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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE IMPACT OF EMPLOYMENT GAPS AND GENDER DISPARITIES ON SOCIAL SECURITY BENEFITS**

AUTHORED BY - MANJARI V<sup>1</sup> & NANDITHA S<sup>2</sup>

## **ABSTRACT**

This study aims to gain a deeper understanding of the ways in which gender-based income disparities and employment gaps impact the working classes' access to social security benefits. Gender inequality across India results in unequal opportunities, which impacts the lives of both genders. But statistically women are the most disadvantaged. While constitutional provisions that guarantee women's freedom and equality from gender discrimination, it is hampered by societal attitude. When women are employed, they tend to work in low-quality jobs in vulnerable conditions, and there is little improvement forecast in the near future, which in turn creates employment gaps. This might occur due to various reasons particularly among women due to personal or family responsibilities or their fragile health conditions due to striking a balance between work and personal life. Gender disparities in education can be seen across a number of distributions even today. Women endure various hazards, abuses, and vulnerabilities simply by virtue of being female. The study highlights the current social security benefits which are officiated by the Government of India for women and the necessity of implementing policy changes to improve benefit systems. Understanding how gender and employment discrepancies interact to affect social security benefits is one way that this research adds, thereby attaining income equality and helps shape future policies.

This paper discusses the greater challenges such as Gender disparities wherein, women are more likely to experience career interruptions and earn less over their lifetimes compared to men. Addressing these challenges requires systemic changes in policy, workplace culture, and societal attitudes, which the study aims to achieve.

**Keywords:** *Social Security, Gender Disparity, Employment Gaps, Challenges and Policies*

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## INTRODUCTION

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In order to eradicate discrimination, promote social progress, and enhance living conditions, it is crucial to acknowledge the worth and equality of every human, as stated in the United Nations Organization Charter, the first international treaty.

Social Security is a cornerstone of retirement planning and economic security for millions of individuals. However, the benefits derived from Social Security are not equally distributed among all beneficiaries. Two critical factors influencing the adequacy and equity of these benefits are employment gaps and gender disparities. Employment gaps, whether due to caregiving responsibilities, health issues, or economic downturns, can significantly impact the amount of Social Security benefits one receives. Similarly, gender disparities in earnings and employment patterns contribute to a noticeable difference in Social Security benefits between men and women.

Employment gaps often result in reduced lifetime earnings and lower contributions to Social Security, which in turn affects the benefits individuals receive upon retirement. For many, these gaps can result in diminished financial security during their retirement years, particularly if the gaps occur during pivotal periods of career development.

Gender disparities compound this issue, as women, on average, earn less than men and are more likely to experience career interruptions due to caregiving responsibilities and other factors. This lower lifetime earning potential, combined with longer life expectancies, places women at a heightened risk of inadequate Social Security benefits.

Understanding the interplay between these employment gaps and gender disparities is essential for developing policies that address these inequities and ensure that Social Security provides a fair and sufficient safety net for all individuals. This exploration not only highlights the challenges faced by those with fragmented employment histories and women but also underscores the need for systemic changes to promote greater financial security and equality.

## DECODING EMPLOYMENT GAPS

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Employment gaps in India result from a multifaceted array of factors that significantly influence an individual's career trajectory and economic stability. One prominent cause is the pursuit of higher education and skill development. In a rapidly evolving job market, many individuals, especially younger professionals, take time off to acquire advanced degrees or certifications, which can lead to temporary unemployment. Family responsibilities also play a critical role; for instance, women often experience career interruptions due to maternity leave and the need to manage household duties, including childcare and elder care. In a society where traditional family roles still prevail, these responsibilities disproportionately affect women, leading to longer and more frequent employment gaps. Health issues further exacerbate this problem, as personal or family health crises can necessitate extended periods away from work. Economic downturns and instability also contribute to employment gaps, as job losses and reduced opportunities during recessions force many into periods of unemployment. Moreover, the informal sector, which comprises a substantial portion of India's labor market, often lacks job security and is susceptible to fluctuations that can result in unpredictable employment patterns. Gender-specific issues, including workplace discrimination and limited career advancement opportunities, particularly affect women, leading them to experience more frequent or prolonged employment gaps. Additionally, geographical challenges such as rural-to-urban migration can create gaps as individuals transition to new job markets or adapt to urban environments with inadequate infrastructure. These gaps have several implications, including hindered career progression, diminished financial stability, and skills atrophy.

