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The Transformative Vision of Maternity Benefit Laws in India: Analyzing Social Security in the Light of the Constitution

ABSTRACT

Women in the Indian society have been victims of humiliation, torture and exploitation for quite a considerable amount of time. But with time, the role of women in the society has undergone a massive evolution, as a result of rapid industrialisation. The country has witnessed an enthusiastic participation of women in various workforces. Women have been seen to take various kinds of jobs and perform better than the men. But the problem is that the patriarchal mindset of the conservative society has remained the same. A major part of the society still expects the women to devote her entire life to the household and raise children. These are the things that most of the times curb the inner aspirations and aims of a woman to achieve heights. There are several instances where a woman has been forced to give up her job, after giving birth to child just for the reason of managing household and bringing up child. The society has often been sceptical in the matter of participation of women in various organized sectors. In order to secure the aims and aspiration of women, there has been a worldwide introduction of several rights. Although the institutional design varies, industrialized countries have commonly been implementing laws providing maternity benefits. At present almost all countries have several laws securing maternity rights of women. In the light of various atrocities faced by the women, the post-Independence period has witnessed implementation of several reasons to protect and improve the status of women. One such legislation introduced with the motive of assuring just and humane working conditions and maternity relief is Maternity Benefit Act, 1961. This paper explores how important was the need of implementing such an Act and also aims to introspect how efficient the Act has been in dealing with these problems.

KEYWORDS

Maternity Protection, Working Women, Maternity Benefit Act, 1961, Equality, Labour Laws, Maternity Benefit Amendment Act, 2017, Human Rights.

INTRODUCTION

Women constitute a major percentage of the Indian population. Industrialization has widened the scope of freedom of women, which has

in turn led to the participation of women in various workforces. Moreover, at present, the nature of the world is becoming competitive day by day and families are not able to survive on the earning of one person which has also created an inevitable situation for women to participate in earning.

At the same time a woman has to perform multiple tasks like managing household chores, looking after the family etc. One of the most difficult task is to bear and give birth to a child. For continuation both the things giving birth to a child and working are equally required.

The first International Labour Conference was held in 1919 in which the first Convention for Maternity protection (Convention No.3) was adopted. Later on there were two other conventions that increased the scope of Maternity safety at work viz. Convention No. 103 in 1952 and Convention No. 183 in 2000.

In India, it was in 28th July, 1928 when the concept of maternity benefit was first introduced in the Bombay Legislative Council. Dr. B R Ambedkar was a strong proponent of this legislation. He opined "It is in the interests of the nation that the mother ought to get a certain amount of rest during the pre-natal period and also subsequently"¹

Along the same line, The Central Government, also passed three Acts, viz,

1. The Mines Maternity Benefit Act of 1941,
2. The Employees' State Insurance Act of 1948 and
3. The Plantations Labour Act of 1951.

But due to the inconsistency of provisions laid down by each Act, there arose a need for an Act which would have been more uniform in nature.

Moreover, Article 42 of The Constitution of India which states, "The State shall make provision for securing just and humane conditions of work and for maternity relief" is also a directive that recognized providing proper maternity benefit to women.

The Maternity Benefit Act of 1961 was enacted on 12th December, 1961 to ease the participation of women in organized sector and their public sphere. The Maternity Benefit Act also aimed to overcome the challenges faced by the women in their professional lives owing to the generalized gender roles association. Its object is to provide an equal opportunity to women who often tend to fall prey to the internalized patriarchal

¹ "Babasaheb on Maternity Benefit Bill in 1928." Savari, 13 Apr. 2017, www.dalitweb.org/?p=3430

instincts of the society. The biological difference between a man and a woman doesn't make it fine for them to have a difference in opportunities provided to them.

In the judgement of *P. Geetha v. Kerala Livestock Development Board Ltd* it was observed that womanhood and motherhood should never be looked upon as an obstacle in her way of progress and development. Anything acting like an impediment in a person's growth should be eradicated from its roots and law plays the role of eradicating such dysfunctional elements present in the society in order to ensure a free and fair chance of opportunities to everyone.² Hence, it can be very well made out that the Maternity Benefit Act is the law's turn to appreciate the dichotomy of divine duty, the split motherhood.

