

Women, labour laws & employment: Gap between theory and practice

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Abstract

Indian constitution has adopted numerous provisions prohibiting sexual discrimination. Many gains have been made for women in society to enable them to achieve equality in their social, political and economic aspects of their lives. Nevertheless, discrimination against women persists. Workplaces provide examples of the aspect of women's lives where they face discrimination.

Keywords: Labour Laws, Maternity Benefit Act, 1961, Human Capital, Discrimination

1. Introduction

1.1 Women and Laws

Law is an instrument to bring desired changes by the state which uses the fear of penalty to make sure that everyone adheres to the provisions of the law. The world has moved towards achieving the goal of equality in place of existing inequalities which have been in practice since ages. Inequalities lead to discrimination against one by the other in the society. In such a situation laws have special place when it comes to the women in society. Since ages, women have been kept at subordinated, dependent and disadvantageous position because of which men in society continue to have authority over women that ultimately strengthened the existing patriarchal structure of society. On the importance of laws for women, Anne-Marie Mooney Cotter writes,

“The law is of central importance in the debate for change from gender injustice to gender justice”^[1].

Similarly, Krishna Gupta writes,

“Law is being used as an important instrument for transforming the status of women”^[2].

The protection by laws against discrimination was not easily provided to women. To gain the protection and benefits for the betterment of women, several movements were initiated to overcome the status of being a secondary sex. These movements have been given the name of ‘feminist movements’ as these movements aimed to gain equal rights for women in society in all domains of life including socio-economic and political. The importance of these movements becomes evident when one considers the steps taken by world organisations at global and national organisations at domestic levels to help women to overcome the traditional discriminations prevailing against them. Accordingly, world celebrated ‘International Women Year’ in 1975 and the decade of 1976-85 was observed as ‘Decade for Women’ and many more conferences were held at international level to raise the awareness among world population and policy makers towards inequalities faced by women in every step of their life.

It is the liberal feminists who stressed on the importance of laws in bringing positive change in the lives of women. Krishna Gupta brings the importance of laws as emphasized by liberal feminists by writing,

“Liberal feminism put an increasing emphasis on change through law and courts. It was... less threatening ... They advocate reform of discrimination laws. They argue in favour of affirmative action to create substantial equality ... Law if effectively enforced, could remove gender equality”^[3].

Swapna Mukhopadhyay has similarly led emphasis on the importance of law in bringing positive change in the lives of women in India. She writes,

“... reliance on the efficacy of law and legal reforms to initiate changes in the social order towards the gender just and egalitarian society gets voiced in what might be termed as the first comprehensive document marking the contemporary feminist movement in India, i.e. the Report of Committee on the Status of Women in India. The Committee viewed legislation as one of the major instrument for ushering in changes in the social order in the post colonial state”^[4].

As against the paramountcy attached to the laws by the liberal feminist, feminist jurisprudence has provided an altogether different picture of the importance of laws in the lives of women. Bringing the basic views of feminist jurisprudence in its contemporary phase, Krishna Gupta writes,

“Feminist jurisprudence in its most contemporary phase offers powerful arguments to the effect that law itself is a masculine enterprise ... They decry the importance of legally oriented victories which have been attained by the women's movement in the areas of equality of opportunities, in politics and employment, affirmative action, preferential treatment etc. They are more concerned with continuing gender inequality in economic, political and social spheres and ineffectiveness of law in dealing with domestic violence, rape, employment discrimination and endless kinds of exploitation of women”^[5].

Both the above stated views regarding the importance of laws in the lives of are correct. It cannot be denied that the government agency responsible for implementing laws and bureaucracy responsible for implementation of such laws have till date remained male dominated. Thus, it is not incorrect to say that complete neutrality of laws is hard to achieve as individuals responsible for making laws easily get influenced by the external factors. Being one of the members of the group of those who has dominance over women, the

idea of men making and implementing laws towards achieving equality of sex in every domain of life is still a distant dream. However, denying the usefulness of laws in bringing equality, no matter to a limited extent only is not correct. It becomes very difficult to bring changes in society for the betterment of oppressed class of society without bringing the laws as it make the people to obey new standards of life because of the fear of punishment.

Next section presents the views on the place of women workers in the labour policy and how the labour laws affect them at the shop floor differently as envisaged in the objectives of the labour laws and policy.

