

RGICS



RAJIVGANDHIINSTITUTEFORCONTEMPORARYSTUDIES
JAWAHARBHAWAN,DR.RAJENDRAPRASADROAD,NEWDELHI-110001

RGICS Issue Brief

(September 26, 2016)

Women's Rights: Current Challenges

Prepared by: Niharika Bapna
(Under the guidance of
Ms. Barkha Deva)

RGICS Issue Brief

Women's Rights: Current Challenges

Prior to 2006 a number of protective legislations like the Domestic Violence Act (2005), Dowry Prohibition Act (1960) were enacted and rape law reforms were initiated in response to the need to protect women from violence. The main objectives of these legislations were to protect the health of women and provide for their safety. In the latter part of the past decade, the society and the legislature, to a certain extent, came to realise that women need laws that offer more than just protection; they need laws to provide them with a conducive environment to grow. Laws were required to foster women's independence so that they are not perceived just as recipients of 'doles' from the State but recognised as stakeholders who are capable of asserting their rights.

In this regard legislations can be perceived as tools that would initiate such a progressive social change. But for this to happen laws should not be only aimed to satisfy an immediate deficit but more importantly, should be forward looking. Considering how instructive a legislation can be for a society a strong case needs to be made for laws to not mirror society but embrace a liberal, progressive thought process.

A ban on surrogacy for homosexual couples is being bolstered by rooting it in the Indian 'ethos' and introduction of paternity leave is being dismissed on the presumption that men will use it as a 'holiday'. When it is the Union Ministers of India who advance these arguments, it is clear that our government is in a virtual time warp and is unable to look at tabling progressive laws even in 2016. For it is a progressive law that can be the best 'pull' factor encouraging a society to embrace, quoting Victor Hugo, an idea whose time has come. And this cannot be truer than in context of the rights that are most valued by women in present times.

Flavia Agnes's review of legislations aimed at protecting women during 1980-89 revealed that those legislations were ineffective in tackling the issue of violence against women.ⁱ In order to assess the new challenges women face in this decade the present document evaluates the three recent legislative efforts-the Sexual Harassment of Women at Workplace Act (2013), the Maternity Benefit Amendment Bill (2016), the Surrogacy (Regulation) Bill (2016). Although, at the outset it must be pointed out that akin to the erstwhile era of protective legislations, these three legislative efforts are still focussed on addressing concerns around traditional women's rights- their safety and their ability to procreate. Whether they will be impactful in altering status quo and addressing rights that are valued by women in India in current times remains to be ascertained.

I. Legislative Incompetence in Addressing Women's Rights

Often rights of women are construed on the basis of their relations with others as a daughter, a married woman and a mother rather than viewing them as a separate entity with independent interests. It cannot escape observation that our policies and our laws intended to advance women's rights are more targeted in doing so within the framework of private and domestic concerns.

Women-oriented legislations must be progressive not normative

In the case of India, law making is a complex process. It is formulated by a mix of contradictory influences owing to which sometimes laws made by the Parliament are either ignored or trumped by local customs which then become uncodified laws.ⁱⁱ So to break down hegemonic attitudes towards women, we cannot simply wait for the present society to turn into a conscientious one which will rise to accept women as independent entities- separate from being mothers, wives and daughters? Legislations therefore cannot continue to restrict themselves to reflect what the society believes or else the chance for redemption of women's identity will be left to the indeterminate future of progressive societal development. It has been argued that mere passing of stricter laws with strict punishment cannot initiate the process of social change and gender justice and in order to bring about social justice there has to be a change in attitudes of those who are in power.ⁱⁱⁱ However, this cannot be a ground to consider the process of law making perfunctory.

RGICS Issue Brief

Women's Rights: Current Challenges

Ministry of Women and Child Development's primary focus is children not women

Even the Ministry dedicated to women views their concerns linked with that of children, self explanatory from the title- Ministry of Women *and* Child Development. Out of the six autonomous organizations under it only two (National Commission for Women and Rashtriya Mahila Kosh) centre their objectives on women while the rest are for improvement of child welfare. Even if we were to look at the subjects allocated to the Ministry under the particular head of 'women's empowerment and gender equity', we will find that NCW and RMK are the only women oriented subjects; issues regarding juvenile offenders, adoption and child marriage are itemized under this head!^{iv} How are these subjects contributing to the empowerment of women and gender equity? Considering the fact that it is this wing of the government that suggests policy changes and drafts legislations for women, it is questionable if this Ministry is even capable of identifying core concerns of women when it cannot even view them as an independent entity?

