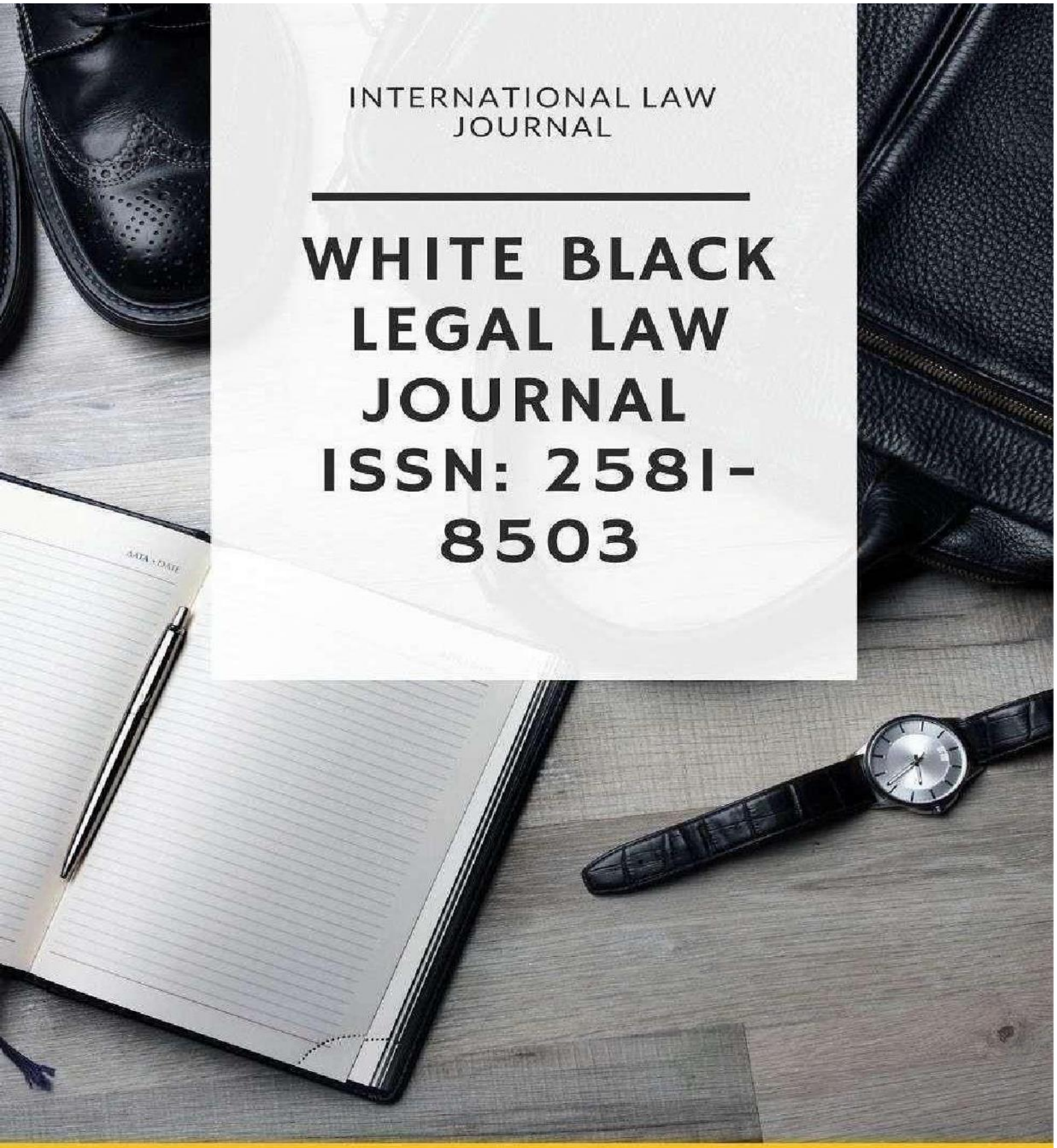


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WOMEN'S RIGHT TO MATERNITY BENEFITS: BALANCING EMPLOYMENT AND REPRODUCTIVE RIGHTS

