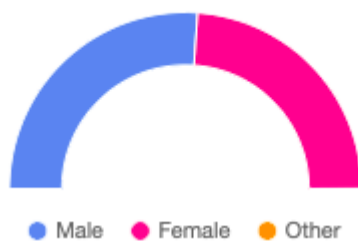


Fig 1. Screenshot from COWIN Dashboard

2.2 Landscape of women workers in India

This subsection traces the occupational segregation patterns of the female labour force in India, to understand the ways in which pandemic has affected them in a differential manner. The distribution of female workforce in different job streams across the spectrum can help in designing policies in context.

India has one of the lowest female labour force participation rates in the world. The labour force participation rate is defined as the percentage of the working population between the age-group of 16 and 64, currently employed or seeking employment in the economy. The female labour force participation rate indicates what percentage of women within the working age (16-64 years) population that are currently employed, or are seeking employment (Upreti, 2021). With the onset of the pandemic, India's female labour force participation rate fell to 16.1% during the July-September 2020 quarter (Government of

² <https://dashboard.cowin.gov.in/>

India, 2021). This is a drop from the female labour force participation rates of 20.31% in 2019 (World Bank, n.d.).

66 % of the work done by Indian women is unpaid(Schwab et al., 2017). Women’s labour in India is limited to certain industries with low wages such as education, textiles, health and social work. Women’s participation in industries with the highest wages such as IT, financial services is low (Mishra & Chapman, 2019). In 2011-12, the share of women in high-skilled jobs was around 36%, while it was 36.8% and 26.8 % for women in medium-skilled and low-skilled jobs (Mondal et al., 2018).

For the purposes of this paper, women in high-skilled, high paying wages are referred to as women in white collar jobs, while women in low to medium skilled with low to medium paying wages are referred to as blue collar jobs.

To get a brief understanding of women in blue collar jobs and the ease with which they can work from home, we performed an analysis based on the research produced above. The results are tabulated below. White collar jobs appear generally more amenable to shifting to work from home.

Sector of economy	Proportion of women in the particular sector	Amenability to WFH
Domestic workers	High ³	Low
Gig economy		
Beauty services	High ⁴	Low
Cleaning services	High	Low
Other gig services	Low to medium	Moderate
Entrepreneurs		
Brick and mortar presence	Low ⁵	Moderate
Online presence	Medium	High

Table 1: Ease of WFH for blue collar jobs

³ ‘A Study on female domestic workers in India’, JICR, 2020

⁴ ‘Towards a Gender Equal Future of Work for Women: A Preliminary Case Study of Women in the Gig Economy in India During Covid-19’, Tandem Research, 2020

⁵ ‘How did India’s Women Enterprises Fare during the COVID-19 Lockdown?’, Economic and Political Weekly, 2021

Accordingly, to understand the potential dynamics and futures of care, we focus on the invisible labour women contribute in the economy. To intersect this analysis with class realities, this paper focuses on the unpaid work of women at home and the paid work of women at the workplace from the perspective of white collar and blue collar jobs.

3. Pandemic and the aggravation of invisible labour : At 'home'

This section explores the impact of the pandemic on the employed women in their non-work settings. This detailed analysis of women's unpaid responsibilities and obligations at home can help to shed light on the ways in which it intersects with their work obligations and their mental health.

The rise of unpaid care work has been evident during the pandemic and it has implications for women employees at their place of work. Literature highlights the unrecognised work Indian women put in their households (Samuel, 2019). This labour borne by women unequally has only increased with the ongoing pandemic (Gross, 2020).

According to the OECD, unpaid care work (Ferrant et al., 2014) refers to all unpaid services provided within a household for its members, including care of persons, housework and voluntary community work. These activities are considered work because theoretically one could pay a third person to perform them. However, invisible labour is a critical infrastructure which keeps the society running and is essential for sustaining the economy. However, it is not considered as part of the economy's value and is absent from national accounting parameters. Estimates assess that the pandemic has increased women's unpaid work by 30% (Deloitte, 2020).

This section examines the unpaid labour put in by women during the pandemic to give a direction for the future. Three such evident instances of unrecognised unpaid labour - domestic, child care and caregiving responsibilities- are examined here. This is critical to the way in which this doubled burden is linked up to the virtual mode of working at home where the lines are blurred.