THE CONSTITUTIONAL FRAMEWORK RELATING TO THESE LAWS

It was in the later half of the 20th Century principles of social justice and human rights came to be infused in almost all aspects of labour law. The Marxist perspective made it necessary to challenge the unequal distribution of power, wealth, and resources in order to achieve social justice for the workers and demand change. The modern idea of human rights, which emerged after World War II, led to labour movements' framing of their claims through a human rights discourse, in order to counter the economic arguments and special interest politics that were advanced by employers³.

The Universal Declaration of Human Rights had already been adopted when the Indian Constitution was drafted. The Preamble to the Constitution refers to securing all citizens social, economic, and political justice, and equality of status and of opportunity.

There are various rights guaranteed by the Constitution to prevent discrimination. Those include equality before the law and equal protection under the law⁴, prohibition on discrimination by the state on a number of grounds, including of sex⁵, and equality of opportunity in matters of public employment without discrimination on grounds, including of sex⁶. In addition, the state can make special provisions for women, presumably to counter the historic discrimination meted out to them⁷. The Indian state is also duty-bound to protect the life and liberty

² *P. Geetha v. Kerala Livestock Development Board Ltd.*, 2015 SCC OnLine Ker 71.

³ Fudge 2007: 29, 35.

⁴ Article 14, The Constitution of India.

⁵ Article 15(1), The Constitution of India.

⁶ Article 16(1) and Article 16(2), The Constitution of India.

⁷ Article 15(3), The Constitution of India.

of all persons, including women⁸. It is pertinent to note that fundamental rights are applicable only against the “state,” defined broadly through constitutional jurisprudence, and not against private enterprises. On the other hand, the chapter on Directive Principles of State Policy expressly provides for equal pay for equal work⁹; that the health and strength of workers—both men and women—are not abused¹⁰; that provisions are made for ensuring just and humane conditions of work and maternity relief¹¹; and improvement in employment opportunities and conditions of working women¹². These are the guiding principles that are fundamental for the state to incorporate in the laws and policies formulated by it.

In the field of women’s rights, legislations have focused on various aspects and have played a very significant role in developing their rights. There are various issues like payment of minimum wages and timely, regular payment of wages¹³, equal pay to men and women for equal or similar work¹⁴; improving the safety, health, and welfare of women in factories and other places of work¹⁵; occupational health and safety including compensation for industrial accidents and occupational diseases leading to disability or death¹⁶; maternity benefits including provision of crèche facilities¹⁷; and prevention of discrimination and sexual harassment at the workplace¹⁸.

This Maternity Benefits Act, 1961 also owes its basis to Article 42 of The Constitution of India in which provisions regarding just and human working conditions and maternity relief are laid down.

Moreover it may also be stated that besides the Constitutional framework, The International Labour Organization (ILO) also works towards setting normative standards on women’s rights through conventions and protocols, which are similarly ratified by India in order that they become applicable to India. The Maternity Protection Convention 1919 (No 3) is the first global standard aimed at protecting women workers’ rights prior to and subsequent to childbirth. This was followed by the Maternity Protection Convention (Revised) 1952 (No

⁸ Article 21, The Constitution of India.

⁹ Article 39(d), The Constitution of India.

¹⁰ Article 39(e), The Constitution of India.

¹¹ Article 42, The Constitution of India.

¹² Article 46 The Constitution of India.

¹³ Minimum Wages Act, 1948.

¹⁴ Equal Remuneration Act, 1976.

¹⁵ Factories Act, 1948; Mines Act, 1952.

¹⁶ Personal Injuries (Compensation Insurance) Act, 1963

¹⁷ Maternity Benefit Act, 1961

¹⁸ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

103). The ILO Convention No 183, the Maternity Protection Convention, 2000, is the most recent and updated standard, providing for a minimum of 14 weeks of paid maternity leave, a cash benefit (equivalent to two-thirds of the woman's previous earnings) to ensure proper health of the mother and child, and prevents a pregnant woman or nursing mother from exposure to work that can be harmful to her health and that of the child¹⁹. The convention also enables women to return to their equivalent position of work after the period of maternity leave gets over and they are entitled to be paid at the same rate, and are also entitled to one or more breaks for breastfeeding the child. But it is also necessary to state in this context that the Indian law relating to maternity benefit is much more effective than this because the amendments of 2017 to Maternity Benefit Act has increased maternity leave from 12 weeks to 26 weeks which is an improvement over the prescription of 14 weeks' maternity leave stipulated in ILO Convention No 183.