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Abstract

Maternity benefits form an integral part of labour welfare, reproductive rights and gender equality. Such benefits help safeguard women from the economic and professional drawbacks caused due to the process of pregnancy and childbirth and allow women to remain actively involved in work. In India, maternity benefits are guaranteed by the constitution, statutes and judicial precedents. The Maternity Benefit Act, 1961 especially the amended version of the Act which came into force in 2017 provides for maternity leaves on payment and provisions regarding adoption mothers, commissioning mothers and childcare facilities. Code on Social Security, 2020 which is a compilation of several social security statutes including those related to maternity benefits.

However, despite such developments, several women find it difficult to access maternity benefits, especially in the case of women working in insecure, informal and casual employment. Employer funded benefits may also provide employers with a motive to adopt discriminatory recruitment policies. This paper will discuss the legal framework for providing maternity benefits, examine judicial precedents in this context, suggest reforms and mention problems with implementing maternity benefits.

1.Introduction

The right to maternity benefits is an essential issue in labour laws and gender equality. The pregnancy and childbirth are associated with the cost of medical services, recovery process and care of a child born. The lack of legal protection leads to the choice between a job and reproductive role which is harmful for career and financial stability and can also cause the discrimination.

The concept of maternity benefits ensures paid leave, employment protection and other necessary measures in relation to pregnancy and childbirth. The recognition of the fact that the

pregnancy is not only a personal problem, but also a social and economic one promotes maternal health, family welfare and employment of women.

Article 14, Article 15 and Article 21 of the Indian Constitution provide the legal basis for maternity protection. The first two articles give the guarantee of equality and prohibit the mentioned discrimination, while Article 21 guarantees the right to life and personal freedom. The last one, Article 42 requires to the State to provide the just and humane conditions of work and maternity relief.[1]

The Maternity Benefit Act, 1961 created an important legislative framework for maternity protection.[2] It was supplemented with the substantial changes and amendments in 2017.[3] Then the Code on Social Security, 2020 was created which united some pieces of legislation in the sphere of social security and entered into force in November 2025.[4]

Nevertheless, the existence of the legislations guarantees no sufficient protection. The lack of awareness, documents and opportunity to use legal remedy can prevent informal workers from protection. Moreover, there can be the discrimination of women after their return from maternity leave. Therefore, this paper analyses the legal framework of the issue and considers how maternity protection can be improved considering the employment issues.

Objectives and Methodology

The objectives are to consider the constitutional background of maternity benefits, to review the legislation and case-law, to analyze the problems of implementation and to make the recommendations on improving the issue.

Doctrinal methodology will be used.

2. Meaning and Scope of Maternity Benefits

Maternity benefits refer to various protections given to eligible women in relation to pregnancy, childbirth and associated circumstances. The various benefits under the category of maternity benefits include maternity leave, medical benefits, nursing breaks, employment security, and childcare.

Maternity leave enables women to have a period off work without losing the benefits of maternity leave. It is an important benefit that ensures physical well-being and childcare while minimizing the financial cost of giving birth.

[1] INDIA CONST. arts. 14, 15, 21, 42.
[2] The Maternity Benefit Act, 1961, No. 53 of 1961, INDIA CODE (1961).
[3] The Maternity Benefit (Amendment) Act, 2017, No. 6 of 2017, INDIA CODE (2017).
[4] The Code on Social Security, 2020, No. 36 of 2020, INDIA CODE (2020).

Medical benefit involves medical bonuses and medical leave for miscarriage and other situations as per the laws.

Employment security means women should not be dismissed or disadvantaged in any way in connection with the maternity leave. If there was no such provision, women would be cautious about taking up their rights for fear of losing their jobs.