3.1 Domestic responsibilities

According to the National Sample Survey of Time Use in India conducted in 2019 (Shaikh, 2020), 81.2 % women participate in unpaid domestic services spending an average 4 hours 59 minutes each day. In comparison, the participation rate of men in domestic services stood at 26.1%, at around 1 hour 37 minutes each day. This domestic responsibility of tending to the household has been thrust upon women by societal expectations as an inherent feature of the patriarchal society which we all live in.

Given that women spend most of their time involved in household work, it gives them less time to be involved in other activities (Ferrant et al., 2014) which are traditionally considered as 'labour force' jobs in economic terms. With the families being forced to stay at home and unavailability of alternate options for the work to be delegated to other persons for a price, caregiving responsibilities fell upon women disproportionately.

Though the pandemic has witnessed numerous men taking up equal domestic responsibilities, the structural and socio-economic patterns that have existed thus far, unconsciously end up splitting tasks along gendered lines. Even in households where partners share the household responsibilities, the more hidden forms of domestic work generally fall on the women (Hogenboom, 2021).

There is an added aspect to this invisible work which women perform - the mental load of performing cognitive and emotional labour in organising the household (Hogenboom, 2021). This always present mode of organising for the household imparts additional stress on the women which gets translated to the workplace. This has an impact on their mental health with more women facing anxiety and stress about their careers (Deloitte, n.d.). With women having to do more than men, the productivity levels are affected for the worse in their workplace in turn affecting their careers.

3.2 Caregiving responsibilities

The greater feminisation of the caregiving responsibilities is another noteworthy aspect. In several instances, women were expected to tend to family members affected by COVID in their family.

With the caregiving responsibilities falling on women prominently, this mode doubles up as an extra burden on them. The situation seems quite different for women living in nuclear and joint families. Women's partners share the household responsibility and caregiving responsibilities to a large extent in a nuclear household. The same is not true for women living in joint families. Often women in joint households feel more socially obligated to fulfill their feminised roles of caregiving even though it's not necessarily expected from the men in the families. The travel restrictions imposed by lockdown ensured that women could also not rely on the family support structures which were earlier available to them, thus adding to the stress.

Working women who cared for a family member or loved one during the pandemic had to juggle both their employment responsibilities and their caregiving responsibilities. In the meantime, their own personal physical and mental health needs went unnoticed (Garijo, 2020). When it became too overwhelming for women to balance their caregiving work with their job responsibilities, working women were often forced to scale back on their working hours or take a leave of absence impacting their ability to equally participate in the workplace (Garijo, 2020).

For blue collar working women with lower wages, this meant losing out a day or weeks worth of wages during the pandemic. Low and middle income female labor were also willing to work in contexts more prone to COVID out of economic necessity, though they were concerned about their health and at the risk of infecting their family members.

With having to choose between their personal and professional responsibilities, women are afraid that it may dent the progression in their careers (Deloitte, n.d.). Women are considering a career break or leaving the workforce entirely due to the overwhelming stress they have been experiencing.

3.3 Child rearing responsibilities

Women were also at the forefront of providing child care duties during the pandemic with the closing of schools and daycare centres. The childcaring duties which more often than not fall on the women in comparison to their male significant others (Ibarra et al., 2020). Women reduced their working hours to tend to their kids to make sure that the setup for their online classes are there, ensuring that their education is continued and also helping them out with their homework.

Women are at the receiving end of discriminatory treatment with the expectations of being the go-to parent which is having an adverse impact on their own professional careers (Hindustan Times, 2020). As a result of this, women have been dropping out of the workforce due to the inability to cope with enormous personal caring and household responsibilities, in addition to their jobs (Arya, 2015).

Though schools and daycare centres are opening up now, working mothers are scared to send their children to those places in fear of contracting the virus. With a vaccine for children yet to be deployed, those fears are well-founded. Hence, to take care of them, women are reducing back their working hours or giving up on their careers (Boesch & Hamm, 2020). This is a precarious development for the long term if more women drop out of the economy. If the supply of child care is diminished in the future (Boesch & Hamm, 2020), that can also result in more women leaving the workforce permanently.

For women in the low paying jobs, where it is not possible to afford child care due to their socio-economic conditions (Moussié, 2016), the pandemic has had a magnified impact. The choice often is between this responsibility and a day's wages.

These existing divides create more burden on the women for unpaid work they do and impact the way they perform at their workplaces adding on to their mental burden.

