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The Reality of women workers under the Maternity Benefits Act, 1961

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"Social-Justice" is the cornerstone of our Constitution's fundamental rights. In its journey to date, social justice has undergone a great number of changes to fit into the social fabric. This paper focuses on the empirical analysis of the woes of the maternity act and whether the amendment provided accommodation to every working-class woman. The fundamental goals of maternity benefits are to safeguard the self-respect of motherhood, as well as the mother's and the child's health and safety. The continuation of women's economic independence and self-reliance depends on maternity benefits. The establishment of minimum national and subnational standards through the enactment of maternal rights legislation is crucial. It does this by incorporating generally recognized concepts into national laws. This paper further highlights whether the amendment was given a bird's eye. The ambiguities introduced by the new amendment, the government's failure to carry out the constitutionally mandated duties, and the need to reconstruct the law to deal with an unprecedented scenario are the topics covered in this paper. In an uncharted ocean, our nation is navigating a boat through tremendous tides. To discover a solution using certain suggestive models, the last polish-up analysis is conducted while keeping the current episodes linearly. This paper's primary focus is on the necessity of reforming the maternity act.

Keywords: *maternity relief, protective discrimination, maternity rule, pregnancy, maternity benefit.*

JUSTIFICATION FOR MATERNITY BENEFITS

Women's economic dependence is what causes their subordination in society today. To remove such subordination and lay the groundwork for equality, women must be economically independent and play an active role in all sectors of business today. To support such an initiative, the government must create conditions that are appropriate for women's needs. One of the issues that women face in the economic sphere is discrimination as a result of their biological role like childbearing. To address this issue and protect women's economic rights, maternity benefits for female employees are required. Women are entitled to these benefits because childbirth is extremely painful and can result in bodily harm. This may hurt the woman's future work as an employee and reduce her productivity, so maternity benefits for women workers are required.

Maternity benefits¹ are necessary to protect working women's rights to economic independence and self-reliance. Only when disparities are eliminated and everyone receives what they are legally entitled to will a just societal order be established. When those who make up roughly half of our society must be respected and treated with dignity at the jobs, they hold to support themselves. They must be given access to all the amenities to which they are entitled, regardless of the nature of their jobs, hobbies, or workplace². The most natural event in a woman's life is having a child. The employer must be considerate and sympathetic towards the working woman and understand the physical challenges she will face while performing her job duties at the workplace while carrying a baby in the womb or while rearing the child after birth. The employer must do whatever is necessary to make it easier for the working woman to give birth to a child.

Maternity has traditionally been viewed as a condition that prevents women from working in any capacity during the few weeks leading up to and following childbirth. When wage labour became prevalent in industrial settings, several employers tended to dismiss women workers when they discovered that being pregnant prevented them from carrying out their regular tasks.

¹ Maternity Benefit Act 1961

² *Vandana Kandari v University of Delhi* (2010) 170 DLT 755

As a result, many female employees during this time had to take unpaid leaves to keep their jobs.

The health of the mom and the unborn child was negatively impacted by the high pressure that several others had to endure to maintain their productivity during these times of pregnancy. The idea of maternity benefits is required to alleviate this burden for female employees and to allow them to continue performing the societal role of childbearing and raising children without suffering disproportionate health risks or salary losses. Most women want to have children at some point in their lives. They had to give up their job and family aspirations due to the previous economic arrangements.

INDIAN CONSTITUTION AND MATERNITY BENEFITS

According to the Indian Constitution, women have the following rights and privileges for their betterment: the right to equality in law, the right against discrimination, the right to equality in public employment, the right to adequate means of subsistence, the right to equal pay for equal work, the right to just and humane working conditions and maternity leave, and the right to better employment opportunities and conditions³.

Article 15(3) of the Indian Constitution⁴ says “nothing shall prevent the State from making special provisions for women and children”. Article 15(3) primary goal is "protective discrimination," which takes into account women's precarious physical positions. According to the justification, "woman's physical structure and the fulfillment of maternal tasks places her at a disadvantage in the struggle for subsistence, and her physical well-being becomes an object of public attention and cares to preserve the power and vitality of the race." This clause has given the State the ability to create unique statutory provisions that are only focused on the welfare of women.