OBJECTIVES OF THE MATERNITY BENEFIT ACT

The Act was passed by the government with the motive to provide uniform benefits to all women of the country and also to secure their employment during their period of pregnancy. The Act has been framed in a manner so as to preserve the dignity of motherhood by providing absolute healthcare maintenance to child and women when she is not able to perform her duties at the workplace due to her pregnancy. By growing numbers of women workers in India, maternity benefits are increasingly common in all factories, shops or commercial establishments where 10 or more employees are engaged.

The fundamental aims of this Act are summarized below:

1. To protect the health of women,
2. To secure the motherliness,
3. To ensure complete safety of child and mother both, and
4. To preserve the self-respect for motherliness.

It was with the aim to focus on women empowerment by increasing their participation in workforce and securing their job, the government passed this Act.

The judicial decision in the case of *Shalini Pathak v State of Uttarakhand*²⁰ under the purview of this Act strengthened the objective of this Act.

¹⁹ ILO Convention No 183

²⁰ 2014 SCC OnLine Utt 2233.

THE ASPECT OF SOCIAL JUSTICE IN THE ACT

The concept of Social Justice is regarded as a backbone of a developing society. The essence of social justice is to attain a substantial degree of social, economic and political equality which is quite a legitimate expectation under the constitutional as well as moral terms²¹. The judiciary has always been at the helm of social revolution in many societies, especially the democratic ones. It's the only forum which provides rule of law its true form and colour thereby bringing in social readjustment which is necessary for establishing a coherent socio-economic order²².

Women have faced the apathy of disparity, exploitation, inequality throughout the past and they are still fighting to maintain their status in the dynamic society. In light of the existing state of condition of women, there is always a need of a providing some reasonable leverage to the disadvantaged group and Social Security legislation are a step ahead in the validation of this argument. The falling numbers of women at work is rather disheartening, the cause of which remains the little or no realization of their rights and limited remedies available at their disposal.

One of the many illustrious enactments of the legislature to improve Social Justice is the Maternity Benefits Act, 1961 in order provide a level playing ground to the women in working spaces. The recent past has seen a major Amendment to the much progressive law of Maternity Benefits in India through the enactment of Maternity Benefits Amendment Act, 2017. It comes into force as a result of years of struggle by women rights groups and labour justice unions for giving a pedestal to the women in labour work.

THE LANDMARK JUDGEMENT OF B. SHAH v. PRESIDING OFFICER, LABOUR COURT, AND COMBATORE

The law relating to beneficial legislations, specifically the Maternity Benefits Act had been exhaustively discussed by the judiciary in the celebrated judgement of B. Shah v. Presiding Officer²³, Labor Court, and Combaitore²⁴ wherein for the first time, a doctrine of "beneficial rule of construction". It was in this case where an important doctrine of "Beneficial rule of Construction" was vividly discussed in respect to social legislations like Maternity Benefits Act for the first time.

According to the case, on October 1967, a pregnant worker employed by

²¹ Dr. Panday Mayuri, Social Justice; a Dream or Reality, AIR May 2009 Journal 79

²² Dr. Dipti Rekha Mohapatra, Role of Judiciary for the Social Security and Protection of Women Labour in India 17 IJTRA, 25-31.

²³ 1978 A.I.R 12.

²⁴ id

the enterprise Mountain Stuart Estate was authorized to take her maternity leave. A benefit equivalent to 12 weeks' work was received by the worker, but Sundays were excluded from the calculation since the enterprise considered them to be unpaid rest days. Not satisfied with the payment, the worker took the case to the Labour Court, claiming that the benefits paid to her for her maternity leave should include the 12 Sundays. The Court decided in favour of the claimant, ordering the enterprise to pay her for the 12 Sundays. When the decision was appealed, the Court of Madras found in favour of the enterprise. Unsatisfied with the decision, the claimant appealed the ruling and the Court that heard the case found in her favour. Once again there was an appeal by the enterprise against the decision before Supreme Court, which had to decide whether, in light of the Law on Maternity Pay (Law LIII of 1961), the calculation of maternity benefits should include Sundays. While analyzing the case, Section 5 of Law LIII was cited by the Court, which stipulated that the maximum period for which a woman has the right to receive maternity pay is 12 weeks which includes six weeks before the birth and including the day of the birth and six weeks from the day after the birth.