4. Pandemic and the disruptions on the female labour force : At 'Work'

The burden of the invisible, unrecognised caregiving responsibilities often falls on women which has implications for the manner in which they perform at their workplace context. Undertaking inquiry in this direction will help us point towards the future(s) of workers and to help bring in safety mechanisms to be put in place. It can also help us in bringing in more enabling mechanisms for women to be able to participate in the workforce more effectively.

The gendered impact of the pandemic in the context of workforce is analysed in this section. The first part talks about the women in sectors requiring high skills and paying high wages, referred to as white collar work and are studied in a work from home perspective. The next part examines the pandemic effect on the women labourforce in sectors requiring low to medium skills paying low to medium wages.

4.1 White collar work

As the pandemic hit, numerous organisations seamlessly switched to a WFH mode of operations. But this was a luxury which could be afforded only for women in white collar jobs. Though the transition to WFH seemed natural and was even seen as beneficial initially, the veneer is cracking.

From our survey, we observed that almost 50% of the respondents worked in an analyst/associate role which signifies that they are early on in their career trajectories. More than 50% of the respondents worked in the corporate sector. Most organisations across sectors have implemented flexible working policies as a means of adapting to the pandemic. This has allowed women to give caregiving responsibilities in a more relaxed manner rather than worrying about their jobs and career.

Interestingly, women workers suggested that the physical workspace is a ground for equal opportunity and they fear that decreased visibility in WFH settings can lead to deprivation of employment opportunities and benefits in comparison to their male counterparts (Government of Ireland, n.d.) .

Women were physically and mentally burned out from personal and professional obligations. Almost 94% of the survey respondents have highlighted that they experience increased mental stress due to extended work from home responsibilities where work and non-work timings have been blurred. Almost 88% of the survey respondents have mentioned that they feel obligated to work longer hours when they work from home in a virtual setup. The virtual mode of working has necessitated being always 'on' failing from which they are at a disadvantage in comparison to their male counterparts. With the always availability factor seen as a measure of an employee's productivity, this inherently eliminates the female employees from rising up the leadership hierarchy (Deloitte, n.d.) Women WFH employees

fear a lack of equal opportunities available to them due to decreased visibility in offline workspaces (Government of Ireland, n.d.). This perpetuates a fear of losing employment opportunities such as promotions.

Gender inequality also rears its head in the virtual meeting rooms. Many female employees in higher leadership positions showcased that it's difficult for women to speak up in virtual meetings (Connley, 2020). The problem is exacerbated by the virtual workspace limiting visual cues like eye contact and body language, which can help employees gauge when it's the right time to speak.

With all these negative aspects of WFH, our survey has also thrown a light on the positive aspects of it. The ability to provide caregiving responsibilities for their loved ones during the pandemic by being in the comfort of their homes rather than being in office has been highlighted by women as a significant factor.

A related aspect is that WFH has thrown up increased opportunities for women, especially for those looking to re-enter the workforce (Roytalukdar, 2021). WFH made it easier for women with childcare responsibilities to tend to them from the comfort of their homes while being in the workforce.

A prominent facet which was observed in our survey was that WFH has been beneficial for women in dealing with issues of menstruation. Though a significant number of organisations have institutionalised menstrual leaves, there is socio-cultural hesitancy among women to avail that. WFH is beneficial for women in overcoming that hesitancy without availing leaves. With the flexibility offered in working in virtual mode, women have the agency to design their workdays as they see fit and are able to take small breaks throughout the day.

4.2 Blue collar work

Several kinds of work are unable to shift to remote work due to their nature. Such work is also predominantly done by women. Low wage paying jobs are manual requiring on-site presence. These blue-collared jobs that could not be accommodated remotely came to a standstill, depriving workers of their incomes, potentially widening the economic divide and societal inequality (Lund et al., 2020)

The reality of the pandemic on this proportion of blue collar women workforce is studied in this section. It is studied in the context of three sectors of the economy - domestic work, platform work and self-owned work. These three sectors of the economy are chosen to be studied because of its largely unorganized nature and also due to its highly feminised (Beri, 2020) nature.

4.2.1 Domestic work

Domestic work in India is feminised and an unorganised sector. The number of female domestic workers in India range from official estimates of 4.2 million to unofficial estimates of more than 50 million (Beri, 2020). A large proportion of this workforce consists of women and young girls. Domestic work refers to housework such as sweeping, cleaning utensils, washing clothes, cooking, caring for children and such other work which is carried out for an employer for remuneration (ILO, 2010). However, they are largely unseen by the nature of the work they do and are unaccounted in the economy as described before.