³ *Ibid*

⁴ Constitution of India 1950, art. 15(3)

Article 21 of the Indian Constitution⁵ guarantees the right to life and personal liberty, which goes beyond the basic need to safeguard one's physical well-being. The right to live a fulfilling, whole, and respectable life is known as the right to life. It doesn't possess restricted meaning. It is more than just living or existing as an animal. Life has an infinite meaning that cannot be constrained and is accessible to everyone in the nation. Therefore, the State must ensure that a working pregnant woman has access to all the resources and support she needs while also safeguarding her employment, personal health, and the health of her unborn child.

According to Articles 41⁶ and 42⁷ of Part IV of the Indian Constitution's Directive Principles of State Policy, the State must make effective provisions to ensure the rights to work, education, and maternity leave. Article 41 also mandates that the State shall secure just and humane working conditions. Since Article 42 specifically refers to "just and humane conditions of work" and "maternity relief," any service rule as well as an executive or administrative action that denies maternity benefits must be evaluated based on Article 42⁸, which, though not legally enforceable, is still available for determining the legal efficacy of the service rule as well as the action in question.

THE ROLE OF RESEARCH ANALYSTS LEGAL INVESTIGATORS AND POLICY ADVISORS

Before the Act's revision, research studies and independent inquiries among women employees provided critical information into the necessity of the law's progression. In time, the function of Women's roles at home and work in semi-urban and urban Indian cultures have altered significantly as a result of their shared financial and familial responsibilities. Therefore, the full amount of maternity leave must be granted and enforced so that working women are better prepared to return to work after giving birth.

⁵ Constitution of India 1950, art. 21

⁶ Constitution of India 1950, art. 41

⁷ Constitution of India 1950, art. 42

⁸ *Ibid*

According to studies done in 2011 by the V. V. Giri National Labour Institute, the majority of women workers are entitled to maternity benefits that include at least 12 weeks of paid leave, as required by the relevant Act. According to research, the majority of women who requested or received maternity leave with pay for less than 12 weeks or less did not obtain the required 3 months/12 weeks of leave. A total of 73% of women obtained paid maternity leave, with the ITES industry having the highest rate (87.5%). It was suggested that maternity leave under the Maternity Benefit Act be expanded from the current level of 12 weeks to 24 weeks at the 44th Indian Labour Conference, held in February 2012. A countrywide consultation on the Maternity Benefit Act was held in July 2013 by the National Mission for the Empowerment of Women. The recommendations from the conclusion included increasing maternity leave from its current 84 days (12 weeks) to 180 days (6 months) and making it comparable to the benefits offered to central government employees. This would support the WHO recommendation to only breastfeed children.

COMPARISON OF MATERNITY PROVISION

An analysis of comparable policies is usually useful for improving understanding of the maternity provision. In light of this, the following is a brief comparison of India's maternity legislation with the laws of two other well-known nations, whose maternity laws are widely regarded as the best. It's the United Kingdom and Canada. The examination will focus on the benefits and rules that are in place for women in each of the three nations.

BASE POINTS	UK	CANADA	INDIA
DURATION OF LEAVE DAYS	A maximum of 11 weeks before delivery, 2 weeks following childbirth, or 4 weeks in the case of factory	A total of 61 weeks are available, of which 31 weeks are labelled as parental leave and 15 weeks as maternity leave.	Seems to be available as early as 8 weeks before maturity and covers 26 weeks. Only 12 weeks of

	workers can be used toward the 52-week leave period.	These weeks can be used as early as 12 weeks before the due date.	leave are available to mothers who have two or more children.
FINANCIAL GAIN	90% of the average weekly wage is paid out during the first six weeks, and for the following 33 weeks, 151 euros (or 90% of the average weekly salary, whichever is less) is paid out.	To qualify for EI or employment insurance, you must earn at least 55% of your annual income or 53,100 dollars at the most.	With an additional medical incentive of Rs. 3500, fully paid leaves are available for 26 or 12 weeks. Under the 2013 National Food Security Act, pregnant and nursing women are eligible to receive additional Rs 6000.
PENALTY	The employee may file a civil lawsuit against the employer and demand damages if the regulations are not followed.	Similar to the civil lawsuit in the United Kingdom.	The penalty of up to Rs. 5000 and conviction might include a year.