### THE INESCAPABLE GENDER DISPARITY

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Gender disparity in pay, also known as the gender pay gap, refers to the difference in earnings between men and women performing similar work or having comparable qualifications. Not only in India, but across the globe, women face greater challenges in the employment market than do men. When women are working, they tend to labor in low-quality employment in vulnerable settings, with little improvement predicted in the near future. Women's equal pay has long been a cause supported by individuals who value justice and gender equality. In addition to undermining women's sense of equality and worth, paying them less than males have serious consequences on the economy and society.

Much of the gender wage gap can still be solely attributable to discrimination based on one's

gender or sex, even while individual attributes like education, talents, or experience also play a role. The right to work independently, with dignity, safety, and justice, is essential to the welfare of all people. Ensuring women's access to this right is a significant goal in and of itself. Reducing gender disparities in labor force participation has the potential to significantly increase global GDP from an economic standpoint.

## **WHAT ARE SOCIAL SECURITY BENEFITS?**

A number of human rights agreements, such as the International Covenant on Economic, Social, and Cultural Rights and the Universal Declaration of Human Rights, regard social security as a fundamental human right. It is significant because it aids individuals in situations where they are unable to completely exercise their human rights while still maintaining their security and sense of dignity.

Social Security benefits in India encompass a range of programs designed to provide financial support and social welfare to individuals and families in various circumstances, such as during retirement, illness, disability, or death. Social security benefits hold significant importance in India by providing a vital safety net that supports financial stability and reduces economic vulnerability across various life stages.

It acts as a multifaceted shield against the volatility of life's uncertainties, providing robust protection against income loss due to sickness, disability, maternity, employment injury, unemployment, old age, or the death of a family member. It ensures that individuals have a dependable source of retirement income, insulated from the turbulence of financial markets and inflationary pressures, thereby safeguarding against poverty in later years. This safety net not only combats discrimination by leveling the playing field but also plays a pivotal role in reducing poverty and fostering social inclusion. It supports families by alleviating the costs of education and helps employers maintain stable labor relations and a productive workforce. By enhancing social cohesion and promoting overall growth, social security contributes to a nation's development, adapting to structural and technological changes. Moreover, it facilitates risk diversification and income redistribution, ensuring a more equitable distribution of resources and reinforcing the stability of society. Collectively, these benefits play a crucial role in reducing poverty and inequality by offering support during times of economic uncertainty and facilitating greater financial stability for individuals and families throughout India.

## INTERNATIONAL SAFEGUARDS

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India abides by the principles outlined in the Equal Remuneration Act, having signed the UN special charters. This action complies with the standards set forth by the International Labor Organization (ILO), the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW), and the Universal Declaration of Human Rights (UNDHR).

Article 23 of the UDHR states that everyone has the right to just reward for their labor, free from discrimination of any kind.

The ILO's 100th convention, the Convention on Equal Remuneration for Men and Women Workers for Work of Equal Value, was signed in 1951. It places a strong emphasis on the fundamental principle of ensuring equal pay for equal work.

The aim of the CEDAW<sup>3</sup> (1979) is to stop discrimination against women, especially in the workplace. Signatories are encouraged to give top priority to incorporating gender equality into their legislative frameworks. They ought to strive for the repeal of laws that discriminate against women as well as the creation of institutions and tribunals devoted to their protection.

Furthermore, it is imperative to eliminate discrimination in all its manifestations, regardless of its perpetration by individuals, institutions, or businesses. These global agreements highlight India's dedication in promoting gender parity and eliminating discrimination against women in the workplace.

## WOMEN & WORKPLACE

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It is right to acknowledge that women are active workers since the primary stage of civilization. Their contribution has been essential for the survival of the community. But in course of time, men appropriate their labour, male authority and dominance to make women subordinate. Men started owning property created and earned by women.