A number of issues plague this unregulated informal sector of work. Primarily, they are unprotected by labour legislations except for the Unorganised Workers Social Security Act, 2008 (Ghosh, 2013). Other problems include low wages, exploitative working conditions and lack of health and other safety measures (Sumalatha et al., 2021). During the pandemic, numerous employers of domestic workers had terminated their employment owing to their fears of contracting the virus. They were also forced to leave their work due to their own health concerns, not being able to practice social distancing, and the unavailability of facilities for quarantining.

Though some employers paid domestic workers their wages either fully or partially, the domestic workers were not able to access them due to lack of access to online banking facilities (Sumalatha et al., 2021). With the heavy reliance on digitisation brought in by the pandemic, the female digital divide was evident thus decreasing their access to the digital economy. In the event of not doing so, it would lead to an entire section of the workforce being left behind who are very essential for sustaining the economy.

In case of domestic workers who were working in cities they had migrated to, they chose to return to their home states due to unavailability of work in the migrated cities. With normalcy returning as vaccination rates grow, migration is slowly returning to normal as of September 2021 - despite certain reservations expressed by migrants (Sumalatha et al., 2021). Migrants are choosing to return due to lack of opportunities in their home areas. The return has generated a new set of difficulties - with additional constraints of out-of-pocket expenses for health-related measures (such as masks, sanitisers, vaccines etc) in addition to existing economic vulnerabilities.

4.2.2 Platform work

The pandemic has underscored the importance of platform workers, who worked round the clock, normalized services and lives. They acted as public infrastructures (Surie, 2020). Despite precarious circumstances and the risks to health and the difficulties in accessing social security benefits, the platform digital labour economy outperformed other sectors in terms of job recovery during April-July, 2020 (Seetharaman, 2020).

There is gender-related occupational segregation in relation to platform work with more women concentrated in feminised professions such as beauty services, cleaning services etc

(Atal, 2020). With the existing problems in the platform worker space such as status of contractors and not employers, ineligibility for employment benefits, wage insecurity, lack of social safety nets, women are much more at a disadvantage with respect to lack of clarity in maternity leave, menstrual health policies etc (Atal, 2020). Hence it becomes critical to frame women-friendly policies for women to leverage the digital economy.

The nature of the platform economy is in such a manner it is very ad hoc and women are made to tolerate uncertainties and risks at work, due to the lack of forums to turn to (Atal, 2020). With social isolation brought in by the pandemic, there is less access to social capital, which is essential for women in the gig economy space to earn more (Atal, 2020). Women gig workers participated less in labour unions and in some cases, were not even aware of their existences. With the dominance of male outnumbered labour unions, women gig workers' voices are muzzled (Atal, 2020; Natarajan & Gupta, 2020).

With the closure or reduced mode of operation for various physically located offices, it created precarious conditions for women where they were unsure of the mechanisms to report about situations or complaints related to dangerous working conditions or dangerous customers whom they are in close contact with (Atal, 2020).

Though the pandemic has also pushed women out of the formal labor force, a significant number of them are taking to the gig economy due to the flexibilities it offers in managing the household. So it becomes critical to explore institutionalised social protection for gig workers while addressing the concerns of the female workforce.

4.2.3 Self-owned work

Another major employer of the female workforce is the micro, small and medium scale enterprises (both industries and services) comprising upto 50% of the women labour force. Personal and non-professional services, comprising professions such as tailors, dressmakers, petty shopkeepers, barbers and beauty-parlour owners have faced volatility following shutdowns (Bargotra et al., 2021). Numerous enterprises have been forced to close operations owing to the lockdowns. Re-opening these enterprises has not been a smooth process with the shrinkage in markets due to overall reduced economic activity (Upadhyay, 2021).

Already existing limitations such as low access to financial institutions, to infrastructure, and lack of familial support have only disproportionately affected the women owned businesses (Apti Institute, 2021a). With the economy in a state of standstill due to the pandemic induced recession, financial capital to invest in businesses has become scarce (McKinsey, 2020). Even the meagre resources available go to the male working members or male entrepreneurs owing to the entrenched socio-cultural constraints.