The Court then, after having analyzed the word "week" in its various dictionary definitions concluded that weeks did include Sundays.

The Court also pointed out that:

"The interpretation placed by us on the phraseology of sub-sections (1) and (3) of section 5 of the Act appears to us to be in conformity not only with the legislative intendment but also with Paragraphs 1 and 2 of Article 4 of Convention No. 103 concerning Maternity Protection Convention (Revised), 1952:

1. 'While absent from work on maternity leave in accordance with the provisions of Article 3, the woman shall be entitled to receive cash and medical benefits.
2. The rates of cash benefit shall be fixed by national laws or regulations so as to ensure benefits sufficient for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living."²⁵

It was also amazingly dictated by the Hon'ble Court that 'While interpreting beneficial pieces of legislations such as Maternity Benefits Act, emphasis must be granted to its objectives which in this case happens to provide much needed social justice to women workers

²⁵ B. Shah v. Presiding Officer, Labor Court, and Combaitore 1978 A.I.R 12.

employed in certain work establishments. The Court further added that such a beneficial legislation squarely falls within the purview of Article 42 of the Constitution and a Beneficent Rule of Construction doctrine must be applied to such Acts'²⁶

AMENDMENT OF THE ACT

The Maternity Benefit Act, 1961 was a key legislation that enabled women to claim their deserved participation in workforce. The Act was amended in March, 2017 in order to suit the modern needs. The major aim of the amendment Act was to regulate the employment of women during their period of childbirth. It has also amended the provisions related to duration and applicability to maternity leave, and other facilities. This amendment introduced various new benefits. Those benefits are summarized as follows:

1. Leave with average pay of six weeks before and after the delivery.
2. A medical bonus if the employer does not provide free medical care to the woman.
3. An additional leave with up to 1 month of pay will be granted provided the woman shows proof of illness due to the pregnancy, delivery, miscarriage or premature birth.
4. In the case of miscarriage, 6 week leave with average pay from the date of miscarriage will be provided.
5. Light work for 10 weeks (6 weeks plus 1 month) before the date of her expected delivery, if she asks for it.
6. Increase in paid maternity leaves from 12 weeks to 26 weeks for women employees unless they have 2 or more surviving children.
7. Women who are expecting after having 2 children, the duration of leave will be 12 weeks.
8. Every woman who has adopted a child will get 12 weeks of leave from the date of adoption.
9. The Act further introduced the option of work from home for mothers which can be used after the expiry of 26 weeks of paid leave.
10. The Act also recognizes the rights of an adopting mother and also of commissioning mother (surrogate to bear a child) for the first time may claim to leave for 12 weeks.
11. Two nursing breaks in the course of her daily work until the child is 15 months old.
12. No discharge or dismissal while she is on maternity leave.

This Act also introduced in-house crèche facilities for women in every establishment employing 50 or more than women and allows women to

²⁶ id

visit the facility of 4 times a day. Also, according to the Act the paid maternity leave can be availed by any women 8 weeks before the expected delivery date earlier it was 6 weeks. The amended Act made it compulsory for all the employers to inform every woman employee about all the maternity benefits at the time of appointment.

Further by notification of government released on 18th May 2017 another rule under the Act was added which is stated under section 6A of the Maternity Benefit Amendment Act 2017 that crèche facility was to be near the establishment i.e. within the distance of 500 meters from the main entrance of the establishment. Under section 8 of this Act women employee who is entitled to seek maternity benefit is also entitled to seek medical bonus of 25 rupees from the employer. Moreover, Section 9 states that women in case of miscarriage may entitle to seek 6 weeks paid leave immediately from the date of miscarriage.