Women's employment is a significant need of a society's modernization. According to our late Prime Minister Jawaharlal Nehru, "The habit of looking upon marriage as a profession almost

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<sup>3</sup> The Committee on the Elimination of Discrimination against Women, 1979.

and as the sole economic refuge for women will have to go before, we can have any freedom". With employment, women are enabled to be the agents of change and not merely objects of social change. Irrespective of social classes and levels of occupation, paid job on the part of women is a life resource, a means of social security and carves out personal identity along with financial standing. A number of investigations indicate that a woman works for two reasons, one because she has to (i.e. economical need), and two because she wishes to (i.e. for mental need).<sup>4</sup>

India's workforce remains largely male, posing a huge obstacle as the country strives to capitalize on its demographic dividend. The female labor force participation rate (FLFPR) has fluctuated, peaking at 33% in 1972 and falling to a low of 23% in 2017. However, current figures from the Periodic Labour Force Survey (2022-23) show a rise of 37%. This growth is due to younger, more educated women joining the workforce, more women transitioning to salaried positions and the services sector, and more rural female involvement. Despite these advancements, gender disparities exist, with many women still working in low-paid, informal, or unpaid positions and women continue to shoulder a disproportionate burden of unpaid domestic work, averaging 7.2 hours per day compared to men's 2.8. To maintain and expand on these gains, India must increase job quality, strengthen healthcare infrastructure, and promote a more equitable sharing of home chores.

## CAUSES FOR EMPLOYMENT GAPS

### 1. Social and Cultural Norms

In India, In spite of having a very dignified status in religions in the form of goddess Durga and Mother Mary, women have been accorded an inferior social status. They ingrained cultural norms and traditional gender roles have a big influence on women's work prospects. Women are sometimes expected by society to put family obligations ahead of their professional goals. These assumptions not only restrict the job options available to women, but they also feed the cycle of inequality in a variety of professional domains. Women's complete engagement in the workforce is hampered by cultural norms that prioritize their duties as primary caregivers. Aan Oakley argues that a major reason for the subordination of women in the labour market is the institutionalization

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<sup>4</sup> Vohra Rupa and Sen, A.K., Status, Education and Problems of Indian Women", 1989, Akshat Pub, Delhi, p.74.

of the mother- housewife role as the primary role for all women.<sup>5</sup>

## **2. Financial Aspects**

Economic reasons are a major contributing element to the discrimination and disparities in employment that women experience. The gender pay gap, in which women often receive less than men for equivalent labor, is one of the main problems. This discrepancy results from undervaluing women's labor and gender discrimination, which can result in lower pay and less possibilities for career progression. Furthermore, women are disproportionately affected by employment discrimination since, in comparison to men, they are more likely to work in low-wage, informal, and unstable jobs.

## **3. Educational and skill mismatch**

Even while women's educational attainment has increased, there are still disparities in their access to high-quality education, especially in rural areas. Women are employed mainly in unskilled and semi – skilled manual jobs and in intermediate and low – grade white – collar occupations.<sup>6</sup> Women's capacity to compete in the employment market may be hampered by a lack of educational possibilities. Furthermore, despite having a higher degree, there may still be a discrepancy between the talents you have and what employers are looking for. The employability of women and their capacity to land stable, well-paying jobs are impacted by this skills gap.

## **4. Discrimination and Harassment at Work**

Women's full participation in the workforce is still significantly hampered by sexual harassment and discrimination. In many workplaces, harassment occurs despite the existence of legal frameworks designed to protect women. This can create hostile settings that discourage women from entering or staying in the job market. Furthermore, hiring procedures, work assignments, and promotions are influenced by gender prejudices and preconceptions. As a result, women are frequently passed up for development chances and encounter obstacles in their career advancement.

## **5. Policy and Economic Gaps**

Gender inequities in employment are further perpetuated by discrepancies in policy and the economy. While there are many laws and programs aimed at advancing gender

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<sup>5</sup> Haralombos, M. and Heald, R.M., "Sociology, Themes and Perspectives", 1998, Oxford University Pub., New Delhi, p.382

<sup>6</sup> Haralombos, M. and Heald, R.M., "Sociology, Themes and Perspectives", 1998, Oxford University Pub., New Delhi, p.381.

equality, their application is frequently uneven, and women may not be fully aware of their rights. In addition, compared to their male colleagues, female entrepreneurs sometimes face challenges in obtaining resources and money. Women's ability to become economically independent and fully engaged in the job market is hampered by these legislative and economic disparities.

#### **6. Informal and Unpaid Work**

In India, a large percentage of women work in unpaid jobs that are neither officially recognized nor compensated, such as farming or family business employment. The depth of women's economic contributions is further obscured by the fact that official employment statistics do not include this unpaid work, which is frequently essential to family income. In addition, women make up a disproportionate share of workers in the unorganized sector, where they often lack benefits and have unstable jobs. Because informal employment is so common, women need better jobs with more security and better quality.