Childcare protection includes nursing breaks and childcare facilities available as per the laws to ensure that women go back to work.

The concept of maternity leave is linked to the concept of reproductive autonomy. This relates to dignity and autonomy of individuals in respect of reproduction and should not imply a particular model of motherhood and it cannot impose a role of childcare on women alone.

Maternity leave should be different from parental leave. Maternity leave is concerned with pregnancy, childbirth and maternal recuperation while parental leave might enable any of the parents to attend to the needs of the child.

3. Historical Development of Maternity Protection in India

Prior to the enactment of the statutes that govern maternity protection, female workers were vulnerable to loss of wages or employment because of pregnancy and inability to work. Paid leave was not available for women and hence they might have been pressured to go back to work.

The Constitution of India enacted in 1950 laid a foundation for labour welfare. In this regard, Article 42 clearly stipulates that the state is to give maternity relief while Articles 14, 15 and 21 provide for equality, dignity and personal liberty respectively.[5]

The Maternity Benefit Act of 1961 made provisions regarding maternity benefits in certain categories of establishment. This statute governed the employment of women during specific periods before and after childbirth and provisions for maternity payments among other things.[6]

An important development in maternity protection is the Maternity Benefit (Amendment) Act of 2017.[7] It increased the period of paid leave of pregnant women to twenty-six weeks. Further, this Act included provisions for adoptive and commissioning mothers, crèche facilities and work from home where this is feasible due to the nature of work and agreement by both parties.

The Code on Social Security 2020 consolidated various social security legislations. Provisions relating to maternity benefit came into force in November 2025. This means that the Code

[5] INDIA CONST. arts. 14, 15, 21, 42.
[6] The Maternity Benefit Act, 1961, No. 53 of 1961, INDIA CODE (1961).
[7] The Maternity Benefit (Amendment) Act, 2017, No. 6 of 2017, INDIA CODE (2017).

along with the relevant notifications and rules are important sources for the understanding of the current consolidated law.[8]

However, even with these developments, implementation remains to be problematic especially for women who work in informal sectors.

4. Constitutional Framework

4.1 Article 14: Equality before the law

Article 14 ensures that everyone is equal before the law and that they are given equal protection under the law.[9] Discrimination on grounds of pregnancy can cause an infringement of equality if women are denied employment or opportunities for their careers because of the fact that they may need to take maternity leave. Maternity protection is in line with the principle of substantive equality since it deals with the disadvantages linked to pregnancy and childbirth.

4.2 Article 15: Ban on Discrimination

Article 15(1) bans the State from discriminating on the basis of sex, while Article 15(3) allows for special provisions to be made for women and children.[10] This is in support of protective legislation designed to take account of the special circumstances of women. Maternity protection should not be used as an excuse to keep women out of work; its aim is to allow women to take part in employment without facing unfair disadvantages.

4.3 Article 21: Life and personal liberty

Article 21 guarantees life and personal liberty and has been understood to include dignity and various aspects of personal autonomy.[11] Since reproductive choices are closely linked to these interests, they are connected with them.

Maternity benefits help to maintain women's dignity by eliminating the need to decide between looking after their own health and keeping their source of income. The exact amount of benefit available, though, is determined by the relevant legislation.

4.4 Articles 39 and 42

The aims mentioned in Article 39 concern an adequate standard of living, equal pay for equal

[8] The Code on Social Security, 2020, No. 36 of 2020, INDIA CODE (2020).
[9] INDIA CONST. art. 14.
[10] INDIA CONST. art. 15(1), (3).
[11] INDIA CONST. art. 21.

work, and the protection of workers' health; Article 42 expressly requires the State to ensure just and humane working conditions and to provide maternity relief.[12]Even though Article 42 is a Directive Principle and cannot therefore be enforced in the same way as a fundamental right, it does provide a direct constitutional basis for maternity legislation; when these provisions are considered together, they advance the aim of ensuring that women may work without suffering greater economic disadvantages because of their pregnancy.