1.2 Women workers and labour laws

Women have entered the labour force for remunerated work in both organized as well as unorganized sector of Indian economy. There is a general tendency to look at women workers as secondary workers and their earning as secondary earning in their households and that of male workers as primary workers and independent and their earning is considered as the main or primary earning of household. This general thinking is visible everywhere from one's own home to labour market and even visible in the government policies regulating labour market. There exists a gap between the laws enacted as per the constitutional guarantees of equality in the form of equality of opportunity and equal wages for equal work to that of a practice at the shop floor where women workers constitutes majority of informal workers in the economy.

Women enter the labour force with inequality in human capital in comparison to the men workers. This difference in human capital arises due to the cultural practice prevailing in the society wherein girls are considered as a burden and boys as assets. Thus, parents very often put their best to educate their male children and imparting skills in them whereas female children are made to learn household chores and higher education after free & compulsory education is still a dream for many. Further, vocational skills which could help these female children to get higher paid jobs in labour market is still not an acceptable cultural practice because parents are more worried to get their girls married at a so-called appropriate age which prohibits their chances of higher studies and learning more. This lack of human capital investment resulted in the unequal opportunities for women workers in comparison to men workers in the beginning of their earning life. Apart from this type of inequality, women workers mobility and presence in the labour market is further curtailed by the burden of carrying on the domestic duties especially of child bearing and rearing. All this has resulted in the over representation of women workers in the low skilled work and which is near to their residences as there is still a controlled mobility of women in Indian society.

“Discrimination across the board in terms of education and training, hiring and remuneration, vertical promotion and horizontal mobility practices, inflexible working conditions, lack of access to productive resources and inadequate sharing of family responsibilities, combined with a lack of services, such as child care, continue to restrict employment, as well as professional and economic opportunities for women” [6].

In light of the above given picture, labour laws are envisaged to facilitate the conditions of work such that women workers are employed without discrimination but these laws proved to

be of less help because of the continued existence of unequal human capital investment between men and women workers. In India labour laws have been adopted to provide security to its working class along with the fundamental rights of equality in terms of opportunity and also special drive from the part of the State to employ more women workers. In the colonial era only the interest of industrialists were championed by the rulers though they provided a cloak of welfare on it. Those laws restricted the employment of women workers because such laws limited their working hours in comparison to men workers. Even after independence, Indian government carried on the laws of pre-independence era without much change, even though it would be argued that labour conferences were held to discuss new laws and policies regarding industrial relation, yet there is a question to be asked as how many women workers or true representatives of women workers were present in those conferences and how many times did they actually put forward their points to safeguard their interest. These labour laws were adopted to abolish the discrimination in labour market and facilitating the adoption of fundamental rights of equality of opportunity. There is legal equality between male workers and female workers in Indian labour market. However, what has been achieved so far is restriction on the women workers in the labour market by these laws with the aim to protect the interest of women workers. Women workers in Indian labour market have always remained a receiver and not an initiator for their own benefits and this has weakened their power in the labour market.

Benefits and special security provided by Indian labour laws to its women workers have pushed women workers in the shadow of being mothers only and not as woman an independent individual. These laws themselves have reinforced burden of gender specified role of child bearer and nurturer on women workers. As benefits are associated with the gendered role they are not willing to go beyond the occupations associated with gender specified nature of women and also their residence to explore new and more fruitful opportunities of work. This has been so because of the invisibility of women and their voices in formulating labour laws. These labour laws are formulated by men who are made to consider women workers as weak and subordinate within the working class by their gendered moulded thoughts and perceptions.

“With the traditional legal system as it is, law becomes legitimate and social dominance becomes invisible, perpetuating discrimination and male dominance” [7].

Following are certain provisions given in various labour laws that have impact on the employability of the women workers:-

1.3 Impact of labour laws on employability of women workers

Provisions dictating nature of work and working conditions to be maintained in the manufacturing firms such as provisions of rest, maximum number of hours of work, holidays and many more has direct impact on the employers' decision on the number of women workers to be employed by him or her. There is a provision that prohibits the employment of women in the night shift. The provision which is given in various labour laws is said to be adopted to ensure the safety of women. Further, in industries where restrictions regarding

night shift of women workers are not placed, there is a provision of making arrangements of transportation to be used by women workers by their employers. On this matter, National Commission for Women in its Work titled Course Curriculum on Gender Sensitisation of Judicial Personnel notes,

“The factories Act, Plantation Act, Mines Act and The Bidi and Cigar Workers Act all play restriction on employment of women during the night (SEWA, 1989.)”^[8].