### **IMPACT OF COVID -19 ON WOMEN WORKFORCE**

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Female labor-force participation increased following the pandemic's worst phase in 2020, but it remains threatened by hazards that, if left unchecked, might undo the progress made in gender equality over the last decade.

The COVID-19 pandemic cast a harsh spotlight on the existing inequalities in the labor market, hitting women's employment particularly hard. As lockdowns swept across the globe, women, who are disproportionately represented in the most vulnerable sectors like retail, hospitality, and healthcare found themselves facing significant job losses. The pandemic intensified traditional gender roles, adding a heavy layer of caregiving responsibilities as schools and childcare facilities shut down. This unforeseen burden pushed many women to scale back their work hours or exit the workforce altogether. The financial impact was stark, further widening the gender pay gap as women, often in lower-wage and less secure positions, faced increased economic strain. For women from lower socioeconomic backgrounds, the repercussions were even more severe, underscoring systemic inequalities that the pandemic amplified. This crisis has illuminated the urgent need for comprehensive and equitable policies to support working women, addressing both immediate needs and long-term career impacts, while championing structural reforms to foster gender equality in the workforce.

## PLANS AND POLICIES FOR WOMEN DEVELOPMENT

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### 1. For Employment

The government has granted several concessions to the women entrepreneurs. For example, the Small Industries Development Bank of India and state-level government banks now requires that women entrepreneurs raise a smaller percentage of the capital they need. If a man is starting a business, he has to have a funding ratio of 1:3, i.e., he must put up one rupee for every three he obtains from the banks. But in the case of women, they must put up just 10 per cent and can obtain financing for the remaining 90 per cent. The only limitation is that this kind of credit can be given only to very small business. This is nevertheless an encouraging positive change.

On the other hand, the government is not inclined at all to give any kind of concession to women in medium and large-scale businesses. Women in these sectors are having a hard time to get access to credit. For the assistance of women entrepreneurs, The Government of India has developed various training and research institutes, such as, National Institute of Entrepreneurship Development set-up by the U.P. Government at Lucknow, Entrepreneurship Development Institute of India at Ahmedabad, set-up by Development Bank of India; and State Bank of India also has a training wing for Entrepreneurship Development.

Recently the Reserve Bank of India has also issued guidelines to the scheduled and commercial banks for extending the necessary financial assistance to the women entrepreneurs in the country especially in the rural regions.

In India, several targeted initiatives aim to bolster the success of self-employed women, reflecting a concerted effort to enhance their economic empowerment. The **Stand-Up India Scheme** provides essential bank loans to women entrepreneurs, particularly those from marginalized communities, enabling them to start or expand their businesses. Similarly, the **Pradhan Mantri Mudra Yojana (PMMY)** offers microloans up to Rupees 10 lakhs to support small enterprises. The **Deen Dayal Antyodaya Yojana - National Urban Livelihoods Mission (DAY-NULM)** and **National Rural Employment Guarantee Act (NREGA)** offer additional support by providing financial aid, skills training, and guaranteed wage employment to bolster self-employment. At the state level, Women Development Corporations and Self-Help Group (SHG) initiatives further offer financial assistance and skills development.

Moreover, specialized programs from private sector and NGOs, including impact investing and entrepreneurship development workshops, provide critical resources and mentorship. Collectively, these programs are designed to address the diverse challenges faced by self-employed women, fostering their business growth and financial independence.

## 2. For Social Security

- **Pradhan Mantri Matru Vandana Yojana (PMMVY)**

The Pradhan Mantri Matru Vandana Yojana (PMMVY) is a flagship scheme designed to provide financial support to pregnant and lactating women to enhance their health and nutritional status. Under this initiative, eligible women receive a cash incentive of Rupees 5,000 during pregnancy and childbirth, aimed at reducing maternal and infant mortality rates. The scheme encourages institutional deliveries and provides critical financial assistance to ensure that women receive adequate medical care during and after pregnancy.

- **Sukanya Samriddhi Yojana (SSY)**

The Sukanya Samriddhi Yojana (SSY) is a savings scheme specifically targeted at securing the future of a girl child. It encourages parents to open a savings account in the name of their daughter, offering attractive interest rates and tax benefits. The scheme aims to provide financial support for the education and marriage of girls, ensuring that they have the resources needed to pursue their goals.

