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BALANCING WORK AND MOTHERHOOD: A LEGAL STUDY OF MATERNITY PROTECTION IN INDIA

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Abstract:
This article examines the intricate environment of maternity protection in India, encompassing its historical evolution, current legislative structure, and ongoing issues. This emphasizes the significance of the Maternity Benefit Act of 1961 and its following changes, which have safeguarded the rights of working mothers. The core of the study delineates the diverse and complex issues associated with the execution of comprehensive maternity protection within the extensive informal sector, where the majority of Indian women are employed.
The paper examines the "Wollstonecraft Dilemma," which pertains to the conflict between women's aspirations to enter the workforce and the necessity for maternity protection. This document evaluates essential elements of maternity protection as outlined in ILO Convention 183 and examines India's advancements regarding these stipulations.

Keywords: Maternity protection, India, labour rights, gender equality, Maternity Benefit Act, informal sector, women's employment, work-life balance, policy implementation, social security.

INTRODUCTION

Maternity protection is a critical aspect of women's rights and labour policy, representing a significant health issue for working mothers and their children. In India, maternity protection concerns are marked by the complex and multidimensional characteristics of certain economic sectors and social structures, reflecting the country's overall variety.
Women are an essential segment of the workforce in India, considerably contributing to the economy via both paid employment and unpaid labour, including economic activities and social reproduction tasks. The current maternity protection policy in India is mostly sector-specific and focused on the employer-employee relationship.[1] A survey indicates that 94% of the female labour in India is employed in the unorganized sector, underscoring the substantial involvement of women in informal jobs that often lack legal protections and benefits.[2]
The early 20th century witnessed the inception of maternity protection for female workers, coinciding with progress in labour rights and global women's empowerment. In India, the campaign for workers' rights was more comprehensive; yet organizations like the Women's India Association commenced their advocacy for maternity benefits as early as 1920.
Notwithstanding the legal advancements of the Maternity Benefit Act of 1961 and its later amendments, the scope and implementation of maternity protection continue to be grossly inadequate. The era of economic liberalization in the 1990s has intensified the situation, transformed the organization of

[1] Public Health Resource Network, M S Swaminathan Research Foundation & Tamil Nadu - Forum for Creche and Child Care Services, '*Towards Universalisation of Maternity Entitlements: An Exploratory Case Study of the Dr Muthulakshmi Maternity Assistance Scheme,'* Tamil Nadu (PHRN 2010).
[2] Chowdhury, D *'India Must Protect the 150 Million Women in the Informal Sector'* (The Diplomat, 2024) https://thediplomat.com/2024/india-must-protect-150-million-women-informal-sector/ accessed 15 October 2024

production and labour, and frequently led to the erosion of the limited rights granted to women workers.

The challenges to attaining comprehensive maternity protection in India are intricate.
1. The vast informal sector predominantly employs women under precarious conditions, lacking social security safeguards.
2. Societal expectations impose upon women the primary obligation for childcare and home duties, resulting in a "double burden" for working mothers.
3. Employers, especially those in smaller enterprises, are apprehensive about the additional expenses associated with maternity benefits.

Addressing these difficulties necessitates acknowledging the diverse demands of women across all sectors and socio-economic strata. Moreover, altering cultural perceptions of gender roles and acknowledging the multiple responsibilities of women as both workers and moms are essential.
The article offers a comprehensive examination of maternity protection in India, considering its historical context, current legal structure, obstacles encountered, and potential pathways for improvement. By comprehending the pertinent issues, efforts may be focused on integrating the maximum number of women under this policy to enhance the effectiveness of policies in India's development process.

HISTORICAL CONTEXT

The Maternity Benefit Act of 1961 is a significant legislation aimed at safeguarding the rights of women in India during pregnancy and childbirth. Its origins may be traced to the Bombay Maternity Benefit Bill introduced in 1929, which constituted the inaugural legislation in the nation aimed at safeguarding the maternity rights of employed women. During these initial phases, the severe conditions faced by female workers in the textile industry, particularly in Bombay, where women were working in mills without leave or assistance during pregnancy, necessitated this bill. Prominent advocates for this measure included Dr. B.R. Ambedkar and N.M. Joshi, who underscored that legal recognition was essential for the realization of reproductive rights and the welfare of women in the workplace.[3] One of the principal aims of the Indian government following independence was the enhancement of work conditions and social security. This was accompanied by the provision of extensive maternity benefits in accordance with international labour standards established by the ILO. The Act aimed to guarantee that women might remain employed without the apprehension of job termination due to maternity. It stipulated that female employees in firms with ten or more workers are entitled to paid maternity leave for a specified duration before and after childbirth.