This text associate such provision with the security of women and consider it as a way to sensitise others about the heavy burden of dual work that women carry with them. It writes,

“While it is believed that night employment is detrimental to the health of all workers, only women’s night work is restricted. If women are to work at night, they must be offered transport to and from work in order to ensure their safety. It also must be kept in mind that women alone are responsible for household task which must be done during the day. Therefore, they do not have the same opportunity for rest during the day as men have. This should not restrict women’s employment choices, though. Instead it should serve to improve recognition of women’s heavy workload and pave the way for a more equitable work distribution between men and women”^[9].

The above discussed provisions, no matter how good intentions it has towards women workers of India has proved to be a hurdle in the long term employability of women workers, as was observed during filed visits in small scale manufacturing units of garment industry of Ludhiana. The restriction on night employment as stated in the Factories Act further limits down the already few employment opportunities available to women workers who had limited access to skills. Since the goal of every employer is to maximize the profits by making sure that the machines and workforce are always at work. If they employ women workers, it would legally mean no night shift. As far as garment industry is concerned, the workload keeps on changing as per the changes in orders and at times of big orders to be completed on time, this industry indulges in night shift to complete the order. Here, employment of women leading to no night shift makes it difficult to complete the order on time. Hence, to avoid such situation the women workers are not hired on permanent basis within the factory premises. Further, the provision of providing transportation service is simply not acceptable to employers especially in garment industry as it would increase the cost of production. Garment industry or for that matter any industry cannot afford to increase its cost of production in order to remain competitive in the world market. Provision of providing private transport for the women workers by employers can be looked from different perspective altogether. This provision helps the state transport system to neglect the need to strengthen and improve their services which can enable women workers to travel at night. It has allowed the traditional norm of women depending on men to travel outside their homes. Such provision can be looked from the perspective that the state is not responsible for enabling the mobility or safety of women workers who defy the gendered defined roles based time-table which clearly state that women should not venture out in dark on their own. Putting restriction on the employment of women in night has brought major consequences in the society. Today, nights are not considered as safe for women to go out. Presence of

women as workers in night shifts and their mobility in nights since the inception of industrial work in society would have resulted in more equitable access to outside world without any fear along with of course the state transportation system connecting all parts. This practice of restricting women workers in the night shift has ensured that women are available in the service of their men especially their husbands when they come back from their work and also for other family members.

Another such provision is to provide crèches in factories. This provision is in tune to the nurturing role of women in society. Based on the gender defined role, it is the sole duty of a mother to take care of her children. This duty does not change with the change in the status of women from being a housewife to a worker. On this matter of crèches facility, National Commission for Women notes,

“The Factories Act, 1948 has a statutory provision for crèches in factories employing more than twenty five women. There are no laws for the children of unorganised sector workers. However, a very limited number of crèches are run under the social welfare boards. Voluntary Agencies, such as, Mobile Crèches, too run a number of childcare centres for these workers. However, the finances available for childcare in the unorganised section are very limited”^[10].

The above stated provision makes it compulsory on the part of the employers to make all the arrangements to make sure that there exists a crèche for the children of their women workers. Having this facility within their workplaces, relieve women workers from the stress about the well-being of their little children in their absence. The stress free worker always works at his/her maximum level of productivity. In this sense, providing crèches within their establishment can actually bring profit to the employers. However, employers fail to see this side and concentrate only on the cost side. They consider this provision as a burden which they have to carry because of the fear of penalty. To come out of this compulsion, women workers are employed in less numbers than the prescribed number of twenty five women workers on permanent basis. Further, once again women workers are employed on temporary basis so that they do not become legally eligible to avail such benefits.

Provision for providing maternity benefits to women workers also creates hurdles in the long term employability of workers on permanent basis. This Act makes it compulsory on the part of the employers to provide paid leaves. On the matter of implementation of this provisions at ground level, National Commission for Women states,

“Studies have also found that even in the organised sector the coverage of maternity benefits is not good. This is due to different factors including the temporary nature of women’s employment, poor enforcement of the Act and women’s unwillingness to fight for their rights”^[11].