- **Beti Bachao Beti Padhao (BBBP)**

The Beti Bachao Beti Padhao (BBBP) scheme is a comprehensive initiative aimed at addressing the declining child sex ratio and promoting the education of girls. This scheme combines financial incentives with awareness campaigns to improve the status of girls through enhanced health care and education. It focuses on creating a supportive environment for girls, encouraging their families to prioritize education and well-being.

- **National Social Assistance Programme (NSAP)**

The National Social Assistance Programme (NSAP) is designed to provide social security to the elderly, widows, and disabled individuals from economically disadvantaged backgrounds. This program encompasses several schemes, including the Indira Gandhi National Old Age Pension Scheme (IGNOAPS), Indira Gandhi National Widow Pension Scheme (IGNWPS), and Indira Gandhi National

Disability Pension Scheme (IGNDPS). These schemes offer monthly pensions to eligible beneficiaries, helping to improve their quality of life and ensure that they have a financial safety net in times of need.

- **Janani Suraksha Yojana (JSY)**

The Janani Suraksha Yojana (JSY) aims to promote institutional deliveries and reduce maternal and neonatal mortality rates. Under this scheme, pregnant women who deliver in hospitals or health centers receive a cash incentive, encouraging them to seek professional medical care rather than opting for home births. This financial support is intended to cover the costs associated with delivery and postnatal care, ensuring that women receive the necessary medical attention and support during childbirth.

- **Mahila E-Haat**

Mahila E-Haat is an innovative online platform launched to empower women entrepreneurs and artisans by providing them with a marketplace to sell their products. This initiative, supported by the Ministry of Women and Child Development, enables women to showcase and market their goods directly to consumers. By facilitating access to a broader market and offering a platform for economic engagement, Mahila E-Haat helps women grow their businesses and achieve financial independence.

## TYPES OF BENEFITS

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### 1. Disability Benefit

Disability benefit provides financial support to workers who are unable to work due to an illness or injury sustained while on the job. It typically includes compensation for medical treatment, replacement of lost wages during the recovery period, and sometimes a lump sum payment if the disability is permanent. This benefit ensures that workers have financial assistance while they are unable to earn their regular income.

### 2. Dependants' Benefit

Dependants' benefit offers financial assistance to the family members or dependants of a deceased worker. This support helps cover the loss of income and provides some relief for funeral expenses. It aims to ensure that the dependants are not left in financial hardship due to the loss of the primary breadwinner.

### **3. Sickness Benefit**

Sickness benefit is a form of financial aid provided to workers who are temporarily unable to work due to illness. It usually includes cash payments to replace lost wages during the period of sickness and may also cover medical expenses. This benefit helps workers manage their finances while they are recovering and unable to perform their job duties.

### **4. Maternity Benefit**

Maternity benefit helps in providing support to pregnant women both during and after pregnancy. This typically includes paid leave from work to recover from childbirth and take care of a newborn, as well as job protection to ensure women can return to their jobs after the leave period. Additionally, it may include financial assistance to help cover maternity-related expenses.

### **5. Funeral Benefit**

Funeral benefit offers financial assistance to help cover the costs associated with a deceased worker's funeral. This benefit is designed to ease the financial burden on the family during a difficult time, helping to manage expenses related to the funeral and other end-of-life arrangements.

### **6. Health Benefits**

Health benefits refer to a range of medical services and support provided to workers and their families. This typically includes access to medical care, treatment for illnesses and injuries, and coverage for medications. Health benefits ensure that workers receive necessary medical attention and support, contributing to their overall well-being and financial stability in managing healthcare needs.

## **SCHEMES FOR WOMEN**

India, as the world's largest democracy, strictly adheres to the socio-economic welfare of the people as the prime task of the makers of the state. Equality is the first principle of the Constitution and in every governmental action, gender-based discrimination represents the ugly face of the society. In India, there are various women's policies, schemes, and legislatures for protecting women or eradicating discrimination.

### **CONSTITUTIONAL MANDATE REGARDING PROTECTION OF WOMEN:**

The constitution of India not only grants equality to women but also empowers the state to

adopt measures of positive discrimination in favour of women to neutralize the cumulative social economic, educational, and political disadvantages they face.