The Act has undergone multiple amendments since its establishment. The Maternity (Amendment) Bill of 2017 is mentioned among these amendments. It extends maternity leave from 12 weeks to 26 weeks, providing enhanced support during the crucial phases surrounding childbirth. This amendment was founded on recommendations from several labour conferences and health organizations promoting improved maternal health care outcomes. The legislation additionally accommodated adoptive moms and let women to work from home during maternity leave, aligning with the changing societal norms around gender roles and familial obligations.

THE WOLLSTONECRAFT DILEMMA

The Wollstonecraft Dilemma, as articulated by political scientist Carole Pateman in 1989, was a framework that elucidated the intricate challenges women faced in achieving full citizenship and equality under a patriarchal structure. The difficulty stems from the contradictory expectations placed on women who wish to engage in the workforce yet require maternity protection and childcare assistance.

[3] Chaudhuri M, '*Indian Women's Movement: Reform and Revival'* (Radiant Publishers 1993).

This disadvantages women, as the struggle between these two ambitions typically represents a structural and social framework inclined towards male-biased norms and traditions, as observed in the broader societal context.

The Wollstonecraft Dilemma delineates the dual avenues through which women have sought citizenship: paid employment and acknowledgment of unpaid household labour. However, these two pathways frequently cannot be pursued concurrently within modern societal frameworks. For instance, remunerated employment was intended to accompany autonomy and esteem—a practice incompatible with childcare obligations. In contrast, prioritizing domestic responsibilities correlates with diminished respect and esteem for women in public spheres. This indicates a broader societal incapacity or reluctance to integrate women's experiences into the public sphere of citizenship, hence perpetuating a cycle in which women's contributions remain undervalued.

The Wollstonecraft Dilemma: Conclusion Terminates the non-aggression agreement and asserts that gender equality and citizenship issues are essential concerns that remain increasingly pertinent today. This challenge necessitates an urgent re-evaluation of social values and structures to foster an atmosphere where women can thrive as equal citizens, liberated from the limitations of antiquated patriarchal standards.

ESSENTIAL ELEMENTS OF MATERNITY PROTECTION

The ILO Convention 183 delineates fundamental elements of maternity protection for the health and welfare of mothers and their offspring. This encompasses maternity leave, which must be taken for a minimum duration of 14 weeks to ensure at least six weeks of obligatory leave following childbirth.[4] Safeguarding the health of mothers and children is paramount to this regard.[5] Monetary benefits during maternity leave are crucial; these benefits should amount to no less than two-thirds of women's prior earnings to enable them to maintain their income while nurturing their newborns. Comprehensive medical care, particularly for prenatal, labour, and postoperative treatments, is essential.

Employers must safeguard against occupational hazards, ensuring that pregnant or nursing women are not subjected to harmful working conditions that could jeopardize their health or that of their children.[6] Employment protection is a crucial factor that ensures safeguarding against summary dismissal or discrimination based on pregnancy and delivery, as well as the right to reinstatement in the prior professional role or a comparable position.[7] The convention stipulates that help for breastfeeding upon returning to work and pauses for breastfeeding are considered part of working hours and compensated accordingly.

LEGISLATIVE FRAMEWORK AND LIMITATIONS

This legislation provided essential advantages for female workers. These benefits ensured financial security and employment protection during pregnancy and postpartum. A woman is entitled to maternity benefit under this Act if she has been employed for a continuous period of at least 80 days in a business

[4] *SOCIAL PROTECTION AND HUMAN RIGHTS*, https://socialprotection-humanrights.org/instru/maternity- protection-convention-2000-no-183/ last accessed Oct. 15, 2024.
[5] World Health Organization, '*Maternity protection: Compliance with international labour standards', WHO,* https://www.who.int/tools/modules-immunization-monitoring/manual/policy/maternity-protection [https://perma.cc/XXXX-XXXX] last accessed Oct. 15, 2024.
[6] International Training Centre of the International Labour Organization, '*Maternity Protection Resource Package - From Aspiration to Reality for All Module 1: Maternity Protection at work: What is it?'*, https://www.itcilo.org/resources/maternity_mod_1.vp last accessed Oct 15, 2024.
[7] International Labour Organization, *'Social Protection Platform*', https://www.social-protection.org last accessed Oct 5, 2024.

with 10 or more workers during the 12 months preceding her projected delivery date. The Act encompasses all establishments employing 10 or more workers, including industries, mines, plantations, ports, railway construction, and other construction projects. The Maternity Benefit (Amendment) Act 2017 enhanced these provisions. It expanded the provisions and advantages for female employees within the legislation.

