



Contributions of the Critical Legal Feminist Theory in the Analysis of the Situation of Women in Labour Market Policies during the Covid-19 Pandemic in Latin America

Tovar Y*

Law Faculty, National Autonomous University of Mexico, Mexico

***Corresponding author:** Yvonne Georgina Tovar Silva, Professor of the Law Faculty, National Autonomous University of Mexico, Mexico, Tel: +1525514469174; Email: ygtovars@derecho.unam.mx

Mini Review

Volume 5 Issue 2

Received Date: April 29, 2022

Published Date: May 17, 2022

DOI: 10.23880/abca-16000230

Abstract

The COVID-19 pandemic has posed different challenges to human kind in political, economic and social fields. One topic that should be addressed is the situation of women in labor market policies during the COVID-19 pandemic in Latin America. According to the International Labour Organization, the employment of women in the Americas decreased between 2019 and 2020 by 9.4 percent due to the effects of COVID-19- compared to 7.0 percent in the case of men- which represented the highest globally decline in all regions. This data has to be taken into consideration by public, private and social sectors to find optimal solutions to face this situation. Furthermore, a critical analysis should be made in order to identify the issues that have caused the problem and that may represent future risks. In this regard, the Critical Legal Feminist Theory may offer an interesting perspective of how the ideology, authorities and law should be reconsidered to explore new horizons for women in the society. Certainly, an inclusive dialogue is of core importance to understand how women are experiencing the labor market situation and policies, include their opinions and suggestions in labor law aimed at reinforcing women's human rights, including the rights to health and work, as well as to include additional indicators to evaluate the results of labor policies.

Keywords: Labor Market Policies; COVID-19 pandemic; Gender; Human Rights; Critical Legal Feminist Theory

Introduction

The aim of this manuscript is to explore the contributions of the Critical Legal Feminist Theory in the analysis of the situation of women in labor market policies during the COVID-19 Pandemic in Latin America.

Certainly, the COVID-19 pandemic has posed different challenges that human kind has been dealing over the past two years. Despite the fact that in the past two years there has been made significant achievements regarding vaccination, as well as scientific developments to face the problematic, some challenges are still needed to be considered in the political, economic, social and cultural field. One topic that deserves to be addressed is the situation of women in labour market

policies during the COVID-19 pandemic in Latin America. An interesting approach of the situation can be seen in the technical note of the International Labour Organization (ILO), issued on March 2022, where the research on the gender equality and market work policies during the pandemic in Latin America and the Caribbean showed that women in Latin America and the Caribbean were the most affected by the crisis triggered by COVID-19 that may even represent a setback in gender equality at work, due to situations related to the insufficient recovery, high rates of unemployment for women and the low participation of women in the labour market.

The statistics and data that the ILO document contains should be subject to further studies in order to find

additional solutions, in order to protect women's rights. For that matter, a critical legal analysis should also be made in order to identify the consequences of the situation of women in the labour market in terms of the human rights of women, the importance of the principles of universality, interdependence, indivisibility and progressivity of human rights in women, so that in this case both the right to health and the right to work could be equally protected, as well as the possible implication of the morality as a cause of the situation. In this regard, the Critical Legal Feminist Theory may offer an interesting approach to the topic in order to analyse the problem, find alternative interpretation of the problem and additional solutions within the legal field.

The hypothesis is that the Critical Legal Feminist Theory may offer an additional perspective of the challenges that women are facing in terms of labor market, where a need for an inclusive dialogue is of core importance to protect the rights of women, include additional indicators to evaluate the results of labor policies and explore new horizons for women in the society. The analytical and descriptive methods will be used to offer an overview of the situation of women in labour policies in Latin America, according to the International Labour Organization (ILO), as well as the possible contributions of the Critical Legal Feminist Theory to offer additional elements to understand the problem and find alternative solutions.

This manuscript will be divided in to two sections. The first section will offer a brief description of the technical note of the International Labour Organization (ILO) issued on March 2022, regarding the gender equality and market work policies during the pandemic in Latin America and the Caribbean. The second section will give a general reference to Critical Legal Feminist Theory in order to appreciate the main ideas and explore its contributions to the analysis and possible solutions to the consequences of the situation that women are facing in the labor market due to the COVID-19 pandemic.