Essentially women's rights issues are those for which women are the intended beneficiary, constituency or object. The focus when talking about women's rights policies should be on issues which have as their goal greater equality and opportunity for women. This definition of women's rights emerges from a modern liberal feminist conception which recognises unique interest particular to gender and also makes a strong case for advancing women's equality.^v The Indian Constitution guarantees equality for women before the law. However, the institutional support under the gender specific laws which would take this constitutional idea forward have been written with unquestioned bias in the language and continue to uphold gender stereotypes.^{vi}

It is true that policy problems identified through political agendas comprise more issues than those encompassed within the legislative framework. But it is also true that the number of legislations passed and debated by Parliamentarians is used to assert the success of a session.^{vii} Therefore, if the recent legislative attempts for women are not enabling then this poses a serious question about how viable are laws that are being produced by the legislature.

One important reason why legislations have been incompetent in achieving results is because they are insincere towards their objectives. It is not enough to have ambitious, progressive legislative themes without due diligence to ensure these objective are realised. Societal entitlement is a concept of human rights understood as the responsibility of the State and the society to guarantee not only freedom of opportunity to its citizens but also achievement of results.^{viii} While advancing a rights-based legislative solution for changing the current perception of women primarily as care givers, the law makers need to be wary of women in this country being deprived of their basic human right of social entitlement owing to paternalistic law makers?

II. The Sexual Harassment of Women at Workplace Act, 2013

In case of India the glaring absence of females in the workforce is cited as one major determinant of the country lagging behind globally in the sphere of economic growth. A recent study by Asian Development Bank (2016) in Bangladesh has revealed that the positive economic turnaround in the country has largely been due to the rising presence of women in the workplace.^{ix} Keeping in mind that Bangladesh is also a developing country this finding speaks volumes about which direction India should move in if it intends to achieve economic prosperity. While rising inequality and a slowdown in economic growth are considered as important economic problems facing the world, the issue of gender inequality has not yet forayed into our domestic economic debates.^x A sense of how much economic freedom Indian women have can be gauged from a recent report evaluating economic freedom in context of gender disparity in 159 countries. The report analyses freedom to work and freedom of movement and ranks India 112 (behind Mexico and Russia), speaking volumes about what is in store for women aspiring to work.^{xi}

RGICS Issue Brief

Women's Rights: Current Challenges

Whether the Sexual Harassment of Women at Workplace Act (SHWW) in 2013 was enacted to address this importance to encourage women to work by making workplaces safe cannot be said for sure since this legislation was passed by the Lok Sabha without any discussion.^{xii}

Considering the fact that this Act borrows heavily from the 1997 Supreme Court formulated Visakha guidelines in the landmark case of Visakha versus State of Rajasthan, this legislation has not adapted its provisions to match the evolved gender roles in 2013. Women's position in regard to their visibility in workplaces has undoubtedly changed over the past two decades. This is one reason why even after being aware of the problem of workplace sexual harassment the Act has not been successfully implemented by organisations- 36 percent of Indian companies and 25 percent of MNCs are not compliant with the Act while 40 percent of the respondents were yet to train their ICC members. 35 percent were unaware of the penal consequences of not constituting the ICC and a striking 71 percent of the small and medium companies failed to display penal consequences of sexual harassment as mandated by the Act.^{xiii}

The Act cannot be fully implemented because the Finance Minister thinks 'it may not be desirable'

The poor implementation of the SHWW Act can be attributed to the attitude of various governments towards the issue of sexual harassment of women at workplace but the current government has also not done much to help the cause even though gender equality is the fifth goal in the list of the 17 sustainable development goals. Evident from the Finance Minister's refusal to make it mandatory for companies to reveal if they had constituted the mandated Internal Complaints Committee objecting that industry representatives were against "enhanced disclosures under the Companies Act, 2013 and adding to these may not be desirable". In simpler words, it will be a burden for the companies to constitute the ICC. This reluctance to ensure Corporate India implements the Act is further confirmed by a reported statement in the Indian Express in which officials accept that they get regular sexual harassment complaints but well known firms refuse to constitute a panel since they believe ICC would lead women employees to create a nuisance.^{xiv}

Not only is it absolutely regressive to assert that constituting ICCs will be a burden for companies, the fear that their image will be maligned when women complain is baseless. Section 16 of the Act completely prohibits contents of the complaint and inquiry proceedings to be known to the public, press and media. If the inquiry is fairly conducted then there is no reason for any party to appeal to a tribunal or a Court thereby preserving the 'reputation' of the company. Moreover, since August 2012 the Securities Exchange Board of India has already mandated that the top 100 listed companies on the National Stock Exchange as on March 2012 need to file a Business Responsibility Report each year. The BRR aimed to encourage responsible business practices inter alia accounts for the number of sexual harassment cases that a company receives and their status. A mandated disclosure will only help in getting certainty in the status of implementation of SHWW Act as the questions under BRRs regarding the issue are 'broad and vague'. Thus the intent of Finance Minister's statement clearly hints at an aversion to greater transparency rather than the inconvenience of the desirability of the mandatory revelation demanded by the Union Minister of Women and Child Development.^{xv} Unfortunately this hinders in monitoring the implementation of the Act.