National Commission for Women further states that,

“In many cases women only begin working after having all their children (organised sector), many married women workers in the organised sector have undergone tubectomy and hold documents proving this fact. These documents are then shown to employers to prove that maternity benefits will not be required (Hirway, 1986). Thus, the number of women requiring maternity benefits is made small”^[12].

The above stated information brings to light the negative consequences of this Act on the employability as well as

health of women workers. This Maternity Benefit Act, 1961 has made a natural biological cycle of women a hurdle or burden on women. As far as employers are concerned, the provision of paid leave is not a major concern. It is the provision that states that women workers cannot be dismissed for the prescribed number of days. This provision leads to decrease in the production level of manufacturing firms in the absence of working hands. Further, employing contract based workers for a limited period of time is not an easy task because of the earlier discussed provisions regarding usage of contract labour. Hence, employers give second thoughts on the impact of employing women workers on permanent basis which ultimately restrict the employability of women workers on long term permanent basis.

This Maternity Act if implemented strictly can have adverse impact on the employability of women as workers on permanent basis. In an industry like garment industry where work hours are based on the orders and limited time frame, giving paid holidays to pregnant women workers and accepting them as workers when they re-enter the labour force after child birth. In addition to this, it will affect the chances of becoming permanent workers of those women workers who are hired to work for the women workers seeking maternity leaves. Such workers will be asked to leave their work once the earlier women workers re-enter their workplaces. This practice will not enable such women workers to avail the benefits of this Act when they will be pregnant. Looking at this law from above discussed perspective will not be of much help to the women workers at large. Further, this provision will force the employers to look for the younger girls to be employed as workers. This may result in usage of child labour and it will for sure have impact on the education of girls especially of girls belonging to poor households.

The law to curb all the possibilities of sexual harassment at workplaces has the noble objective of making workplaces safe for women. Along with the positive side this Act has also created a hurdle in the employability of women workers. This aspect has come to the light while small scale manufacturing units were visited. It is said to be risky to employ native women workers to work along with the male migrant workers because sexual harassment taking place in the workplace would result in dragging the employers in the whole procedure described in this law. Such incident is also associated with bringing bad name to the manufacturing units. This fear of losing respect in the market has created hurdle in the employability of women workers which has been given the name of security of women in the society.

These labour laws not only discriminate against women by limiting their employment opportunities, they also create heterogeneous working class which benefits capital owners because it divides working class on the line of sex and weaken the solidarity among workers. While doing this, women are pushed back not only by male workers but by employers also, who not to forget very often are male. Laws have made women workers dependent on others to safeguard their interests and in the absence of strong women leaders; they are dependent on male leaders with their prejudices formulated by the culture and societal norms.

Further, the whole procedure of arbitration and adjudication given in the labour laws provides stark difference from the perceived notion of equal women workers. This whole

procedure of getting justice within the ambit of labour laws does not take account of gender specified role of women workers along with the lack of support from family members to undergo long procedure period along with the fact that benefits are associated with employment and not with unemployment. Here women workers are considered as equal to men workers to undergo the procedure.

Trade unions which are the vanguards and protectors of workers have failed to support the issues regarding women workers though in India trade unions are very active in industrial relation and focus its attention to male workers only^[13]. This has resulted in the weak bargaining power of women workers at negotiation table.

2. Conclusion

Indian constitution has adopted laws concerning social, political and economic aspects of life that enable Indian women to live their lives as equal partners in society. The equality provision has also adopted in labour codes as well regulating the labour market. These legal provisions have contributed to many gains for women in society from abolishing inhuman activities towards women such as Sati pratha and Child Marriage, to giving them power through enacting laws such as Widow Remarriage Act, right of women in family properties, Maternity Benefit Act and Equal Remuneration Act. Nevertheless, women still face discrimination. Despite various labour laws with the aim to ensure equal status to women as workers, the discrimination against women as workers is clearly visible at workplaces in the formal as well as informal sector. It will be completely incorrect from our part to neglect the importance of laws, but the focus must go beyond the written aspect of these laws. There should be emphasis on the impact of the employability of such laws at shop floor level. Practical application of such laws can be strengthened and that too in tune with the objectives with laws are formulated can be achieved through educational measures, training and legal literacy programs for workers, employers as well as personnel of government enforcement departments.

3. References

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