1. **ARTICLE 14:** Equal before law and equal protection of laws for women.  
*C.B. Muthamma.V. Union of India*<sup>7</sup>, An Indian foreign service officer, challenged the discriminatory rules that required a female officer to obtain government permission before marrying and also stated that women officers could be forced to resign upon marriage. The Supreme Court held that such service rules were unconstitutional and violative of articles 14 and 15 as they discriminated against women based on gender and marriage.
2. **ARTICLE 15:** states that special protection for women should be made.  
*D.S. Nakara.V. Union of India*<sup>8</sup>, the case challenged a government notification that discriminated against pensioners who had retired before a specific date and those who retired after, leading to disparities in pension benefits. The Supreme Court held that the classification made between pensioners was arbitrary and violated Article 14 of the Constitution. It ruled that pension is not a bounty, but a right, and any discriminatory treatment in pension schemes must be eliminated.
3. **ARTICLE 39(a):** state to direct its policy toward securing for men and women equally the right to an adequate means of livelihood.
4. **ARTICLE 39(d):** equal pay for equal work for both men and women.
5. **ARTICLE 42:** maternity relief.
6. **ARTICLE 51(A)(e):** to promote the spirit of brotherhood amongst all the people of India and to renounce derogatory practices to women's dignity.
7. **ARTICLE 243:** One-third of the seats are to be filled by direct election and the same and the same ratio for chairpersons in the panchayats and in Municipal corporations as well.

### **SPECIAL LEGISLATION FOR PROTECTING WOMEN:**

Legislative activism has taken place to protect women in different dimensions the society initially society depended on only the Indian Penal Code but some of the amendments took place in the year 1985 and also in the Law of Evidence as well.

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<sup>7</sup> 1979 (4) SCC 260.

<sup>8</sup> 1983 AIR 130.

The special statutory protections are:

1. Immoral Traffic (Prevention) Act, 1956.
2. Dowry Prohibition Act, 1961.
3. The Maternity Benefit Act, 1961.
4. The Medical Termination of Pregnancy Act, 1971.
5. Indecent Representation of Women (Prohibition) Act, 1986
6. Commission of Sati (Prevention) Act, 1987.
7. Prohibition of Child Marriage Act
8. Protection of Women Domestic Violence Act, 2005 and rules 2007.
9. Equal Remuneration Act, 1976.

Some of the acts which govern protection of women with regard to social security benefits under labour and industrial laws in India;

#### **The Employee's State Insurance Act, 1948:**

Under section 46; The act provides benefits details benefits for the insured persons or their dependants;

Sec 46(2) deals with **Maternity Benefit** is the form of periodical payment available to the insured women. It is payable in the case of -

- i. confinement;
- ii. miscarriage
- iii. sickness arising out of pregnancy
- iv. premature birth of child

The grounds of eligibility of an insured woman to such payments must be certified by an insured medical officer as provided by the regulations.

In *ESI Corporation.V. Shanthakumari (2004<sup>9</sup>)*, This case dealt with a claim for maternity benefits where the ESIC had denied the benefits on the grounds that the woman was not entitled to them as she had not made sufficient contributions. The court ruled that women employees are entitled to maternity benefits under the ESI Act provided they meet the statutory requirements for contributions. The court also emphasized that **maternity leave and benefits** should be seen as a right under the law, and that ESIC must ensure their implementation in a **non-discriminatory manner**.

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<sup>9</sup> (2005) IILJ629MAD.

In *Gujarat State Fertilizers & Chemicals Ltd .V. ESI Corporation*,<sup>10</sup> This case involved the challenge to ESIC's refusal to pay maternity benefits to a woman employee, arguing that she did not fall under the ESI coverage at the time of claiming the benefit. The court ruled in favour of the employee, stating that the ESI Act's provisions are intended to provide **comprehensive social security** to women and that technical disqualifications must not stand in the way of women claiming **maternity benefits**.

In *Shanti Devi V. ESI Corporation (2009)*<sup>11</sup>, A woman claimed that she was denied maternity benefits by the ESIC on the ground that she had resigned from her job shortly before her delivery. The court ruled that even if the woman had resigned, her entitlement to **maternity benefits** accrued while she was still employed. The court stated that the benefits must be provided irrespective of the timing of her resignation.

### **The Employee's Provident Funds and Miscellaneous Provisions Act, 1962:**

Under Section 6-A of the Act provides for Employees Pension Scheme for the purpose of providing for;

- Superannuation pension, retiring pension or permanent total disablement pension to the employees etc.
- Widow or widower's pension, children pension or orphan pension to payable to the beneficiaries of such employees.

In *Rajasthan State Road Transport Corporation .V. President Rajasthan Roadways Union and ANR*<sup>12</sup>, that if employee had not exercised the option to avail of benefit of family pension scheme 1971 and his wife had received entire provident fund under E.P.F, her claim for family pension would be untenable.