Sexual harassment is a gender neutral misuse of power distribution at workplace, not a man versus woman issue

The hastily drafted legislation cannot escape blame either. Because the SHWW Act is not inclusive the conceptualization of sexual harassment in the Act reads as a man versus woman issue rather than an employer-employee problem. The Standing Committee Report recognises this tilting of the law towards prevention of workplace sexual harassment of women in favour of women. It advised that Ministry must conduct surveys so that male sexual harassment complaints are made a part of the Annual report submitted by the employer to get the whole picture of incidents. But this recommendation has not been reflected in the legislation.

RGICS Issue Brief

Women's Rights: Current Challenges

In case of sexual harassment, whether the victim is a male or female or transgender should be inconsequential in determining the gravity of exploitation. That men face sexual harassment at workplace is not even a conjecture anymore but is backed by data. According to the ET-Synovate survey (2010) querying 527 people in seven cities- 38 percent of the respondents believed that men were as vulnerable to sexual harassment in a workplace as women.^{xvi} Essentially sexual harassment is about the misuse of power distribution in a workplace irrespective of gender. But the legislation does not give voice to this sentiment and continues to emphasize on particular victimization of women, enhancing their gender inferiority at the workplace and neglecting the male victims.

The apprehension that adopting a gender neutral approach in case of SHWW Act could result in gender blindness^{xvii} and overlooking different gender roles would result in failure of the law is untrue. The question of varying gender roles in a workplace does not arise (as it might in a domestic set-up) where an employee is hired for his/her qualification for a position. And therefore gender specific identification of sexual harassment reflects the inherent bias of the legislation in shoe-horning women as victims when the offence of sexual harassment is gender neutral. The present import of the legislation is that the employer has a duty to provide a safe working environment at the workplace to women employees, if this legislation was

gender neutral the employer would have a duty to provide a safe working environment at the workplace to all his employees. This reading would have averted emphasis on women victimization and also fostered the idea of gender equality in true spirit.

Women-centric ICC does not uphold gender equality in true spirit

The Act mandates that the Presiding Officer of the Internal Complaints Committee be a woman and specifically mentions that one half of the members of the ICC have to be women as well. How do we place this dichotomy where in all likelihood a male employer could be providing a safe working environment, assisting an aggrieved woman to file a complaint under

another law but only a female majority can best address grievances in the ICC? The 2009 Catalyst survey conducted on 32 individuals majorly of North American region, of which more than half belonged to top managerial positions can provide some meaningful insights to answer the above question.^{xviii} The survey finds that most initiatives aimed to reduce gender inequality look up to women to change organizational practices, making gender a woman's burden, thereby alienating men who are a major stakeholder in bringing about any positive change in this sphere. According to the survey the three barriers that prevent men from supporting gender initiatives are apathy, fear (of making mistakes while helping and of being judged by their male peers) and real or perceived ignorance.

It is probable that a women dominated ICC was formed assuming that a female presiding officer will be more approachable for a hesitant, female victim. But this constitution of ICC in all probability will result in alienation of men hampering an inclusive outlook to problem solving in the workplace.

Lack of criminal remedy under the Act, only a fine of Rs. 50,000 for any contravention whatsoever

Before the enactment of SHWW Act women sought protection under Section 509 (IPC, 1860) which penalises insulting the modesty of a woman by words or gesture with an imprisonment for one year or fine and the Indecent Representation of Women (Prohibition) Act, 1987 which awarded a minimum imprisonment of two years for any kind of harassment to women by individuals and companies. The SHWW Act on the other hand offers compensation derived from the deductions of salary or wages of the harasser as the only remedy in case the claim against the harasser is proved. There is also no distinguishing when it comes to contravention of any provision of the Act as any contravention would uniformly attract a fine of fifty thousand as penalty. So whether a false complaint is filed by the supposedly aggrieved woman or the ICC itself is not constituted, the penalty is a standard fine.