The rise of digital based social commerce has given a new virtual space for women to newly establish (Apti Institute, 2021a) or shift their businesses to the online space. But the lack of financial capital has been a problem here. With so many of these women coming from a background of lower to middle income backgrounds and often end up sharing digital devices across the family. With the advent of online education during the pandemic, those devices are prioritised for education or male members of the families to conduct their businesses. And these women are always at the end of the short stick and they are not able to carry on their business as usual mode of operations due to lack of digital devices.

Though some women have been able to leverage the benefits of work from home, the same is not true for all. Several class and occupational segregations intersect with the facilitation of working from home. With WFH also being fast tracked in the last two years, there are legal provisions available and applicable for the same with specific reference to women occupied in different jobs that need to be studied.

5. Legal framework for Work from Home (WFH)

The premise of labour law applicability is the existence of an employer-employee relationship. Labour law for WFH workers extends only to those who are engaged in employer-employee relationships constituting organized (or white collar) and unorganized home based workers (HBW) (or blue collar) workforce.

WFH regulation in India has not been explored though it is a viable choice for women creating pathways to access employment opportunities, which were previously denied due to their care and household responsibilities. At this point, we need to explore regulation of WFH because we need to understand the applicability of existing laws and need for new laws given the changing trajectories of WFH. WFH legislation should not only cater to the needs of the emerging WFH organized sector but also the already existing, neglected HBW.

WFH is not present in any Indian labour legislation. The Social Security (SS) Code is the only legal protection given to HBW while the organized sector is absolutely devoid of any form of legislation. We proffer a framework for WFH regulation which accounts specifically for the differing experiences of workers.

Clarity in definitions of WFH and the different kinds of WFH workers is a must thereby defining the scope of its applicability and preventing ambiguity. For instance, the SS Code stipulates HBW as a subset of unorganized workers entitled to social security. However, Section 2(36) of the Code defines them as workers engaged in employment in premises of their choice other than that of the employers which can be interpreted to include organized WFH employees. The intent is to provide benefits to unorganized HBW and not organized WFH employees but overlapping definitions can produce undesirable outcomes by unduly affording benefits to non-intended recipients.

The Draft Standing Model Orders for the Service Sector, 2020 is the only piecemeal of a legislation stipulating that an employer may allow a worker to work from home for such a period as may be determined by the employer, subject to conditions of appointment or agreement between them. This single clause does not suffice for the host of legal issues that arise due to WFH environments. There are no legal safeguards for employees, enforcement mechanisms, lacking even a definition of WFH. The clause, based on contract, does not recognize the right of an employer to work from home. Further, labour is a subject of the Concurrent list permitting centre and state to legislate on the issue. Given WFH's interaction with the state labour codes , it may give rise to jurisdictional issues.

In the following subsections, we trace the regulatory gaps by identifying specific issues and analyse its unique impact on the two kinds of workers- organized WFH employees and HBW. In each subsection, solutions are proffered to fill the regulatory void and resolve the legal anomalies.

5.1 Specific Regulatory Gaps

An overarching WFH legislation must consider key themes commonly affecting both types of workers with unique solutions afforded to each depending on the nature of work and the socio-economic conditions of workers. The specific problems encountered differ vastly as the nature of work determines their requirements, while socio-economic conditions influence housing doubling up as home and workplace.

HBW workers grapple with a plethora of issues on a daily basis- low, irregular and delayed payments, unfair terms and arbitrary cancellation of work orders, broadly categorized under contractual legal obligations. Other issues related to poor working conditions stem cumulatively as a result of their own socio-economic status, lack of employer liability provisions to provide for safe and healthy workspaces and inadequate state intervention essential to work efficiently.

The first step towards ensuring that workers are afforded rights from the duty bound party, that is, the employer, is that it is identified. The employer shall take responsibility for their workers and cannot take advantage that there exists no fixed 'workplace' provided by the employer. The law must stipulate that it is the primary responsibility of the employer to enter into clear, written contractual agreements mutually agreed by both parties. This contract will form the basis for determination of minimum wages and other social security benefits to be granted to the worker, as determined by the respective state governments, not left at the discretion of the employer.

Identification of employers and subcontractors requires coordinated state effort by partnering with supply chains and home based organizations (Draft National Policy for Home-Based Workers in India, 2017). Employers shall be held liable for the actions of their subcontractors holding them accountable for workers engaged by them(Draft National Policy for Home-Based Workers in India, 2017). Inability to identify employers shall not deprive the worker from availing these rights given they belong to economically weaker

sections of society living on meager incomes. State intervention is required and mechanisms for provision of the same must be stipulated in law.

