

WOMEN EMPOWERMENT THROUGH MATERNITY BENEFITS: A MYTH OR REALITY?

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Abstract: Women are the wealth of India and they have contributed in almost every field and made country feel proud at every occasion. However another reality of Indian society is that there is systematic discrimination and neglect of women's in India which could be in terms of inadequate nutrition, denial or limited access to education, health and property rights, domestic violence, sexual violence and so on. Every minute one woman dies needlessly of pregnancy-related causes. Women do two-third of the world's work, but make only 5 per cent of the world's wages and hold only 1 per cent of the world's assets.[1]

This global concern has steadily grown through the past few decades and has resulted in efforts to bring women into the mainstream of life, mainly through socio-economic activities aimed at empowering them and thus restoring equality between the sexes.

Introduction: One of the way to empower women is through maternity benefits. To become a mother is most natural phenomenon in the life of a women. Pregnancy is a predictable, foreseeable condition that will occur among a substantial portion of working women. It is equally predictable that pregnancy will involve some period of disability during which the pregnant employee will be unable to work. One must realise the physical difficulties which a working women would face in performing her duties at the work place while carrying a baby in the womb. Taking in to account the hardship of this difficult task the UNO has adopted the convention on the Elimination of All Forms of Discrimination against women which spells out the areas of protection to women namely, prohibition of discrimination on the ground of pregnancy, Maternity and Marital status with maternity leave and pay without loss of employment. Apart from this to provide protection to the women workers who are in their family way by giving maternity leave and benefits, ILO has adopted conventions.[2]

The Preamble to our Indian Constitution refers to the Justice-Social, Economic and Political. It confers on men and women equality before law and equal protection of laws.[3] It prohibits discrimination against any citizen on the grounds of religion, race, cast, sex and etc.[4] It makes a special provision enabling the state to make affirmative discrimination in favour of women[5]. Similarly our constitution provides for equality of opportunities in matters of public employment[6], it prohibits the traffic in human beings and beggar other similar forms of forced labour[7] equal right to means of livelihood,[8] equal pay for equal work for all citizens[9]. Article 42 of the constitution contains a direction to the state to make provision for ensuring just and human conditions of work and for maternity benefit. Above all the constitution imposes a fundamental duty on every citizen to renounce the practice derogatory to

the dignity of women[10]. In tune with various provisions of the constitution, the state has enacted many women specific and women related legislations to protect women.

Women Empowerment through Maternity Benefits: In order to regulate the employment of women in certain establishments for certain periods before and after child birth, and to provide for maternity benefits, the Indian Parliament enacted the Maternity Benefits Act, 1961.

The Act prohibits the employment of and works by a women during six weeks immediately following the day of her delivery or her miscarriage or medical termination of pregnancy. It also provides that no women shall work in any establishment during the six weeks immediately following the date of her delivery or her miscarriage or medical termination of pregnancy. Further it provides that a women on her request will not be employed during one month immediately preceding the period of six weeks before the date of her expected delivery on any work which is of arduous nature or which involves long hours of standing, or which in any way likely to interfere with her pregnancy or the normal development of foetus or is likely to cause her miscarriage or otherwise adversely affect her health[11].

Right to payment of Maternity Benefit: Every woman shall be entitled to, and her employer shall be liable for, the maternity benefit at the rate of the average daily wage for the period of her actual absence[12].

Condition for eligibility of maternity benefit: A women shall be entitled to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.[13]

Maternity period- The maximum period for which any woman shall be entitled to maternity benefit is

twelve weeks.[14]

Apart from these provisions, in case of tubectomy operation a woman is entitled to leave with wages for a period of two weeks. In the case of illness arising out of pregnancy, delivery, miscarriage pre mature birth of a child, a woman is entitled to, in addition to the period of absence allowed to her, leave with wages at the rate of maternity benefit for a maximum period of one month.

Another legislation which makes provision for the maternity benefit is Employees State Insurance Act, 1948. Maternity benefit is provided in case of confinement, miscarriage, sickness arising out of pregnancy, premature birth of child and death. The duration of maternity benefit available to an insured woman is for 12 weeks.

The Plantation Labour Act, 1951 provides that every woman worker in the case of confinement is entitled to the maternity allowance at such rate, for such period as may be prescribed.[15] **Factories Act, 1948**[16] and **Mines Act, 1952**[17] also provides maternity leave for any number of days not exceeding twelve weeks.

According to the **central civil services (leave) rules, 1972** a female Government servant (including an apprentice) may be granted maternity leave for a period of 180 days from the date of its commencements.[18] During such period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.[19]

Maternity Benefit: A myth or reality?: In India, only the small percentage of the female labour force that exists in the organised sector can avail the benefits offered by the Maternity Benefits Act, 1961. The Maternity Benefits Act, applies to every factory, mine, plantation including any such establishment belonging to Government and all shops and establishments that employ ten or more people.

Women employee is entitled for the maternity benefit under the Act of 1961 only if she has actually worked for 80 days immediately preceding the date of her delivery. Then one honest question born in the mind is that what is the need of this qualifying period for availing the maternity benefits?

Nevertheless, only a small percentage of women

claim maternity benefits, largely on account of the ignorance of women workers, apathetic trade unions dominated by full time male workers and the general reluctance of employers to grant maternity benefits.[20]

Further, The National Commission on Labour acknowledges that the Maternity Benefit Act provides no protection for women and as a result women are 'either forced to leave their jobs when they are pregnant, or are not hired at all because they will have to be provided maternity benefits during and after pregnancy.[21] A survey of the working of the maternity Benefit Act reveals that women workers do not assert their rights for fear of losing the job.

Next to this all legislations (except central civil services leave rules) provide maternity leave for twelve weeks. It is highly inadequate. Moreover the Act imposes the entire burden of providing maternity benefit on the employer. This has led to the tendency among some employers not to employ married women.

Conclusion and suggestions: From the above discussion we can easily conclude that Maternity Benefits Act and other Legislations in India are intended to empower women employees, but because of some lacunas which are mentioned above these enactments remain myth. In order to convert it in to reality in the sense, to make them more effective, following suggestions are available:

- Qualifying period of 80 days for availing the maternity benefits should be removed by an amendment in the Maternity Benefits Act 1961.
- The lady factory inspector as suggested by the Royal Commission on Labour and Labour Investigation Committee should be appointed to have a close watch in the establishment and to help out women workers in claiming their maternity right from a employer.
- Most importantly, the duration of the leave must be extended in order to allow a mother to fully recover and efficiently nurse her new born child. The duration of post -natal period must be extended keeping in mind factors like nuclear families and urbanization.

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7. Art 14.
 8. Art 15.
 9. Art 15(3).
 10. Art 16.
 11. Art 23.
 12. Art 39(a).
 13. Art 39(d).
 14. Art 52 A(e).
 15. Sec.4
 16. Sce.5 (1)
 17. Sce.5 (2) ¹ Sec.5 (3)
 18. Sec.32 (1)
 19. Sec.79 sub sec.(1),cl (b)explanation
 20. Sec 52 sub sec(2),cl (b) explanation
 21. Sec.43(1)
 22. Sec.43(2) ¹ For statistical data see pocket Book of Labour Statistics,Government of India,Ministry of Labour,Labour Bureau,1996,87 88.
 23. Report of the second National Commission on Labour,2002 at 92.

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