RGICS Issue Brief

Women's Rights: Current Challenges

Whether this dilution of remedy has had any effect on the perception of women's right to dignified work is not known. However, a weak law and watered down penalty clauses surely could not be bolstering the right in question for sure. Perhaps this is the reason why even in 2015, two years after the enactment of SHWW Act, NCRB reports show that 119 cases were registered under Section 509 for insulting the modesty of a woman in office premises, a jump from 2014 when 60 cases were reported. Even though there is an entire legislation enacted to address the grievance of workplace sexual harassment women continue to lodge criminal complaints.^{xix}

No centralized database of complaints leads to inefficient monitoring

In response to question dated 24.4.2015 asking if complaints of sexual harassment of women at workplaces have increased since implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 in the country and whether the Internal Complaint Committees (ICC) have been formed in all the districts of each State/UT of the country under the said Act, the Ministry of Women and Child Development said no such data is maintained by it. With no centralized database on the number employers who have constituted the ICCs and a repository of sexual harassment complaints filed it is very difficult to arrive at how many complaints are being filed under the SHWW Act to determine its success.^{xx} Further, an analysis of 237 Business Responsibility Reports (BRR) of 79 companies for the years 2012-13, 2013-14 and 2014-15 reveals that smaller companies may be prone to some serious under-reporting of complaints. When companies were arranged in descending order of market capitalization 16 out of 20 in the bottom 25 percent companies did

not report any incident of sexual harassment in 2014-15 which is counter-intuitive since there were women employees in these companies too.^{xxi}

The SHWW Act is a perfect example of how we have shifted our focus on 'how' to reduce sexual harassment without first understanding what exactly the offence of sexual harassment entails. Often sexual harassment is used interchangeably with sex based discrimination. In our endeavour to construct a law for recognising modern rights of women it is essential that these two terms are separate. While sexual 'harassment' is unwelcome behaviour of sexual nature targeted towards an *individual* while sexual 'discrimination' occurs when an employee is treated differently because of his/her sex.^{xxii} To some extent naive understanding of the differentiation between these two terms has hindered in guaranteeing women an unqualified right to work with dignity.

III. The Maternity Benefit (Amendment) Bill, 2016

The recent amendment to the Maternity Benefit Act, 1961 will definitely impact women's employment. The Ministry of Women and Child Development has reasoned that maternity leave should be increased 'to enable a woman employee to exclusively breast feed for six months after child birth'.^{xxiii} In spite of all the criticism levied against this Bill on the grounds of creation of an implicit bias against hiring women, the Bill was successfully passed by the Rajya Sabha in the Monsoon Session. Mandated maternity leave has been an important policy tool globally, intended for more than one purpose. These may vary from securing employment for the women employees even after child birth to helping countries with dwindling population encourage couples without worrying about job security. However in case of India it seems that women's employability was not an important facet of consideration while proposing an increase in the maternity leave period according to the reasoning given by the Ministry concerned. Yet again the Ministry has introduced a policy change intended to keep women employable without divorcing their identity from that of a child bearer and care giver leaving them to bear costs due to this.

RGICS Issue Brief

Women's Rights: Current Challenges

Accentuating bias against hiring women in child bearing age

The concept of maternity leave, paternity leave or even shared parental leaves is not new. It has already been followed by other countries and therefore India has enough literature and experience to draw on when it introduces a legislative change to alter the maternity leave time period. Let us take the example of United Kingdom. A female employee is entitled to 52 weeks of maternity leave out of which she will receive a statutory maternity pay for 39 weeks. Recently in 2015, shared parental leave was introduced. Under it the parent who takes the leave gets 90 percent of their salary for the six weeks following birth, and a statutory £140 a week for the remaining three weeks. Recent reports point out to two significant outcomes of these policies- one, women are facing increased maternity leave related discrimination with 54,000 women in UK leaving their jobs because of pregnancy; and two, only three percent of the couples were availing of the shared parental leave. In a survey a shocking reason emerged for the latter- men worried taking parental leave would negatively impact their career. Possibly looking at how women were subject to maternity leave discrimination which setback their career, men did not want to venture forth in availing parental leave.^{xxiv}

Looking at the experience of maternity leave discrimination faced by women employees even in a developed nation like UK it is not hard to guess that the same in all likelihood will be replicated in India. In the intensely competitive private sector can women remain assured that they will not be discriminated against in workplaces if they were in the child bearing age, appearing for an interview to be hired? Also, it can be learnt even a progressive measure like shared parental leave has been unsuccessful in bringing about a cultural change in UK society. What is missing then? Emphasizing on a paternity leave at the same level of maternity leave is what will break down workplace discrimination with regard to leave post child birth. Considering it takes a number of years for cultural trends to shift, India has not even begun taking its first steps in that direction.

Refusal to allow paternity leave prevents women from breaking the primary care giver mould

Knowing full well that women will face difficulties in being hired or even retained in workplaces the maternity leave period was increased to 26 weeks. All suggestions in the Parliamentary debate and criticism to consider introducing paternity leave were shot down stating that men will only take this leave as a 'holiday' and they should first show commitment to the cause of childcare by utilising their sick leaves.^{xxv} This is an absolutely superficial counter argument. The debate is not about men utilising their leaves to take care of the child or not. The debate is about a child making two individuals parents who are expected to take care of the child and therefore both should be granted leave. And for that matter sick leave has anecdotally been misused by employees too but that has not been used as an excuse to withdraw the option of sick leave.