5. Statutory Framework

5.1 The Maternity Benefit Act of 1961

The Maternity Benefit Act of 1961 set up statutory maternity protection for women who were employed in certain types of establishments; its provisions have in the past included maternity payments, eligibility, medical bonuses, leave in the case of a miscarriage, nursing breaks and protection against some kinds of dismissal.[13]

The Act also had an effect on the Employees' State Insurance scheme, this depending on the employee's level of coverage and eligibility; its main contribution was to make maternity benefits legal entitlements rather than voluntary concessions on the part of employers.

5.2 The 2017 Amendment

The 2017 amendment introduced several important changes:[14]

Women who are eligible receive a maternity benefit of up to twenty-six weeks in the case of their first two surviving children, on the condition that the statutory requirements are met.

It may take up to eight weeks before the expected delivery date in accordance with the applicable provision.

•The entitlement specified is usually twelve weeks in the case of a woman who already has two or more children who are still living.

A woman who legally adopts a child who is under three months old or who is a commissioning mother may be entitled to twelve weeks' maternity benefit, provided that the relevant conditions are met.

• After the maternity benefit period it may be possible to work from home provided that the type of work permits it and both the employer and the employee agree.

• Businesses which have fifty or more employees are required to comply with the crèche

[12] INDIA CONST. arts. 39, 42.
[13] The Maternity Benefit Act, 1961, No. 53 of 1961, INDIA CODE (1961).
[14] The Maternity Benefit (Amendment) Act, 2017, No. 6 of 2017, INDIA CODE (2017).

provisions in question.

The reforms increased the level of protection but did not remove the difficulties that informal workers encountered or guarantee consistent enforcement.

5.3 Social Security Code, 2020

The Social Security Code of 2020 brings together a number of existing social security laws, and Chapter VI, specifically Sections 59 to 72, covers maternity benefits and the corresponding duties of employers.[15]

The rules include provisions on entitlement to maternity benefits, making and paying claims, medical benefits, leave in respect of certain circumstances, nursing breaks, crèche facilities and the various protections associated with maternity leave.

The provisions of the Code came into effect in November 2025; it follows that present-day legal analysis must refer to the Code together with the relevant rules, notifications and transitional arrangements rather than depending entirely on the earlier Act.

5.4 Eligibility and Enforcement

Maternity benefits are governed by statutory eligibility requirements; in the present system a woman who is eligible usually has to have worked for at least eighty days in the twelve months before the expected date of delivery, with the relevant provisions applying.

The exact requirements will vary according to the applicable law and the nature of the employment contract. Problems may arise in cases where the employment is informal, intermittent or not properly documented.

Effective enforcement means employers must keep good records, tell workers about their rights, and not fire or dock pay unfairly. Labour authorities also need to offer easy ways to settle disputes.

6. Judicial Decisions

6.1 B. Shah v. the Presiding Officer of the Labour Court at Coimbatore

Reference: SCC 4 at p. 384 (1977).

The issue was about how maternity benefits should be calculated under the Maternity Benefit Act of 1961, specifically regarding whether Sundays should be counted in the relevant period.[16]

[15] The Code on Social Security, 2020, No. 36 of 2020, ch. VI, INDIA CODE (2020).
[16] *B. Shah v. Presiding Officer, Labour Court, Coimbatore*, (1977) 4 SCC 384 (India).

Principle and ruling: The Supreme Court gave a favorable interpretation of the maternity legislation and ruled that Sundays should be included when calculating the maternity benefit period.

The case shows that welfare legislation should be understood in such a way as to achieve its protective objective rather than contradict statutory entitlements by adopting an unduly restrictive interpretation.

6.2 The Municipal Corporation of Delhi v. Female Workers (Muster Roll)

Reference: (2000) 3 SCC 224.