An Overview of the Situation of the Women in the Labor Market Policies during the Covid-19 Pandemic according to the International Labour Organization

On March 2022, the International Labour Organization (ILO) released a technical note regarding the gender equality and market work policies during the pandemic in Latin America and the Caribbean, as part of the regional series Labor Outlook in times of COVID-19. The aforementioned technical note offered an interesting study on how women in the region were hardest hit by the COVID-19 crisis in labor markets [1].

In general terms the ILO analysis is centered in the following topics:

- The employment outlook for women in Latin America and the Caribbean in the context of the pandemic. The technical note refers to the insufficient recovery of jobs that can be seen in the fact that from the 23.6 million female jobs that were lost, only 19.3 million were recovered. According to ILO, the stronger impact on women in the region is associated, on the one hand, with the greater presence of women in economic sectors that have been hard hit by the crisis, such as the hotel and restaurant and restaurants, for example, and in other service activities and the and restaurants, and in other service activities, and on the other hand with the higher incidence of informality among women [1]. Regarding the women's labor force participation, the document states that in addition to a significant loss of jobs, a large number of workers (especially women) withdrew from the labor market, due to the scarcity of alternatives in the context of the crisis or the difficulties to reconcile family responsibilities with work, among others. This situation caused a female participation rate in Latin America and the Caribbean in 2020 was 47 percent, an unprecedented decline of 5 percentage points lower than in 2019 [1].
- Good practices in gender policies to recover employment and income in the region. The ILO refers that the implemented measures aimed at containing contagion, through reducing mobility and promote social isolation, had an impact on the functioning of the labor market, where some activities were quickly adapted to teleworking and others were suspended or reduced their level of activity. Nevertheless, some labor market policies and measures were taken by some States in order to mitigate the effects of COVID-19, such as providing a minimum income and/or food basket to those most affected by social alienation measures; policies to sustain and develop employment, care policies and regulation policies of telework. Those policies were even linked to legislation in order to contemplate union and social security guarantees for workers under this modality; include the organization of working time and the limit on the working day to facilitate reconciliation with family responsibilities; ensure equal treatment for work under the face-to-face and teleworking modalities; inclusion of a certification mechanism for the voluntary adoption of practices in the area of labor equality and non-discrimination, as well as the implementation of standards for teleworking post health emergency [1].
- Conclusions and Recommendations. Among the conclusions of the ILO, it can be traced the way in which women have been the most affected by the crisis generated by COVID-19 and that the policies implemented in the labor market did not initially visualize women as the most vulnerable. Just two years later, however,

it has been possible to identify a compendium of good practices that should be evaluated and shared in order to be replicated and adapted to other contexts. Additionally, ILO refers to additional recommendations, such as considering gender equality as an intrinsic component of the design, elaboration, implementation and results analysis of all programs and strategies, policies, laws and regulations implemented during the pandemic and in the recovery phase, investments in care for quality employment and for the full insertion of women in the labor market; strengthening women's capacities to develop their employability, develop and modernize the Public Employment Services, and the consideration that social dialogue, should play a more relevant role insofar as it allows reorienting or modifying the measures taken for greater effectiveness and/or greater efficiency [1].

As it can be seen, the aforementioned ILO technical note regarding the gender equality and market work policies during the pandemic in Latin America and the Caribbean is of special relevance to have an overview of the situation that women are facing in the labour market. Certainly, not only did COVID-19 pandemic had significant consequences in public health concerns, but also on political, economic, social and cultural fields, such as women in the labour market. The recommendations of the ILO are important in order to implement further policies in the public, private and social sector that may contribute to solve the difficulties that women are dealing currently.

In order to improve the situation of women, still further thoughts should be made in order to explore short, mid and long-term solutions that could improve women's way of life. As it can be seen in the technical note, the law itself may play an important role in preventing future problematic situations and assure conditions for their human rights. In this regard, theoretical approaches could be useful to explore alternative insights on what can be done from a legal perspective that may likely have an impact on the public, private and social sectors to reinforce the need to protect the rights of women, as well as to find strategies to ensure the well-being of women in case of future threats.