According to a recent survey of over 250 private companies in India conducted by human resources consultancy Mercer, the number of Indian companies providing paternity leave has increased from 60 percent in 2014 to 75 percent in 2016.^{xxvi} The Maternity Benefit (Amendment) Bill, 2016 was an opportunity to bring about gender equality in the workplace and in all probability avoid discrimination at the time of hiring female employees. But the Ministry it seems is not viewing grant of parental leave from the perspective of gender neutrality. By creating a case for increased maternity leave to ensure the child is breast fed, the role of fathers in child care is ignored if not trivialized.

Once again the government has lost an opportunity to change the perception of woman outside their traditional roles as care givers and more importantly, an opportunity is lost for women to be equal partners in the country's economic progress. Even after being a part of workplace by dint of their qualifications their first identity is of being a mother. Despite the fact that men currently are not viewed as care givers the Ministry has failed to take into consideration that this is changing across nuclear families and presumptuously negated any motivation for them to be so. A statutory mandate for paternity leave would have been a sure lead factor in bringing about this positive change. Instead the amended law does not compel society to break any norms rather it leaves it in its comfort zone so that society continues to identify women as the sole custodian for child care. Alternatively if shared responsibility of both parents

RGICS Issue Brief

Women's Rights: Current Challenges

for child care was recognised, despite initial teething troubles, this would have been a watershed moment for women's rights. It would have contributed to the identity of a woman as an equal breadwinner and man as a caregiver. It is relevant to understand that new legislations must not just address current problems but must seek to improve status quo and initiate social change. Unfortunately, if this Bill gets passed in Lok Sabha what the Ministry of Women and Child Development certainly ensure that a newborn is adequately breast fed even if their mothers are working – a very noble objective but the legislation could have achieved so much more in the sphere of establishing gender equality by going the extra mile.

IV. The Surrogacy (Regulation) Bill, 2016

The Surrogacy (Regulation) Bill, 2016 was drafted to ensure effective regulation of surrogacy and to achieve this it prohibits commercial surrogacy, allowing ethical surrogacy to the needy infertile couples. The government postulates that this Bill would prevent the exploitation of poor women who are compelled to rent their wombs due to their socio-economic conditions and also protect the future of children born out of surrogacy. The Bill excludes unmarried individuals, couples married for less than five years, live-in partners and people of the LGBT community from procreating by way of altruistic surrogacy. This exclusion does not pass the test of reasonable classification as per the Indian constitution as there is no rational nexus

between the object of the Act and this classification of groups excluded.^{xxvii}

As per reports this Bill appears more like an executive order rather than well-reasoned provisions of a piece of effective legislation. In addition to the above mentioned anomaly let us analyse the premise for allowing altruistic surrogacy. Considering that one of the objectives of the Bill is to prevent exploitation of women entering into surrogacy agreements, by allowing altruistic surrogacy the obvious assumption by the government is that surrogates will not be exploited by family members. This is a flawed assumption since there is no authoritative discourse to verify this. In fact there are data sets to show otherwise. NCRB data reveals that out of 34,651 total rape cases reported in 2015 only in 75 cases was the victim not able to identify the offender. In a remarkable 33,098 cases the victim knew the offender and of this in 3,167 cases the rape was committed by family members.^{xxviii} Based on these statistics it is difficult to conceive the idea that families are a safe place where the surrogate will not be exploited. Therefore, it would not be sufficient for our law makers to toe the line of

United Kingdom's altruistic surrogacy Bill rather an intensive India-centric research and analysis to arrive at what model of surrogacy regulation will best suit the country's needs is required.

Challenge to women's core women reproductive rights

It is misunderstood that Surrogacy (Regulation) Bill, 2016 will only result in a linear consequence of banning surrogacy. It is unfortunate that there have been a lack of arguments in current narrative identifying the rights of women at the other end of the spectrum. Even though the social construct of a woman characterizes her as a child bearer and care giver, the control or decision making on reproductive capacities has been largely in the hands of men. Therefore there is a lot of symbolic importance in a woman's right to take an unqualified decision. By advocating a ban on surrogacy the government has invoked the detrimental effect on the child and the society to trump the decisional rights of the surrogate mother who maybe doing this for purely contractual purposes to elevate her family's social standing.^{xxix} What this government has failed to put a finger on is even in dire social and economic conditions women do retain their individual agency. Even if this is an 'adaptive preference' surrogates are attempting to exercise their economic choice to retain control in difficult conditions by 'bargaining with patriarchy'.^{xxx} Many feminists believe that regaining decisional control over their reproductive choices, detached from symbolic harm or speculative risks to potential children, would be an important step for women to be seen as an independent entity. Although there is no uniformity in feminist philosophy regarding surrogacy one of its main tenets is that women should not have their destiny controlled by their biology.