THE INDISPENSABLE NATURE OF THE MATERNITY BENEFIT LAWS

The matter of participation of woman in working sectors has remained a matter of scepticism in the society. The patriarchal society that holds the notion that getting married, managing household chores and raising children is the prime duty of a woman has often curbed the inner aspiration of achieving their goals. Women have always been categorically perceived to act in a manner which revolves around household and children. The idea that men and women should perform different and gender-specific roles because of their biological nature and function is a deeply entrenched notion that has been present in the society²⁷.

The objective is to provide an equal opportunity to women who often tend to fall prey to the internalized patriarchal instincts of the society. The biological difference between a man and a woman doesn't make it fine for them to have a difference in opportunities provided to them. The law comes into force to ensure the same by the provision of acts like the Maternity Benefit Act.

Most women fall a long ways behind men in access to paid work. Furthermore, working ladies are frequently paid not as much as men for their work and there exists a very prominent disparity in the amount of wages paid to a man and a woman and women are amassed in unreliable, dangerous and low wage work. The real explanation for this

²⁷ Susan B. Boyd, *Challenging the Public/Private Divide: An Overview in CHALLENGING THE PUBLIC/PRIVATE DIVIDE: FEMINISM, LAW, AND PUBLIC POLICY*, 3-34 (ed. U. of Toronto, 1997).

wonder is the view of ladies as housewives, parental figures, moms and optional wellsprings of family unit wage. Ladies are regularly in charge of kids, family unit work and unpaid group work, which limits their chances to ok salaried business. In the meantime, for ladies' strengthening, salaried business is very necessary. This is since salaried work makes ladies less financial ward of male family and the life partner, and offers ladies leave choices in i.e. instances of abusive behaviour at home. Work drive investment is however not seen to be essentially positive in essence, since it can be regarded a consequence of financial weight, imbalances or neediness, and can increase the weight of work on ladies two times more who are in charge of all residential work in the family. Along these lines, business benefits, and particularly maternity benefits, are pivotal supplements to ladies' salaried work. Maternity leave can make a domain that enhances a lady labourer's ability to adjust work and family life.

The existence of Maternity Benefit laws is very necessary for the preservation of legal rights and monetary security of a woman. The instalment part of the Maternity Benefit Act is additionally in accordance with the ILO tradition No. 183, which expresses that maternity money benefits should be founded on profit earned in the past and not 66% of the lady's past income.

As a matter of first importance, it is certain that the Maternity Benefit Act covers every female worker in any shop, manufacturing plant, mine or on the other hand manor. This implies there is no requirements to assess the sort of work ladies perform at these work environments with a specific end goal to see if they are qualified. Also, it is of incentive to take a note of that the Maternity Benefits Act enables the State Government to stretch out the Act to some other foundation. For instance, the Government of Kerala has widened every arrangements of the Maternity Benefits Act with the goal that it covers the foundations characterized as business foundations in the Kerala Shops and Commercial Establishments Act of 1960.

Another imperative legitimacy is that the Act gives full pay for ladies on maternity leave, since it expresses that female representatives might be paid at the rate of their normal day by day wage. This piece of the Indian law is more dynamic than the relating part in the enactment of a few European nations.

In the landmark case of *MCD v. Female Workers (Muster Roll)*²⁸ the Supreme Court ruled in favour of the daily wage female workers and upheld their rights to maternity benefits, on the principle of social justice

²⁸ (2000) 3 SCC 224: AIR 2000 SC 1274

demanding an affirmative effort to remove socio-economic inequalities.

PARTING NOTES

It can be stated without any doubt that The Maternity Benefits Act, 1961 is very progressive in nature and is a step forward in increasing gender neutrality. But it has often been argued that despite of the benevolence of the Laws, proper implementation could not be achieved in various rural and village areas. Moreover, in private enterprises, where the fundamental rights provisions are not directly applicable, the scope exists for employers to discriminate against women workers, due to a perception that appointing women workers is burdensome.

At present, there is a want of Law that would prevent pregnancy-based discrimination in private enterprises, except a provision in the 1961 Act that a woman cannot be terminated due to pregnancy. In the context of a decreasing participation of the female workforce, and a patriarchal society surrounding women's professional work in general, such discriminatory hiring and firing practices exacerbate the detrimental impact on women workers and must be arrested. It suggested various remedial measures should be immediately taken by the Government to arrest this trend.