The Critical Legal Feminist Theory in the Search for Alternative Approaches of the Situation of Women in the Labor Market due to the Covid-19 Pandemic

The ILO's study of the gender equality and market work policies during the pandemic in Latin America and the Caribbean can be subject to different analysis in order to appreciate further approaches to the problem and further solutions. In this regard, the Critical Legal Feminist Theory

Legal Feminist Theory may offer an additional perspective of the challenges that women are facing in terms of labor market, where a need for an inclusive dialogue is of core importance to protect the rights of women, include additional indicators to evaluate the results of labor policies and explore new horizons for women in the society. It is convenient to briefly determine the scope of the Critical Legal Feminist Theory in order to explore how this perspective can contribute to find other perspectives on the topic and explore the contributions of this theoretical tool for the addressed problem.

Towards a New Legal Paradigm through the Critical Legal Feminist Theory

The need to vindicate the situation of women in Modern Ages has been addressed by distinguished philosophers such as Olympe de Gouges, Mary Wollstonecraft or Sophie de Grouchy since the eighteen century, an endeavor that was also present in the nineteen century with authorshilosophers, such as, Virginia Wolff, Harriet Taylor Mill or Lou Andreas-Salomé and in the twentieth century, with Simone de Beauvoir, Simone Weil, Sarah Kofman, Judith Butler, among others. Aside from the contribution of renowned authors, during the late nineteen century and twentieth century significant female-led demonstrations to stand for women's rights, such as suffrage, education, workplace rights, social justice, social security, freedom, as well as protection from sexual harassment and rape that started in England latter replied in Europe, North and South America, Asia and Africa [2]. Yet, the struggle still continues to fully achieve better political, economic, social and cultural opportunities for women in society, in which the law plays an important role in the protection of women and in an effort to reach optimal equality conditions. Throughout the legal analysis it can be seen both the opportunity to strengthen the protection of women, but also the need to identify those obstacles that hinder the progress of women's rights and well-being.

In this regard, it is necessary to look for new paradigms that offer different insights on law and gender, in which the Critical Legal Feminist Theory may allow us to deconstruct our reality, question differences and show us the contradictions of the essentialist discourse and appreciate the problems that gender inequality represents, the role that law plays in the reproduction of this inequality, as well as the challenges that are required to propose favorable actions to improve this situation. Throughout the reference of authors, such as Annette Lyth, Catherine MacKinnon and Andrea Dworkin is possible to determine to what extent the situation of women in the 21st century have progressed or if we are only facing a discourse that, deep down, hides and denies the submission and exploitation of women, which means that it would be necessary to vindicate the role of women in society, give them a voice and be fully recognized by law, so that they can

actively participate in political, economic, social and cultural life [3].

In an attempt to follow Annette Lyth's perspective to explain the situation underlying the problem of women in labor market policies addressed by ILO, it would be needed to unmask and criticize the patriarchy hidden behind a "genderless" law, and to reconstruct the legal theory, where it would be of special importance to apply the feminist methodology in the analysis of legislation and its implementation, in which it is important to consider aspects such as discovering the privileged patriarchal interests in law are questioned, determining the areas in which the feminine perspective is denied or distorted, and consider the type of reforms required to embrace such perspective [4]. As a result, the information and statistics of the ILO's technical note may even require an additional analysis on each of the countries of Latin America to determine if the public policies and the implementation of labour law are in some way denying the feminine perspective and particular needs of women during the pandemic, that may reflect that aside from health issues and concerns, the labour and familiar sphere were also a major concern for women during the COVID-19 pandemic. However, it can be subject to a further analysis the way in which the measures and policies adopted by the pandemic were taken in the region, in order to determine if those policies and measures did in fact considered the situation and voices of women or if in any case the privileged views were imposed. For example, in an enterprise it could be interesting to see if the labour policies taken during the COVID-19 pandemic considered the opinion and situation of all the women of all levels of the hierarchical organization, or if they were only taken by CEO's without considering the particular situation of women. This study may be of particular importance to find new perspectives on the decision-making process in companies, especially in difficult situations such as the one that the world faced in 2020.

