

SERVICE LAWS AND WORKING WOMEN: FILLING INCLUSION GAPS IN NATIONAL DEVELOPMENT**N. Shukla¹, M. Pandey² and S. Singh³**¹Xavier Institute of Social Service, Ranchi
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saumya.ism@gmail.com**ABSTRACT**

India is a country which is still in the process of defining and redefining the role of women in the socio-cultural as well as the politico-economic framework of its development. The dynamics of social change have had a considerable impact on the way Indian women have been treated over centuries of development in all domains of existence; Social, Cultural, Economic, Political and the more contemporarily, Professional.

The implementation of service laws related to women has a wider connotation. It does not suffice to enlist the existing Laws, emphasize their wide applicability and ensure technically sound adherence to the provisions. Howsoever sincere our claims to development may sound, it's a fact that social attitude towards the professional role of women lags much behind what Law purports to provide. The legal and regulatory environment within a country can have a significant impact on the ability of women to engage in activities which require independent decision making. There are many variables that influence the recognition of the roles they perform. Social change whether through legislation or through judicial interpretation is an indicator of the change in role perception. The changing pattern does have an impact on the laws and the life of a given society and law must keep pace with the changing socio-economic demands of a developing society. The present paper is an analysis of existing research to identify the variables that either influence or are missing in the legal framework that is empowered to address inclusion of women in development.

Key words: development, Service Laws, women, implementation, role, inclusion

Introduction

Implementation of Service Laws in general and those for women in particular has more to do with compliance than with the effectiveness of it. Where 'justice delayed' is becoming an acceptable feature, denial of justice seems to be inevitable outcome of any case that knocks at the doors of the judicial system. But laws are also understood to be deterrents to unfair and unjust treatment. Within this parameter Laws relating to women could be serving a two-fold purpose. One that compliance to existing laws could be helping create a positive environment for increasing women's Labour Force Participation and the other that by empowering women with Rights they could be acting as deterrents to discriminatory treatment at workplace. But compliance ensures implementation of what

laws provide for. So far so good, but again Labour laws in India have been enacted to cover industrial relations, equal and minimum wages, conditions of work and non-discrimination of women. The NCEUS while analyzing the effectiveness of the coverage of different labour laws found that "the actual coverage of the labour regulations in India is very small; the laws themselves apply only to a small proportion of workforce and they are actually implemented in the case of even smaller segments." Abraham et.al. (2014). Women are working in the formal-informal; public-private; organized-unorganized sectors. Legislations that govern workers in the organized and unorganized sectors show that women workers in the unorganized sector have no legal or social protections from unemployment, underemployment, poor remuneration, non-remuneration and

poor conditions of work. Recent developments have initiated debates over housewife's duties being recognized as a paid profession and the domestic- helps being recognized by service laws. Even so, several variables need to be considered while analysing the concept of women and work like, basic conditions of life and survival, basic consumption needs, basic capabilities, nature of economic participation, extent of social inclusion and freedom Ghosh, (2009)

Objectives of the study

The basic objectives of the study are:

- To identify variables through a review of existing literature, that influence effective implementation of service laws related to women and
- To identify inclusion gaps that exclude women from national development.

Review of Literature

Law and justice either hinder or foster equality in all social context. Work, in it being performed by social units, men or women is a social context. Differences in men and women's social, legal and economic endowments affect the way they experience Law and Justice in their lives. However, women experience additional 'barriers' to accessing justice. Women face pressures of both productive and reproductive roles to be performed by them. Women workers in the informal/unorganized sector have minimal legal rights and social protections. It is also argued that even existing laws which govern the formal employment sector do not adequately cover legal rights of women in the labour force. Women are discriminated at two levels, firstly, at the entry level, and secondly on employment, women workers are treated differently from male workers within the organized and unorganized sectors. Abraham et.al.(2014) . There also exists a perceptive reality in relation to Gender Equality at workplace and the obvious reasons identified were:

- sociologically-driven role specifications that are prevalent in India
- patriarchal form of social structuring which is also reflected at workplace
- stereotyping image of female, confined to family roles and which directly leads to role conflict if they opt for employment. Sharma & Sharma (2012).

This perceptive reality of Gender Differences places a limitation on the women's capacity for choice and agency. These inequalities are further reflected in the gender segregation of labour markets. Kabeer (2012). Kabeer identifies two categories of constraints. Those that are family and kinship related, such as –

- imposition of male preferences on women's use of their time,
- women's obligations to work on men's farms and enterprises,
- the assignment of primary responsibility for domestic and care work to women,
- social norms about acceptable activities for men and women;
- restrictions on their mobility in the public domain,
- customary laws which give women little or no rights over property.

And those that are in the public domain, such as-

- gender discriminatory laws and policies
- attitudes and behavior of more powerful actors, including employers, state officials, trade unionists, traders and co-workers.

And there is Gender discrimination of various less visible kinds like demands for sexual favors, tend to get excluded from the more quantitative studies.