RGICS Issue Brief

Women's Rights: Current Challenges

Need to debate women's rights to sensitize society about their existence

It would not be prudent to view the situation of surrogates in India solely from the point of view of women's rights considering the socio-economic realities of our society. But there is no reason why the women's rights being challenged in this process are not debated and discussed. Whether Parliament will do justice to such a discussion as we stand to legislate on surrogacy for the first time remains to be seen. For now the government has denied reproductive justice to women and has adopted a didactic approach on the basis of analysing only 18 surrogacy cases which most likely included the famous ones inevitably centred on a mishap in the surrogacy arrangements.^{xxxii}

In what context and in light of what opportunity will we ever discuss a woman's reproductive rights, her right to free will and bodily integrity again? And yet it cannot be ignored that these rights are in the true sense what a modern woman in India needs in order to challenge the patriarchal mindset of the society. Even if we are not at the stage or of the mindset to grant these rights to women as far as allowing commercial surrogacy is concerned, it is not well-meaning for the government or the society to assume that these rights do not exist at all in the first place. Presently even one statement or comment or even a tweet becomes the seed of setting off debates in mainstream media. For example Maneka Gandhi's statement about not allowing paternity leave for want of proof that it would not be misused as a holiday by men drew a sharp reaction from the fathers and would-be fathers in India. This may not have led to amendment of the Bill but it did compel society to discuss if men can be to care givers at all, not a mean feat considering how this has always been considered a woman dominated gender role.

A significant step in this direction has been taken by the Bombay High Court as it beautifully contextualizes the nuanced nature of reproductive rights of a woman. As the Court adjudicated a suo motu PIL considering the abortion rights of female prisoners under the Medical Termination of Pregnancy Act, 1971; it has set off a positive debate which recognises woman as a capable and independent decision maker regarding her body. The Court has identified that *while it is the right of a woman to be a mother so also it is the right of a woman not to be a mother and her wish has to be respected*. It further goes on to say that *human rights are natural rights and thus a woman has a natural right in relation to her body which includes her willingness to be a mother or her unwillingness to be a mother*. In its wisdom the Court has also laid down that *there are social, financial and other aspects immediately attached to the pregnancy of the woman and if pregnancy is unwanted, it can have serious repercussions*.^{xxxiii} These observations made by an authority like the Supreme Court underline the importance of reproductive rights of a woman by placing them in a larger societal context.

The way Parliament structures its debate on this Bill and the manner in which society engages in this debate will have a lasting impact on determining how women's rights are viewed and more importantly which way we are headed in recognising

women as separate entities. In a surrogacy contract three parties are involved- the surrogate mother, the child and the intended parents. It would be telling if in addition to viewing a surrogate mother as a victim some part of the debate will address her as an independent entity taking an economic decision.

If this Bill is passed in its current form the State would have the last say in whether an infertile woman can have a surrogate child and whether a woman can be a surrogate and carry a child for another. The decisional control over reproduction would have shifted away from the woman so that the greater good of the society is preserved. We need to be sensitive to the fact that we are setting a precedent for the manner in which women's rights will be discussed henceforth whenever they clash with policy decisions. If we need society to even begin thinking about shirking its paternalistic attitude towards women then it is pertinent that Parliament and this government identify and engage in a discussion of women's rights trumped by the Surrogacy Bill, even if it does not grant them.

RGICS Issue Brief

Women's Rights: Current Challenges

V. Conclusion

Analysing the construct of the three most important women's based legislations in recent times it can be concluded that there has been no revolutionary attempt to change the mindset of the society in perception of women. Even the recently released overarching Draft National Policy for Women adopts largely a welfare based approach for women's rights not viewing them as capable to assert their rights on their own.^{xxxiii} The patriarchal structure is so deeply embedded in women's systems that they too perceive themselves as caregivers and attach themselves to this identity. Drawing from the concept of invisibility of work at times women do not recognize their work as work and their identities are forged based upon their normative role fulfillment in society.^{xxxiv} The State needs to provide this assurance to women by drafting strong, well-reasoned laws. And when the law compromises on their rights a valid justification for the same must reflect in the process of arriving at such the decision.

The government and particularly the legislature wield a high degree of control over what rights of women will be recognised and how they will be demarcated. Legislations are policy tools that can push society to change. It will be a real victory when legislations are drafted with absolute clarity of intent and purpose and a holistic perspective of rights encouraging society to move towards initiating positive social change. Until then, they will remain paper tigers with a lofty objective to achieve while the real rights of stakeholders continue to be ignored. Just like the three recent legislative attempts continue to be lag factors rather than lead factors as they fail to identify the real challenges to women's rights.

