

BOOK REVIEW

HANDBOOK ON LAW, WOMEN AND EMPLOYMENT, *Surinder Mediratta, Oxford University Press, New Delhi, 2009. HB, Pages xix+218. Rs. 750.*

Women have entered the domain of paid employment in huge numbers since the beginning of the nineteenth century. There has been a gradual upliftment in the status of women as they have gained economic independence. Although the acquisition of human rights by women has had a positive impact on society, there remain significant inequalities creating an impediment in the path of full realization of social justice. A substantial sex differential in earnings still remains. Patriarchy is a reality that exists even today causing authority and power to be male prerogatives. Occupational segregation on the basis of sex creates discrimination and stereotypes.

In a thought provoking introductory chapter the author elucidates that law is an instrument for social engineering and several labour legislations have been enacted to govern the employer-employee relationship. However, despite these laws the status of women remains abysmal because of poor implementation, existing lacunae and non-application in the unorganized sector. 'Gender Equality' becomes a far off dream due to the lackadaisical attitude of the implementation machinery. Interestingly, it has been stated that 'women themselves should become instrumental in bringing about the desired changes in the society' for the reason that they, as mothers, play a key role in shaping the welfare of future generations.

Developing the subject further, Mediratta argues that employment as a concept excludes certain crucial types of work that contribute to 'human welfare and development'.¹ These are the household chores that are usually performed by women and are labeled as economically unproductive. The book explains that unpaid work is as much part of the monetary economy as paid work. This implies that both paid and unpaid works contribute to the growth of the monetary economy and qualify to fall within the term 'work'. Unfortunately, it is only the work which leads to creation of goods or services and is tradable in the market which is labeled as employment. It is due to such labeling that many women are undervalued and their work and contribution goes unrecognized.

Although the work participation rate of women has substantially increased over the years, yet it is much less than the participation rate for men. The book highlights that the women-oriented laws enacted to protect their interests induced many employers to employ men proving that educated women have a

¹ See p.11 of the book.

much higher unemployment rate than educated men.² Women are primarily confined to the unorganized sector due to the burden of household work and lack of opportunity to acquire adequate skills and training. Yet there is lack of systematic protection and protective legislations for the employees in the unorganized sector. Such an attitude seems to be a glaring reality and is surely reflective of the conservative societal mindset and the deep rooted patriarchal setup the Indian society has been entwined with since time immemorial.

Equality is one of the foremost principles enshrined in the Constitution of India. The author has elaborated upon the concept of equality by discussing the Preamble, Article 14 and Article 39(d) of the Constitution and reached the conclusion that equal pay for equal work can be inferred from the paramount law of the land. However, in many employment sectors the employers regard women to be cheaper labour. Weak implementation of legislations such as the Minimum Wages Act, 1948 and the Equal Remunerations Act, 1976 results in serious violation of women's rights and the constitutional mandate of equality. Job valuation is imperative to realize the goals of these legislations because it helps in assessing what works qualify as being of a similar nature. The same should be done on the basis of the work content and not the sex of the individual carrying out the work.

In the chapter titled "Sexual Harassment at the Workplace", Mediratta has comprehensively covered both the legal and sociological aspects of the constant menace faced by women at work. The very first few paragraphs of the chapter brings to light the interesting fact that "sexual harassment" as a term was coined as late as in the mid-1970's. Tracing the genesis of the recognition of the problem as an aftermath of the women's movement in the United States, the author goes on to elaborate upon the definition of sexual harassment as enunciated in the landmark judgments of *Vishaka v. State of Rajasthan*³ and *Apparel Export Promotion Council v. A.K. Chopra*⁴. The concept of "hostile work environment", although mentioned by the author could perhaps have been discussed in more detail in light of the fact that the same has been specifically referred to in the latter case. He then goes on to critically analyze the Protection of Women against Sexual Harassment at Workplace Bill, 2007 and suggests means of plugging the loopholes. Through his use of real life instances, the author has successfully ensured that the reader is able to empathize with the victims of such harassment while at the same time providing a comprehensive account of the existing legal situation.

Securing maternity protection for women as a social security measure is a matter of right in India. In this context, the author explores the benefits available to women under the ILO Conventions as well as under the Indian law, primarily under the Employees' State Insurance Act, 1948 and the Maternity Benefit Act, 1961. Several facets of these statutes have been discussed and their shortcomings

² See pp. 14-16 of the book.

³ AIR 1987 SC 3011.

⁴ AIR 1999 SC 625.

have been highlighted. The author notes that most of the laws providing maternity protection are, restricted to the organized sector, excluding the women in the unorganized sector who, in fact, represent the majority of the women workforce. Through his use of statistics, the author highlights that notwithstanding the inadequacies of the existing legal framework, only 0.25 % of the women actually avail of the maternity benefits that are currently available. One may misconstrue the author's reasoning, whereby he equates disability with pregnancy, for the granting of maternity benefits, but a complete reading of the chapter dispels all doubts as to the fact that he is in fact an ardent supporter of equality.

The author further contends that society owes a special responsibility to women because of their childbearing function. This special responsibility should extend to ensuring maintenance of good health and well-being of women employees. Law mandates certain duties upon the employer to provide special facilities like separate washing and toilet facilities, rest rooms and canteens, crèches and hostels for working women. While such facilities are purportedly for the safety and well being of women employees, the author expresses his skepticism about the actual benefits of such restrictive provisions contained within the Factories Act, 1948 and Mines Act, 1952. His suggestion that certain provisions of these enactments be rephrased so as to better serve the dual goals of safety for vulnerable groups such as pregnant women and children below 18 years of age, while at the same time ensuring that they are not used to adversely affect the chances of women in certain employment avenues like cleaning or lubrication of machinery in motion, is noteworthy.

The theme in the book is concluded by noting that although these legislative provisions have been enacted with the intention of extending such benefits to the women employees but in reality, create opportunities for employers to discriminate against women by limiting their employment opportunities. The means somehow seem to be eluding the ends sought to be achieved.

Mediratta's book is a comprehensive account of the major issues faced by women at work. The handbook touches upon relevant enactments and case laws while discussing each of the issues. However, this book is of special relevance to the extent that it does not enunciate the laws in clinical isolation and contextualizes the same by liberal references to real instances, historical backgrounds and statistical data. His use of the comparative approach stands readers in good stead as it aids them in acquiring a holistic idea of the topics under discussion. All in all, Mediratta's book is an appreciable and honest effort at highlighting much discussed yet perennially significant issues experienced by women at work on an everyday basis.

— Salonika Kataria & Ushasi Khan*

* Editors, NUJS Law Review