It is suggested that district level state supported bodies be established. These bodies perform the primary function as the first and focal point of contact easily accessible to HBW to address their grievances. These grievances can vary from inability to identify their final employers to availing social security benefits and other welfare schemes from the state.

Issues of concern affecting both sectors of workers have been identified below and potential approaches are suggested.

5.1.1 Health issues

The Occupational Safety, Health and Working Conditions (2020) Code defines establishment as a place employing workers indicating a physical space, non-inclusive of WFH workers. The definition of establishment needs to be expanded to include WFH workers and the extent of application must be specified. Additionally, provisions specifically applicable to WFH employees and HBW must be included in the Code.

Ergonomic and other specific risks stem from their unique job profiles. For instance, increased exposure to display screens affecting vision of WFH employees and exposure to toxic substances leading to chronic respiratory diseases for HBW (Chen, 2014).

The law must stipulate that the employer, as far as reasonably practicable, manage and conduct all activities to ensure the health, safety and welfare of employees. The responsibilities of the employer include the provision of protective gear, providing safe equipment, maintaining healthy work practices and imparting health and safety instruction periodically (HSA, 2020). Employees also have a duty to take reasonable care of themselves by using the protective equipment and following all the health and safety instructions of the employer. Internal health and safety committees for WFH employees can be established where health and safety concerns such as quality of protective gear, WFH equipment and other work related health concerns can be reported.

Occupational ill-health is exacerbated for HBW considering their living conditions characterized by poor sanitation and housing facilities. Further, in cases where employers of HBW cannot be identified, leaving them to fend for themselves is highly exploitative and unfair. The potential solution mandates coordinated effort by state and civil society. Structural changes in housing and sanitation can be attributed to lack of state intervention. Civil society enables the mobilization of HBW to put forth their demands to state authorities. We emphasize on the role of offline intermediaries such as local leaders, municipal authorities, HBW organizations and NGOs that actively help HBW to voice their concerns and demand for better working conditions (SEWA, 2014). The law could mandate the development of community work sheds in identified HBW housing clusters (SEWA, 2014), providing basic facilities of community toilets and clean work atmospheres ensuring decent health conditions.

With specific reference to WFH employees, the right to disconnect has come to the forefront amidst the increasing levels of work related stress induced due to long working hours. The right to disconnect envisages the workers right to disengage from work at a stipulated time and not engage in work related communications during non-work hours or holidays (Eurofound, 2019). It seeks to draw a clear line between work and non-work hours which usually get blurred in WFH settings.

With women spending more time in unpaid care work than men, the significance of fixed work timings and the right to disconnect are amplified for women. It lays down a level playing field for men and women employees to compete ensuring that a WFH setting is not unduly advantageous to male employees, making them look more productive when in reality they actually have more time to do so.

5.1.2 Accidental liability

It is agreed that extending application of OSH codes to the homes of workers invites legal ambiguity due to the inability of employers to monitor and exercise control over the same (ILO, 2017). The question is whether it is legally justified to make the employer liable for accidents that occur in the homes of workers during the work hours.

Section 73 of the SS Code stipulates that employee compensation will be afforded when the accident occurs in the 'employers premises', indicating non-inclusion of home premises. In the case of WFH employees, the employer can be made liable for accidents that occur during the working hours only limited to locations where the employer anticipated the employee to work and it was in the midst of performing the duty (ILO, 2020) including time off taken during duty (personal discomfort doctrine)(Thean & Kim, 2021). The liability should be limited to the mentioned conditions and further limited to injuries caused only to the employee and not any other third party.

In *Sandberg v. JC Penny*,⁶ the Court applied the "work-connection" test to hold that compensation was justified to the claimant employee despite working in her house as her injury *arose out of* and occurred *in the course* of her employment. In Italy, smart workers are entitled to insurance against accidents (Samek Lodovici et al., 2021). In France, any accident occurred during teleworking is a work accident (Samek Lodovici et al., 2021).

Special provisions for HBW have to be stipulated affording compensation from the state in the event employers of HBW cannot be traced. Access to welfare compensation schemes must be made available to HBW through the district level focal body.