Another author that is important to refer is Catherine MacKinnon, specifically in her book "Toward a feminist Theory of the State", where it is referred how the state incorporates facts of social power, such as hierarchies among men ordered on the basis of race and class, stratifying women as well, as how the law adopts the male point of view and enforces that view on society, which may be significant to appreciate the way in which in the liberal state, the rule of law both institutionalizes the power of men over women and institutionalizes power in its male form [5]. For the aforementioned author the first task of a movement for social change is to face one's situation and name it. For that matter feminism has begun to give voice to and describe the collective condition of women as such, so largely comprised as it is of all women's particularities and has begun to

uncover the laws of motion of a system that keeps women in a condition of imposed inferiority. To achieve this objective, the feminist method that the author appoints could be of special importance, since it refers to the need to adopt the point of view of women's inequality to men that requires grasping women's reality from inside, developing its specificities, facing the intractability and pervasiveness of male power [5]. An additional analysis may be referred to equality, which should be understood substantively rather than abstractly, so that it can be defined on women's own terms and concrete experience. According to the author, in order that women can be part of changing their relations with the state and with men, it is needed that women claim concrete reality, in which unequal pay, allocation to disrespected work, demeaned physical characteristics, dehumanization of women, among other situation, can be traced as examples of women's inequality, and then it should be recognized that male forms of power over women are affirmatively embodied as individual rights in law [5].

The reference to Catherine MacKinnon may offer interesting research topics and action guidelines to identify if in labour relations a male perspective is somehow present and how that situation does has affected the situation of women in the labour market. Furthermore, it is needed to give voice to women in the labour market, as well as in other public and private spheres, in order to hear their concerns aimed at finding possible solutions. Topics such as, maternity, situation of women that take care of children or elderly, or specific health issues of women, should be properly discussed with women of all the organizational hierarchy in order to duly implement measures that may be compatible with women's needs in the labour market. As a result, once again the decision-making process within public, private and social sectors should be redesigned in order to give voice to women.

Finally, if we take into account what Andrea Dworkin stated to look at the role of men in creating a hatred of women, in creating prejudice against women, in using the culture to support, promote, advocate, celebrate aggression against women and to look at the role of men in creating political systems that subordinate women [6], it could offer interesting insights on how the disadvantage for women in the labour market could be due by some prejudices against women, the way in which the culture supports the aggression and how these the political (and even legal) system is immersed in the subordination of women in an important economic field, such as the labour market. This problematic may implicate not only men, but even some women that unconsciously have contributed to create these subordination conditions that extent to serious disadvantages in the labour conditions within the region.

The references made above, along with the ILO's study mentioned in the first section, may urge us to consider the need to explore political, legal and theoretical options aimed at improving the situation of women in society. Within the political field it is still needed an inclusive dialogue with women that not only expresses their political or entrepreneur views, but also, the ones of women from household, cleaning workers, child and elderly care, minimum wage jobs, unemployed and even from the informality, whose voices are not always present in the public debate. This approach may give additional suggestions and different views on the problematic that those women are facing and how can society should care and find solutions to the situation of women in the labour market. Moreover, the inclusive dialogue may be of special importance in order to find additional indicators to analyse the situation of women in the labour market, identify those situations that hinder the solution of the problem and even to help law and policy makers to address the needs of the labour market from a female point of view.