The Maternity Benefit Act stipulates a designated duration of maternity leave, which has been increased to 26 weeks. The specified duration has been subdivided into two segments: an 8-week prenatal leave and an 18-week postnatal leave. For mothers with two or more children, the leave duration is established at 12 weeks, with a maximum of 6 weeks permitted prior to delivery. The Act stipulates that all women are entitled to receive full remuneration during this period, computed based on the average daily income. The Act also addresses several other significant matters. For example, it offers a medical bonus of Rs. 3,500 if the employer neglects to give complimentary prenatal and postnatal care. In the event of miscarriage or pregnancy-related difficulties, supplementary paid leave is provided. Nursing women are allotted break time to breastfeed their kid until the age of 15 months. The third notable change enacted in 2017 mandates that establishments with 50 or more employees must have a crèche facility, so facilitating access to childcare for working mothers throughout their working hours. Women whose employment permits it have the option to work from home upon returning from maternity leave.

The Maternity Benefit Act explicitly forbids the firing or termination of an employee by the employer during her maternity leave. Consequently, it pertains to the safeguarding of women's employment rights, guaranteeing that a woman can resume her position without detriment after a period of absence. Nonetheless, courts persist in issuing inconsistent rulings when women pursue litigation for job discrimination.

The Maternity Benefit Act of 1961 is a crucial legislation that promotes women's health during maternity in India. It advocates for gender equality in the workplace and acknowledges the challenges faced by women during pregnancy. The modifications enacted in 2017 have strengthened these rights by imposing greater obligations on businesses to comply with legislation, thereby fostering a work environment advantageous for women.

CONCLUSION

Extended parental leave correlates with a reduced probability of depression in mothers upon re-entering the workforce. Assuming all other factors remain unchanged, a one-week extension of maternal leave from work will, on average, decrease depressed symptoms by 6-7%. Several observational studies in public health literature indicate that women who work postpartum or return to work immediately after childbirth have greater mental and physical health symptoms compared to their counterparts.[8] While some indicative data suggests that extended maternity breaks diminish the incidence of clinical depression, further study may be necessary to substantiate these correlations effectively. Furthermore, numerous supplementary or long-term advantages are attributed to maternity leave. This encompasses extended breastfeeding periods, reduced accident rates during the child's initial year, and for mothers, enhanced postpartum physical and emotional well-being, along with improved long-term labour market results.[9] Efficient maternity protection regulations are crucial for supporting mothers, fostering a healthier workforce, and enhancing gender balance in the workplace.

[8] Gjerdingen, D.K. and Chaloner, K.M. (1994) *'The relationship of women's postpartum mental health to employment, childbirth, and social support'*, Journal of Family Practice, 38, pp. 465-472.
[9] Waldfogel, J. (1998) *'The family gap for young women in the United States and Britain: Can maternity leave make a difference?'*, Journal of Labor Economics, 16(3), pp. 505-545.

In conclusion, this is a significant advancement in safeguarding the rights and welfare of working mothers under India's Maternity Benefits Act. The Act aims to enable women to reconcile professional aspirations with maternal requirements by instituting paid maternity leave, nursing breaks, and protection against termination. This law advances both the individual lives of women and broader societal goals, including gender equity and economic prosperity. Nonetheless, the challenges associated with the Act's implementation remain substantial, particularly among the informal sectors. The primary issue of dispute pertains to the potential adverse impact on women's employability, since certain companies may hesitate to hire women of childbearing age due to the associated additional costs. As India's socio-economic landscape evolves, the Act must account for these changes and address challenges by encompassing all sectors. This legislation ought to be founded on a cooperative initiative by the government, employers, and civil society to establish a supportive environment for working mothers. The future should have revisions that extend benefits to adoptive mothers, single fathers, and address challenges faced by women employed in non-traditional environments. The Maternity Benefits Act serves as a statutory foundation for fostering a more inclusive and equal work environment. This would lead to the complete involvement of women in the economy and foster the advancement of economic activities.