References

ⁱ Flavia Agnes, "Protecting Women Against Violence- Review of a Decade of Legislation, 1980-89", The Economic Political Weekly, April 1992 Available at: <http://www.epw.in/journal/1992/17/review-womens-studies-review-issues-specials/protecting-women-against-violence> Accessed on 20.9.2016

ⁱⁱ "India: The Legal Framework for Women and Work", Catalyst Information Center, October 2012. Available at: http://www.catalyst.org/system/files/legal_framework_india_1.pdf Accessed on 30.8.2016

ⁱⁱⁱ Flavia Agnes, "Protecting Women Against Violence Review of a Decade of Legislation, 1980-89", The Economic and Political Weekly, April 25, 1992. Accessed on 12.9.2016

^{iv} Official Website, Ministry of Women and Child Development Available at: <http://wcd.nic.in/about-us/about-ministry> Accessed on 12.9.2016

^v Cindy Simon Rosenthal, "Women Transforming Congress", University of Oklahoma Press (2002)

^{vi} "India: The Legal Framework for Women and Work", Catalyst Information Center, October 2012. Available at: http://www.catalyst.org/system/files/legal_framework_india_1.pdf Accessed on 30.8.2016

^{vii} "Now look at what Rajya Sabha has done and delivered. In this session itself, 14 laws including the Mental Health Bill, Maternity Benefits Bill, and those on education and agriculture, have been passed... Between this session and the last, the number of laws passed is 34. And since May 2014, 94 laws have been passed. So will the prime minister now apologise for the insult he had heaped on Rajya Sabha?"- Anand Sharma, Deputy Leader of Opposition in the Rajya Sabha The Indian Express, August 31, 2016. Available at: <http://indianexpress.com/article/india/india-news-india/congress-anand-sharma-interview-kashmir-issue-pok-gst-gau-rakshak-parliament-3005053/>, accessed on 31.8.2016

^{viii} Ruth Dixon-Mueller, "Population Policy and Women's Rights: Transforming Reproductive Choice", ABC-CLIO (1993)

^{ix} Bangladesh: Looking Beyond Garments, 2016, Asian Development Bank Available at: <https://www.adb.org/sites/default/files/publication/190589/ban-beyond-garments-eds.pdf> Accessed on 19.9.2016

^x Victoria Bateman, "The World has a Gender Problem. It Hurts Growth", The Livemint, September 11, 2016. Available at: <http://www.livemint.com/Opinion/3fuWnnpNPN82ufgDDwxBsO/The-world-has-a-sex-problem-It-hurts-growth.html> Accessed on 12.9.2016

^{xi} Economic Freedom of the World, 2016, Fraser Institute Available at: <https://www.fraserinstitute.org/sites/default/files/economic-freedom-of-the-world-2016.pdf> Accessed on 19.9.2016

^{xii} "Workplace Sexual Harassment: LS OK's Bill", The Indian Express, September 2012 Available at: <http://indianexpress.com/article/news-archive/web/workplace-sexual-harassment-ls-oks-bill/> Accessed on 21.9.2016

^{xxxiii} "Reigning in Sexual Harassment at Workplace in India", 2015 Available at: [http://www.ey.com/Publication/vwLUAssets/ey-reining-in-sexual-harassment-at-the-workplace-fids-survey-2015/\\$FILE/ey-reining-in-sexual-harassment-at-the-workplace-fids-survey-2015.pdf](http://www.ey.com/Publication/vwLUAssets/ey-reining-in-sexual-harassment-at-the-workplace-fids-survey-2015/$FILE/ey-reining-in-sexual-harassment-at-the-workplace-fids-survey-2015.pdf) Accessed on: 13.9.2016

^{xxxiv} "Harassment at Workplace: Jaitley Says No to Maneka Request on Disclosure of Probe Panels", The Indian Express, December 8,

RGICS Issue Brief

Women's Rights: Current Challenges

2015 Available at: <http://indianexpress.com/article/india/india-news-india/harassment-at-workplace-jaitley-say-no-to-maneka-request-on-disclosure-of-probe-panels/> Accessed on 21.9.2016

^{xv} “Sexual Harassment Complaints Have Jumped Seven Times in Two Years in India’s Top 100 Firms”, The Scroll, December 24, 2015 Available at: <http://scroll.in/article/777342/sexual-harassment-complaints-have-jumped-seven-times-in-two-years-in-indias-top-100-firms> Accessed on 21.9.2016

^{xvi} “Even Men are not Safe from Sexual Harassment at Workplace: Survey”, The Economic Times, August 22, 2010 Available at: <http://economictimes.indiatimes.com/special-report/even-men-arent-safe-from-sexual-harassment-at-workplace-survey/articleshow/6389438.cms> Accessed on 21.9.2016