Within the legal field the gender perspective is needed for the interpretation, creation and application of the law, in which women's rights can be in fact protected and promoted in every field, including the labour market, where despite the in *dubio pro operario* principle that in some States is recognized, such as in Mexico, still the entrepreneur point of view sometimes is the solely one that is considered in drafting, interpreting and applying the law. In labour relations in the public, private and social sectors, women should also be considered, not only as a gender quota, this is, as a measure instrument aimed at incorporating women in labour positions, but also it is needed a continuous dialogue with women from all the hierarchy of the workplace in order to understand their needs, concerns and problems, adjust the business plan to incorporate the women's perspective, draft new internal labour policies and find optimal solutions that best suits women's needs. Moreover, the compliance processes within enterprises should be reconsidered in order to incorporate additional measures to guarantee better opportunities for women within the organization, as well as within the society as a whole. It is deemed that dialogue can favour the achievement of better opportunities to protect women's rights in a broader scope.

In the academic field, the Critical Legal Feminist Theory may offer interesting contributions in order to explore alternative horizons for society. Subjects as Labour Law should not only be studied and evaluated on the solely ground of legal rules, but also, it would be advisable to incorporate the philosophical and social focus of the Feminist Theory to explore the challenges of Labour Law and the role that lawyers and authorities have to protect women's rights in the labour field.

As it can be seen, the COVID-19 pandemic had several consequences not only in matters related to health, but also, in labour issues, in which women were affected as it could be seen from the ILO's technical note referred in the previous section. Therefore, it is necessary to protect women's rights to health and work among others, as well as to adopt further measures and analysis should be done to find the interpretation of the problem and alternative and innovative solutions. The proposals referred in the previous paragraphs of this section are examples on how further reflections and actions on the topic should be taken, to identify those practices that affect women, the industries that affect the most to women and the obstacles that women are facing to be included in the decision making-processes. In this regard the Critical Legal Feminist Theory may offer an interesting approach to understand the roots of the problematic that women face, give voice to women and explore alternative ways to improve women's life conditions, especially when difficult situations may be at stake.

Conclusion

The Critical Legal Feminist Theory offers an interesting perspective to explore alternative interpretations of the problems that women face in their daily lives, the role of ideology and practices that affect the women situation and the need to give voice to women to stand for their rights in the public, private and social sphere.

The analysis of the situation that the ILO's technical note has offered in March, 2022 regarding gender equality and market work policies during the pandemic that showed that women in Latin America and the Caribbean were the most affected by the crisis triggered by COVID-19 is certainly a topic of deep concern that requires to find optimal solutions to solve the problems that women are dealing, where their rights to health and work are at stake. For that matter, the Critical Legal Feminist Theory offers an interesting new paradigm to explore different insights on law and gender, aimed at determining exploring if the labour market policies and the implementation of labour law are in some way denying the feminine perspective. Additionally, the aforementioned theory may provide theoretical tools to identify alternative indicators to evaluate labour market policies and give voice to women in the labour market, as well as in other public and private spheres, in order to hear their concerns aimed at finding possible measures to face difficult situations, such as the COVID-19 pandemic.

The contributions of the Critical Legal Feminist Theory may be of particular importance in the politic, legal and academic fields in order to continue exploring further analysis and actions that should be taken to identify those

practices that affect women, the industries that affect the most to women, the obstacles that women are facing to be included in the decision making-processes and give voice to women and explore alternative ways to protect women's rights and improve women's life conditions.

References

1. International Labor Organization (2022) Latin America and the Caribbean: Gender equality and labor market policies during the pandemic. Labor Overview Series in Latin America and the Caribbean. pp: 1-28.
2. Basu A (2010) Women's Movements in the Global Era: The Power of Local Feminisms. Routledge, pp: 560.
3. Robles Vázquez J, Tovar Silva YG (2016) American Critical Legal Theory: An Introduction to Critical Legal Studies. Legal Research Institute. UNAM, Mexico, pp: 137-156.
4. Lyth A (2005) Where are the Women?. A Gender Approach to Refugee Law. *In*: Ziemele I, et al. (Eds.), *Expanding the Horizons of Human Rights Law*. Martinus Nijhoff Publisher, Leiden-Boston, pp: 110-112.
5. MacKinnon CA (1989) *Toward a feminist Theory of the State*. Harvard University Press, Cambridge, Massachusetts and London. England, pp: 237-244.
6. Dworkin A (1993) Prostitution and Male Supremacy. *Michigan Journal of Gender & Law* 1(1): 10-11.