Women who were employed by the Municipal Corporation of Delhi on a muster-roll or daily-wage basis were not given maternity benefits since they were not considered to be regular employees.[17]

Principle and ruling: The Supreme Court agreed to the award of maternity benefits to female workers and based its decision on labour-welfare principles and the constitutional values, refusing to exclude them just because they were not regular employees.

The decision is a major ruling in the field of inclusive maternity protection and shows that the object of maternity relief cannot be undermined by unjustified distinctions according to employment status; it still does not imply that every worker automatically meets all the statutory eligibility conditions.

6.3 Air India v. Nergesh Meerza

This case looked at the validity of some employment rules set by Air India for its female cabin crew. The company said that women could only work as air hostesses until they reached 35 years old, got married within four years of joining, or became pregnant. If any of these happened, Air India would fire them. These rules did not apply to male crew members, who could keep working until age 58.[18]

The Supreme Court said that the rules were unfair and discriminated against women. The Court pointed out that the rules treated women differently from men doing the same job. It ruled that setting different retirement ages and work conditions based only on gender was not allowed. The Court struck down the rules about age and pregnancy. However, it let Air India keep the rule about marriage, but only if the company did not use it to target or harass women unfairly.

[17] *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, (2000) 3 SCC 224 (India).
[18] *Air India v. Nergesh Meerza*, (1981) 4 SCC 335 (India).

Reference: SCC 4 at page 335 in 1981.

The case questioned the regulations relating to air hostesses, covering the rules on termination, retirement and pregnancy.

The principle and ruling were that the Supreme Court struck down certain discriminatory features of the regulations, such as the clause which required termination of service upon the first pregnancy, even as it dealt with other provisions differently.

The case shows the constitutional issue that arises when pregnancy is taken as a reason for ending someone's employment, and it is still relevant to the question of gender equality in the workplace.

6.4 Suchita Srivastava v. Chandigarh Administration

The Supreme Court decided this case in 2009. It focused on the right of a woman to make decisions about her own body, especially her right to continue or end a pregnancy. The case involved a mentally challenged woman who became pregnant after being raped in a government-run welfare institution in Chandigarh. The administration wanted to end her pregnancy against her wishes.[19]

The Court said that the right to make choices about one's own body is part of the right to personal liberty under Article 21 of the Constitution.[20] The Court also said that Section 3 of the Medical Termination of Pregnancy Act, 1971,[21] gives a woman the right to choose whether or not to end her pregnancy, as long as she meets the conditions in the law.

The Court made it clear that the consent of the woman is important, even if she has a mental disability, as long as she can understand and make an informed choice. The Court did not allow the administration to end the pregnancy without her consent. This case set an important example for protecting the reproductive rights of women, including those with mental disabilities.

Reference: SCC 9 from 2009.

The case involved a woman who had an intellectual disability and who became pregnant as a result of being sexually assaulted. The authorities applied for permission to have the pregnancy terminated.

The principle and ruling were that the Supreme Court regarded the choice relating to reproduction as a significant part of personal liberty within the context of Article 21 and

[19] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1 (India).
[20] INDIA CONST. art. 21.
[21] The Medical Termination of Pregnancy Act, 1971, No. 34 of 1971, § 3, INDIA CODE (1971).

stressed the importance of the woman's consent.

Importance: Even though the ruling does not deal directly with paid maternity leave, it does support reproductive autonomy. Protection in the area of maternity should respect women's independence rather than make assumptions regarding motherhood.

6.5 Deepika Singh v. Central Administrative Tribunal

Reference: (2022) 7 SCC 401.

A nursing officer was refused maternity leave on the grounds of the rules of the service in a situation which involved children from her husband's previous marriage.[22]

Principle and ruling: The Supreme Court took into account the variety of modern family arrangements and cancelled the refusal to grant maternity leave in the particular case.

The ruling shows that maternity-leave rules must be interpreted in a sensitive manner, in a way that is consistent with their object and the constitutional values, rather than by relying on strict assumptions regarding family arrangements.