⁶ 260 P.3d 495 (2011)

5.1.3 Safety issues

Working from home does not guarantee safety for women. Women are targets of workplace harassment even when they are within the confines of their homes. HBW face gender based violence at the hands of their subcontractors when they procure/deliver raw materials and final goods to them (Draft National Policy for Home-Based Workers in India,2017). The virtual workspace has given rise to new forms of virtual workplace harassments including sexual harassment underscoring the importance of law ensuring womens safety.

The POSH Act, 2013⁷ is the special legislation that deals with sexual harassment at workplaces. The contention is whether the legislation allows “home” of the employee to be interpreted within the definition of workplace. The definition of ‘workplace’ is inclusive to any place visited by the employee during the course of employment,⁸ encompassing virtual and HBW.

In *Saurabh Kumar Mallick v. CAG of India*⁹, the Court adopted a broad interpretation of the ‘workplace’ based on the progressive societies jurisprudence holding that the definition of workplace cannot be static given the advent of technology and changing means of transacting which includes video-conference. In *Sanjeev Mishra v Bank of Baroda*,¹⁰ the Court held that workplace harrasment includes virtual sexual harassment. In *Jaya Kodate vs. Rashtrasant Tukdoji Maharaj Nagpur University*,¹¹ the court stated that the Parliament has kept an inclusive definition of ‘workplace’ under POSH ensuring that no place where women could be sexually harassed are left out.

Gender based violence targeting HBW comes within the ambit of the POSH Act. However given the unstructured working conditions, lack of employer identifiability, or inability of HBW to approach employers at the extreme end of the supply chain, accessible alternate forums must be established. It is the responsibility of the state to create adequate and efficient forums for reporting that enable faster and speedy resolution. The district level body can be responsible for channelizing complaints of HBW to relevant stakeholders, state authorities or the employer, in case the employer is identified.

In the context of virtual work, several types of sexual harassment are stipulated in the Act which can occur virtually without physical presence of the parties known as online harassment or cyberbullying.¹² They are offences under the criminal codes attracting criminal penalties. Often, employees lack knowledge to differentiate between sexual harassment and cyber bullying leading to underreporting or wrongful of cyber bullying as sexual harassment, later rejected by the Internal Committee(IC) (Variyar, 2021).

⁷Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁸ Section 2(o), POSH Act, 2013.

⁹ WP(C) No.8649 of 2007

¹⁰S.B. Civil Writ Petition No. 150/2021

¹¹ Writ Petition Nos. 3449, 3450 & 3451 of 2013 <https://www.lawyerservices.in/Jaya-Kodate-Versus-Rashtrasant-Tukdoji-Maharaj-Nagpur-University-2014-06-13>

¹² Section 2(n).

Mandatory training and information be imparted to employees enabling distinction between sexual harassment and cyber bullying. The employer must establish adequate redressal mechanisms for cyberbullying and online harassment to address this newfound problem prevalent in virtual workplaces. An anti-harassment committee can be set up, similar to the IC in sexual harassment cases. The employers must devise mechanisms that address the gaps in applicability.

These offences warrant the establishment of a committee. These committees are faster and effective resources for employees vis-a-vis criminal remedy. Mostly, women employees hesitate from seeking criminal remedy fearing they may not be allowed to work. Further they intend to only create a safer workspace for them rather than penalizing the offender.

The law must mandate companies to align their harassment policies with the WFH work culture. This includes explicitly stipulating the WFH harassment is harassment at the workplace, prescribing WFH code of conduct and defining 'hostile work environments' (Ranalvi, 2020).

5.1.4 Data protection and privacy

Employees are concerned about the increasing use of software and hardware to monitor them in their homes. The sudden shift to WFH during the pandemic accelerated these concerns of monitoring where employees had no option but to use their personal devices compelled to download software enabling monitoring. Even if the devices were provided by the company, surveillance cannot be conducted without employees knowledge. Though monitoring is deemed necessary as part of the employment, such monitoring cannot be unnecessarily intrusive where the employer has visibility into the private affairs of the employee. For instance, the ECHR in the case of *Bărbulescu v. Romania*, the court opined that reading of the employee's personal chat transcripts was violative, even if the chatting was done on a work device (Press Unit ECHR, 2017)¹³.

Monitoring should be contractually provided for and thus consent must be obtained. It is agreed that employees are considered as data principals afforded with privacy enhancing rights. However, practically implementation is difficult given that such withdrawals and objections can affect their employment status. Employees do not have much bargaining power and have little choice to withdraw their consent or object to employee monitoring and surveillance in entirety.