The following conclusions can be drawn from the comparison presented above:

- In comparison to India, where the average length of leave is only 26 weeks and mothers with two or more children are only eligible for 12 weeks of leave, Canada offers 61 weeks

of leave. In other words, it is unjust because the law disincentivizes or forbids parents from having more than two children. Hence there is negative law.

- All three nations offer quite respectable financial benefits, and India further rewards expectant mothers with additional pay on top of their regular paid leave.
- The concept of parental leave is another significant change Canada has made. Most nations disregard the reality that fathers play a significant role in the growth and consequently, they should also be given the chance to take a break to continue their development. India ought to adopt this as well.
- Only India has severe laws about punishment if an employer does not respect the maternity rule, whereas other nations only permit civil lawsuits. In India, breaking the rules will result in a criminal penalty of one year in prison. Because of this, it will make wrongdoers afraid to do anything wrong in the first place.

SUGGESTIVE MODEL

Although our maternity benefit act is highly generous by international standards, it rarely applies. Over the vast majority in Indians. We can categorically state that our maternity benefit regulations are an illustration of Phantom Law. The current law encouraged more businesses to engage in practice due to the act's exclusions, appointments were made using an unorganized process examining some European and Scandinavian nations with more uniform workplaces contrary to India, which has the most diverse workforce in the entire globe.

Maternity Benefit Act of 1961's purpose was to: The Act's goals are to: (1) give maternity benefits to women who work in specific establishments; and (2) set rules for how long women can be employed in those establishments before and following childbirth. A woman will get maternity benefits at a rate equal to her average daily salary for the three months before her pregnancy. But the woman must have put in at least 80 days of employment for the company in the 12 months before the due date of her anticipated delivery. In the event of pandemics or other emergencies that are followed by strict lockdowns and shutdowns, maternity leave should be extended up to three months. This is because one of the benefits of maternity leave is for the mother and child to attend baby groups, spend time with families, and perform religious rites,

but when the country is under lockdown, none of these things can be done. Babies lack interaction, even though it is essential for a baby's growth, bonding, and education, as well as that of the mother. With coordinated efforts from the centre and the state, a distress fund should be established. Three sources should provide the money: the federal government, the state governments, and, in the case of private employees, the employer. Such a fund can be utilized in an emergency, such as a pandemic or case of force majeure, to make sure that pregnant women receive the care they need.

We are in a far better situation than most nations when it comes to maternity leave duration, but our maternity law still needs to be more comprehensive. However, the majority of women, according to the research we conducted above, do not profit from it. Even though the act does nothing about it, many women are working in both organized and unorganized sectors in our country. The statute primarily favours a class of women, not Indian women in general. Before being passed, the law required thorough investigation and a clear vision.

The absence of data from the government is the biggest obstacle to offering advantages to the organized informal sector and unorganized sector. The only way to address this is through data management and collecting, and the 2021 population census presents the ideal time to start. Data can be gathered on these sectors by NSO, and a new entity, similar to ESIC, can be created under the ministry of women's and children's welfare to specifically examine the data so gathered. The body thusly produced can have a clear plan to strive toward the following stage, namely a model that benefits everyone. Following that, the workers may receive maternity benefits in the form of a cash transfer, paid maternity leave, or other health benefits. This data gathering will aid in the fight against bonded labour in India as well as in identifying businesses that solely use unorganized labour to cheat taxes.

CONCLUSION

Maternity benefits are not just for new moms; rather, they represent a crucial first step in securing the future of our nation. In our nation, being pregnant is both a reason for not allowing a mother to work after giving birth and a type of divine origin. In this situation, the state must

act to lubricate and strengthen the system so that it can be brave and intelligent enough to recognize the truth that being a mother does not make a woman weaker, but rather provides her more courage and confidence to face the outside world. The maternity regulations in India have been thoroughly analyzed in the paper above. The maternity benefit act was amended in an idealistic way that merely appears attractive in the official gazette. We should constantly abide by nature's fundamental law, which states that nothing is completely ideal and requires appropriate adjustments whenever forces of either natural or artificial origin are used.