^{xvii} Inability to perceive that there are different gender roles, need, responsibilities of men, women, boys and girls, and as a result failure to realize that policies, programmes and projects can have different impact on men, women, boys and girls

^{xviii} “Engaging Men in Gender Initiatives: What Change Agents Need to Know”, Catalyst (2009) Available at: http://www.catalyst.org/system/files/Engaging_Men_In_Gender_Initiatives_What_Change_Agents_Need_To_Know.pdf Accessed on 26.9.2016

^{xix} Table 5.2, NCRB Report Available at: <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/Table%205.2.pdf> (2015) and <http://ncrb.gov.in/StatPublications/CII/CII2014/Table%205.2.pdf> (2014) Accessed on 15.9.2016

^{xx} Available at: <http://164.100.47.192/Loksabha/Questions/QResult15.aspx?qref=14971&lsno=16> Accessed on 13.9.2016

^{xxi} “How Do India’s Top 100 Companies Fare in Terms of Sexual Harassment”, The Livemint, August 1, 2016. Available at: <http://www.livemint.com/Opinion/bGLANRbxR0RUyxaeDk4xRP/How-do-Indias-top-100-companies-fare-in-terms-of-sexual-har.html> Accessed on 15.9.2016

^{xxii} Terminology Available at: <http://www.un.org/womenwatch/osagi/pdf/whatish.pdf> Accessed on 13.9.2016

^{xxiii} Year End Review, December 28, 2015 Available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=133957> Accessed on 13.9.2016

^{xxiv} Amelia Abraham, “Maternity Leave: What’s Not Working and How to Fix It”, Refinery29, September 8, 2016. Available at: <http://www.refinery29.uk/2016/09/119667/maternity-leave-discrimination-uk> Accessed on 13.9.2016

^{xxv} “Paternity Leave Will Just Be a Holiday for Men Says Maneka Gandhi”, The Indian Express, August 25, 2016. Available at: <http://indianexpress.com/article/india/india-news-india/paternity-leave-will-be-just-a-holiday-for-men-says-maneka-gandhi-2993274/> Accessed on 13.9.2016

^{xxvi} “India Inc is Actually Quite considerate Towards New Dads”, The Quartz, September 21, 2016 Available at: <http://qz.com/784796/though-india-doesnt-have-comprehensive-paternity-leave-laws-its-companies-are-surprisingly-ahead-of-the-curve/> Accessed on 21.9.2016

^{xxvii} Suhrith Parthasarathy, “Republic of Unreason”, The Hindu, September 1, 2016. Available at: <http://www.thehindu.com/opinion/lead/republic-of-unreason/article9056339.ece> Accessed on 1.9.2016

^{xxviii} Offenders Relation and Proximity to Rape Victims (Section 376 IPC) During 2015 Available at: <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/Table%205.4.pdf>, Accessed on 19.9.2016

^{xxix} Katherine B. Lieber, “Selling the Womb: Can the Feminist Critique of Surrogacy be Answered”, Indiana Law Journal, 1992. Available at: <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1466&context=ilj> Accessed on 14.9.2016

^{xxx} Anne Donchin, “Reproductive Tourism and the Quest for Global Gender Justice”, Bioethics, 2010. Available at: <https://scholarworks.iupui.edu/bitstream/handle/1805/7480/Reproductive-Tourism-2010.pdf?sequence=1> Accessed on 14.9.2016

^{xxxi} Reproductive Justice exists when all people have the social, political and economic power and resources to make healthy decisions about our gender, bodies, sexuality and families for ourselves and our communities. Reproductive Justice aims to transform power inequities and create long-term systemic change, and therefore relies on the leadership of communities most impacted by reproductive oppression. The reproductive justice framework recognizes that all individuals are part of families and communities and that our strategies must lift up entire communities in order to support individuals.

Asian Communities for Reproductive Justice (ACRJ) Available at: <http://strongfamiliesmovement.org/what-is-reproductive-justice> Accessed on 14.9.2016

^{xxxii} High Court on its own Motion versus The State of Maharashtra, September 19, 2016

^{xxxiii} “Draft National Policy for Women, 2016: Repeating Old Themes”, The Economic and Political Weekly, August 27, 2016. Available at: http://www.epw.in/system/files/pdf/2016_51/35/Draft_National_Policy_for_Women%2C_2016_0.pdf Accessed on 15.9.2016

^{xxxiv} Jagriti Gangopadhyay, “Women and Trade Unions in the Informal Sector”, 2014 Available at: http://wiego.org/sites/wiego.org/files/resources/files/Gangopadhyay_Jagriti_Dissertation.pdf Accessed on 21.9.2016