Further it is the duty of the employers to notify the employees about the monitoring conducted, software used and nature, purpose and usage of information that is collected (Regidi, 2017). Information being collected without employee knowledge to make determinations related to their employment (Mohandas & Srinivasa, 2020) such as indicators of productivity, promotion, or bonuses, is a grave violation of privacy.

¹³Application no. 61496/08 dated 05 September 2017

We proffer the need for a data protection law that deals with employee privacy, monitoring and surveillance. The law shall stipulate the rights and duties of employers and employees. The law should stipulate that information collected shall only relate to employment purposes guiding contract formation and preventing any possibility of stipulating broadly worded clauses in employment contracts where the employee has no choice to object and literally consents to collection of non-employment related personal information.

6. Conclusion

Despite the rising feeling of normalcy with respect to work, views about a sustained need to socially distance remain. The pandemic has fast tracked the conversation about work from home; however the ways in which it intersects with existing ground realities is a critical exploration. Growing conversations, albeit from a neoliberal frame, about growing female labour participation, necessitate an exploration of how gender intersects with these newer ideas of work.

At the same time, it is critical to acknowledge that all female workers are not alike, and the patriarchy intersects with female work to produce vastly different outcomes and concerns for work - indeed, these are the futures of workers. The dynamics of class and socio-economic backgrounds also play a crucial role in determining the accessibility to safe and decent workplace environments. Socio-economic status, and become doubly relevant in WFH as women navigate both workplace biases around gender and class, alongside challenges like the digital divide.

Policy explorations around WFH must consider this empirical reality. It is essential to strengthen the social protection measures to support the care economy and support informal workers. More women-friendly mechanisms and policies need to be established in the local contexts for women to be able to fully participate in the economy.

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Appendix

Survey Questionnaire

1. Gender

Mark only one oval.

Male

Female
Transgender
Prefer not to say

2. Age

3. What is your role at your organisation?

Mark only one oval.

Entrepreneur/Founder
C-suite
Managerial (mid to senior level)
Analyst/Associate
Other:

4. What is the nature of your employer?

Mark only one oval.

Large scale corporate organisation in tech sector
Large scale corporate organisation in nontech sector
Small scale corporate organisation in tech sector
Small scale corporate organisation in nontech sector
Non-profit sector
Others

5. Have you been able to work from home during the pandemic ?

Mark only one oval.

Yes
No

6. If yes, was it for the same remuneration as before?

Mark only one oval.

Yes
No

7. Do you have caregiving responsibilities?

Mark only one oval.

Yes
No
Sometimes

8. If yes, how is your mental state dealing with virtual working style and caregiving responsibilities?

Mark only one oval.

I feel fine
I'm exhausted
It's manageable

Other:

9. If no, how is working from home different from the normal state of affairs before the pandemic?

10. If you have caregiving responsibilities, do you have anyone in the home to help you out with apart from your significant other?

Mark only one oval.

Yes

No

11. If living with your significant other, are the domestic chores and caregiving responsibilities shared equally, in terms of hours spent?

Mark only one oval.

Yes

No

Maybe

12. If not equal, who spends more of their time on household responsibilities?

13. Do you experience increased mental stress due to extended WFH responsibilities and blurring work and non-work times?

Mark only one oval.

Yes

No

Maybe

14. Do you feel obliged to work longer hours when you WFH?

Mark only one oval.

Yes

No

Maybe

15. If yes, why do you feel obliged to work longer?

16. Do you find it harder to disconnect when you WFH?

Mark only one oval.

Yes

No

Maybe

17. In the virtual mode of working, what have you gained from work from home?

Tick all that apply.

- Less discrimination
- More productivity
- Better career prospects
- Caregiving made easier

18. If you want to mention something more, we would really love to hear from you

19. In the virtual mode of working, what have you lost from work from home?

Tick all that apply.

- In person banter/small talk
- Ability to manage teams effectively
- Ability to communicate your needs to your superior more effectively
- Ability to disconnect from work

20. If you want to mention something more, we would really love to hear from you

21. Have you found any significant benefits in working from home?

22. As of September 2021, has your company extended the option of WFH?

Mark only one oval.

- Yes
- No
- Maybe

23. How do you see the long term trends in virtual working style?