### **The Factories Act, 1948:**

The Factories Act, 1948, is a comprehensive law aimed at regulating labour in factories and ensuring the safety, health, and welfare of workers. It includes several provisions specifically for the protection of women workers, focusing on working hours, safety, and maternity benefits.

- Prohibition of Night Work (Section 66): Section 66 of the Factories Act restricts women from working during the night. Women workers are not allowed to work in any factory

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<sup>10</sup> 11/05/2004.

<sup>11</sup> AIRONLINE 2019 RAJ 1187.

<sup>12</sup> AIRONLINE 2012 SCR.

except between 6:00 AM and 7:00 PM. In *Vasantha R. v. Union of India (2001)*<sup>13</sup> case in the Madras High Court struck down the blanket restriction on night work for women, allowing them to work night shifts under proper safeguards.

- Working Hours (Section 54): Women are allowed to work up to 48 hours a week, with a maximum of 9 hours a day. Overtime work is permitted, but it should not exceed the prescribed limit (currently, 50 hours of overtime in a quarter).
- Prohibition of Hazardous Work (Section 87): Women workers are prohibited from being employed in certain dangerous or hazardous processes or operations in factories. This includes operations involving lead, asbestos, and other harmful substances that could pose a health risk, particularly to women.
- Provision of Separate Washrooms and Restrooms (Section 19): Factories are required to provide separate and adequately maintained washrooms, latrines, and urinals for women workers. These facilities should be accessible and maintained in a sanitary condition.
- Creche Facility (Section 48): In any factory where more than 30 women workers are employed, the employer is required to provide a creche facility. The creche must be maintained for the use of children below the age of 6 years, and it should be located within or near the factory premises.
- Maternity Leave and Benefits (Section 79): Women workers are entitled to maternity benefits under the Maternity Benefit Act, 1961, which applies in conjunction with the Factories Act. Women cannot be employed during the six weeks immediately following the delivery, miscarriage, or medical termination of pregnancy.
- Rest Intervals (Section 55): Women workers are entitled to adequate rest intervals during their shifts. There must be a half-hour break after every five hours of continuous work.

In *B. Shah v. Presiding Officer, Labour Court, Coimbatore (1978)*<sup>14</sup>, The employer denied the employee maternity benefits, arguing she was ineligible under certain rules. The **Supreme Court** held that maternity benefits must be interpreted in favour of the worker, and **women's rights to maternity leave** should not be unduly restricted by technicalities. The court ruled that maternity benefits should be made accessible to women in a **fair and just manner**.

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<sup>13</sup> 2001 IILLJ843MAD.

<sup>14</sup> AIR 12 1978 SCR (1).

In *Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr. (2000<sup>15</sup>)*, Female workers challenged the denial of maternity benefits and related facilities, including creches. The **Supreme Court** held that women working in temporary or casual positions also had the right to maternity benefits, including the provision of creche facilities. The Court emphasized that maternity benefits, including child care facilities, should be available to all female workers, irrespective of their employment status.

In *Cargill India Pvt. Ltd. v. Chief Inspector of Factories and Boilers (2009<sup>16</sup>)*, The case involved a challenge to the assignment of women workers to hazardous areas of a factory. The court ruled that under Section 87, women should be protected from being employed in dangerous jobs. The **High Court** reinforced the need to adhere to the guidelines that protect women from hazardous and dangerous environments.

### **The Maternity Benefit Act,1961:**

The Maternity Benefit Act, 1961, is designed to regulate the employment of women during pregnancy, protect their health, and provide financial support in the form of maternity benefits. The Act ensures that women are entitled to certain rights and protections during maternity, and it was further amended in 2017 to enhance benefits.

- Eligibility for Maternity Benefit (Section 5): A woman is entitled to maternity benefit if she has worked in an establishment for at least 80 days in the 12 months preceding her expected delivery date. This benefit is available to both permanent and contractual workers.
- Maternity Leave (Section 5): The Act entitles women to **26 weeks of maternity leave**, which can be taken as follows:
  - Up to **8 weeks** before the expected date of delivery.
  - The remaining **18 weeks** after childbirth.
  - In case of a **miscarriage**, a woman is entitled to **6 weeks of leave** immediately following the miscarriage (Section 9).
  - Women adopting a child below the age of 3 months or commissioning mothers (surrogates) are entitled to 12 weeks of leave (introduced by the 2017 amendment).
- Payment of Maternity Benefits (Section 6): Maternity benefit is payable at the rate of the average daily wage for the period of actual absence (maternity leave). It is

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<sup>15</sup> AIR 2000 SC 1274.