Women's work in India is further characterized as an outcome of her being situated in the specific trajectory of Capitalism, due to her location. Ghosh (2013). Due to the Segmented labour markets in India, Capitalism has major effects in depressing women's wages and allowing for even greater extraction of

surplus value from their work. There are many strategies for increasing working hours and reducing wages of women, which contribute to increases in both absolute and relative surplus value says, Ghosh. This according to her has resulted in paradoxical combination of increasing paid work, unpaid work, underpaid work and open unemployment of Indian women lies in the macroeconomic processes. The failure of the growth process to cause to shift labour force out of low productivity activities to better and higher remunerative activities are more prominently felt in the women labour force participation. Thus Indian growth is characterized by a basic feature: exclusion from benefits. This has however not meant exclusion from the system. The outcome of this marginalization is exclusion through incorporation. Therefore the Indian economy shows a paradoxical trajectory of high aggregate growth with inadequate or poor employment generation. And this has directly impacted on the lives of women in India. Recent data give clear evidence that women's labour force participation has shown an upward trend but most of it is accounted for by the increase in women being employed as domestic workers. Representation of women in the unorganized and informal employment makes them vulnerable as at present, domestic workers are unprotected by almost all labour legislation. None of the labour laws, such as Workmen's Compensation Act 1926, Inter State Migrant Workers Act 1976, Payment of Wages Act 1936, Maternity Benefit Act 1961, Minimum Wages Act 1948, Equal Remuneration Act 1976, Employee's State Insurance Act, Employees Provident Fund Act, Payment of Gratuity Act, 1972 are applicable to them. However, they have been recently included in the Unorganized Workers' Social Security Act, 2008. Some states have taken the initiatives to issue Minimum Wages Notification. They have also found protection under the Sexual Harassment of women at workplace (prevention, prohibition and redressal) Act, 2013.

Therefore, both public policy and labour mobilization can play roles in improving such conditions even when the overall employment scenario is bleak.

Further, there are feminist legal theories that need to be analyzed to bring about contextual integration of women workforce into the economic developmental framework. Feminist legal theorists go beyond sameness/difference debate and are also concerned with transformation of legal logic, legal values and the concept of justice. Contemporary feminist theories reject the idea of law as a neutral system of regulation and dispute resolution, and attack its concepts of 'universalism,' 'objectivity,' 'neutrality,' 'rationality.' Like Legal Realist theorists, they believe that law cannot be defined as a scientific enterprise devoid of moral or political context, independent of social reality.

Feminists attack these legal concepts on many grounds. They (all) argue that legal concepts of 'impartiality' and 'objectivity' are just viewpoints of dominant groups, and therefore hide male bias: 'if the sexes are unequal, and perspective participates in situation, there is no ungendered reality or ungendered perspective.'" Katherine & MacKinnon (1989). Certain other legal methods have been criticised for their propensity to maintain the *status quo*.

"Legal rules permit and sometimes mandate the *terrorization* of the female body. This occurs by a combination of provisions that inadequately protect women against physical abuse and that encourage women to seek refuge against insecurity....Legal rules permit and sometimes mandate the *maternalization* of the female body. This occurs by provisions that reward women for singularly assuming responsibilities after childbirth and with those that penalize conduct-such as sexuality or labor market work-that conflicts with mothering...Legal rules permit and sometimes mandate the *sexualization* of the female body..... Sexualization also occurs -paradoxically- in the application of rules such as rape and

sexual harassment laws that are designed to protect women against sex-related injustices. These rules grant or deny women protection by interrogating their sexual promiscuity.” Frug (1992)

In keeping with the feminization of perspectives, there is realization that the legal reforms widely discussed in the developmental context, also need to develop an inclusive legal framework that are more individualistic in offering professional choices to women. Eco-feminists accept women’s attitudes and values as different from men. They believe that in certain respects women are superior to men and possess the qualities of creativity, sensitivity and caring which men can never develop. Vandana Shiva in her conception of eco feminism critiques development and establishes the connection between ecological destruction and capitalist growth as a patriarchal project (Shiva, 1999) In this perspective female potential could be optimally used through an understanding of their individual feminine faculties.

Findings and Conclusion

Effective implementation’, is therefore far removed from the mere ‘implementation’ of service laws for women and it is dependent on Gender aptitude, attitude and the intent of:

- The law makers;

- Policy makers who spell out the facilities for implementation
- The sanctioning authority of various legal provisions

If this be the area of concern, it is imperative that women have their economic roles in family, society and professions, defined properly as individuals as well as working teams. As individuals they need to be treated as productive Human Resources in order to contribute positively rather than be treated as ‘burdens’ on the map of development. A clear understanding of ‘gender issues’ in the working environment which otherwise gives rise to contradictions regarding laws granting ‘privileges’ rather than ‘rights’ and ruling out manipulations which erode the intent behind laws governing working women, will actually lead to the ‘effective implementation’ of such laws.

Working women, all women who are in paid employment, face problems at the workplace not just because they are working but also by virtue of them being women. Laws take care of direct action but a synergy of progress can be achieved by actually transforming the existing social discrimination concurrently, to rapidly improve their social and economic status and thus provide a clear definition of the developmental role of women in India.

References

- Abraham, A. Singh, D. Pal, P. (2014).** Critical Assessment of Labour Laws, Policies and Practices through Gender Lens, National Resource Centre for Women, National Mission for Empowerment of Women, Ministry of Women and Child Development, Government of India,
- Sharma, S. Sharma, M. (2012).** Gender Equality at Workplace: a Perceptive Reality, Social Sciences Directory Vol. 1, No. 1, 19-33
- Ray, S. (2013).** Understanding Patriarchy, Human Rights, Gender and Environment
- Frug, M.J. (1992).** Postmodern Legal Feminism, New York: Routledge pp. 129-130.
- Mossman, M.J. (1986).** ‘Feminism and the Legal Method: The Difference it Makes’, Australian Journal of Law and Society 30
- MacKinnon, K.A. (1989).** Method and Politics, in: Toward a Feminist Theory of the State, Cambridge: Harvard University Press at 114.