<sup>16</sup> C/81& 185/2009.

calculated based on wages earned by the woman during the three months prior to her leave.

- Prohibition of Employment During Maternity Leave (Section 4): Employers are prohibited from employing women during the 6 weeks immediately following delivery or miscarriage. Similarly, women cannot be asked to undertake any work that could affect their health or pregnancy in the 10 weeks preceding the expected delivery date.
- Medical Bonus (Section 8): If the employer does not provide free prenatal and postnatal care, the woman is entitled to a medical bonus of Rs. 3,500 (revised in 2011, earlier it was Rs. 1,000).
- Nursing Breaks (Section 11): After returning to work, a woman is entitled to two nursing breaks of 15 minutes each (apart from regular intervals) every day, until the child is 15 months old.
- Crèche Facility (Section 11A): Establishments with 50 or more employees are required to provide a crèche facility (childcare center) within the premises or nearby. Women are allowed four visits a day to the crèche, including nursing breaks.

In *ESI Corporation v. Karnataka Asbestos Cement Products (1995<sup>17</sup>)*, A contractual woman worker sought maternity benefits, but her employer denied them, claiming she was not a permanent employee. The Supreme Court held that maternity benefits apply to all women employees, including contractual workers. The Court emphasized that maternity benefits are a statutory right of women workers, irrespective of their nature of employment.

In *Neera Mathur v. LIC (1992)<sup>18</sup>*, Neera Mathur was dismissed by her employer after disclosing her pregnancy shortly after joining the company. The Supreme Court ruled that termination on grounds of pregnancy violated the Maternity Benefit Act and the fundamental rights of the woman. The Court ordered her reinstatement and directed that maternity benefits be paid.

In *J. J. Woollen Mills v. Labour Commissioner (1974)<sup>19</sup>*, The employer refused to provide crèche facilities for its women employees, leading to legal proceedings. The **Supreme Court** upheld the requirement that establishments with a certain number of women employees must provide adequate crèche facilities. The Court emphasized that employers must comply with the

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<sup>17</sup> 1991(63) FLR638.

<sup>18</sup> 1999 SCR.

<sup>19</sup>1974 AIR 366.

law to ensure that women workers can balance work and childcare.

These are some of the provisions in some of the prominent acts around the landscape of labour laws in India.

### **CHANGES REQUIRED:**

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Some of the changes required in order to reform the gender inequality are;

1. These too many legislations are creating confusion for proper action; all these legislations should be brought under one umbrella through making as one single statute as Law of Women and Girls protection act.
2. In women offences technicalities should be dispensed and speedy disposal and victim compensation should be given on the date of judgement.
3. Active role of voluntary organisations should be given in the statute of empowerment of women.
4. Incorporation of saviour penal sanctions, positive implementation of statutes by active police.
5. Legal services should be extended irrespective of social and financial status in women matters.

### **WAY FORWARD**

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To address the complex interplay between employment gaps, gender disparities, and social security benefits, a multifaceted approach is essential. First and foremost, policymakers must enhance support systems that bridge employment gaps, particularly for women re-entering the workforce after extended absences due to caregiving or other responsibilities. Tailored re-skilling programs and flexible job opportunities can empower these individuals, helping them regain financial independence and stability. Additionally, addressing gender disparities in social security frameworks involves revising policies to ensure equitable access and benefits, recognizing the unique challenges faced by women, such as lower lifetime earnings and interrupted careers. Strengthening legal protections against discrimination, promoting pay equity, and incentivizing businesses to adopt family-friendly practices are crucial steps. Finally, increasing public awareness and support for gender-sensitive social security reforms can drive systemic change, ensuring a fair and inclusive safety net for all workers.

## CONCLUSION

The impact of employment gaps and gender disparities on social security benefits underscores a profound need for reform and innovation. As the workforce evolves and the challenges faced by different groups become more apparent, it is imperative to create social security systems that are both adaptive and inclusive. By addressing these disparities head-on, we can build a more equitable society where everyone, regardless of gender or career interruptions, has access to the support they need. Ultimately, a commitment to fairness and inclusion will not only strengthen the social fabric but also foster a more resilient and prosperous workforce for the future.

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