6.6 The case of X v. the Principal Secretary, Health and Family Welfare Department, Government of the NCT of Delhi

Reference: (2023) 9 SCC 433.

A pregnant woman who was not married applied for an abortion under the Medical Termination of Pregnancy Act, 1971, as amended.[23]

The principle and ruling were that the Supreme Court had adopted an inclusive interpretation of the applicable statutory framework and acknowledged that unmarried women could be covered by it in the circumstances referred to in the judgment.

The decision supports reproductive autonomy and equality regardless of whether or not someone is married; even though it does not directly deal with employment benefits, it does help to shape the general legal interpretation of reproductive rights.

Together, these rulings show that maternity protection is linked to labour welfare, constitutional equality, personal autonomy and the necessity of avoiding discriminatory assumptions about women and family life.

[22] *Deepika Singh v. Central Administrative Tribunal*, Civil Appeal No. 5308 of 2022, 2022 SCC OnLine SC 1088 (India).

[23] *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, (2023) 9 SCC 433 (India); The Medical Termination of Pregnancy Act, 1971, No. 34 of 1971, INDIA CODE (1971).

7. Maternity benefits and gender equality

Maternity protection is closely linked to women's involvement in the workforce; if employers see maternity leave as a financial disadvantage, women may experience discrimination when they are being recruited, promoted or retained.

Article 39(d) requires the State to ensure that men and women receive equal pay for equal work.[24] Although equal pay and maternity benefits are concerned with different issues, both aim at avoiding unjustified economic disadvantage.

A big worry is the direct cost that maternity leave imposes on employers. Since some employers might see women as more expensive employees due to the possibility of maternity-related absences, the right course of action is not to lessen maternity protection but instead to look into shared financing and social-insurance systems.

Maternity protection should also be supported by measures which encourage shared caregiving; although specific maternity leave is still necessary since pregnancy and childbirth have special health requirements, parental and paternity leave can help to reduce the idea that looking after children is solely a woman's responsibility.

Women ought not to be at a disadvantage when they go back to work, and employers must make sure that maternity leave does not have an unfair effect on performance evaluations, training opportunities, promotions, or professional duties.

8. Challenges in Implementation

8.1 Informal Employment

Women who work as domestic workers, as casual labourers or as home-based workers might not have written contracts or records of their wages. As a result, they could find it difficult to prove their eligibility or to obtain effective redress. This leads to a gap between formal legal protection and actual access.

8.2 Gig and Platform Work

People who work in jobs based on a platform system may be regarded as independent contractors instead of employees. Whether or not they are entitled to maternity protection will depend on the relevant law and scheme. Just because they are registered with a social-security scheme does not mean that they automatically have the right to all kinds of paid maternity leave.

[24] INDIA CONST. art. 39(d).

8.3 Financial Burden

Maternity benefits paid for by the employer could lead to a situation where women are avoided when hiring. While the degree to which this happens may differ and must be assessed through empirical research, the risk does warrant consideration of pooled financing and public support.

8.4 Lack of Awareness and Inadequate Enforcement

There are some workers who don't know their rights or the procedures for claiming them, and with regard to others, they are afraid of being dismissed or suffering retaliation if they raise a complaint. Because of this, the labour authorities must have sufficient resources, and employers should make their rights clear and keep accurate records.

8.5 Childcare and Reverting to Work

The poor quality of crèche facilities and the lack of flexibility in the workplace can make it difficult for women to re-enter employment, since childcare facilities must be accessible and appropriate and employers must not punish women for their lawful maternity leave.

The difficulties show that maternity protection needs efficient administration, easy access to remedies and a greater degree of social commitment to gender equality.

9. International Framework

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) covers discrimination in the field of employment. Under Article 11[25] there are provisions concerning maternity, paid maternity leave or similar social benefits and supporting services. The Convention upholds the principle that pregnancy should not form the basis for discrimination in employment.

The Maternity Protection Convention, 2000 (No. 183)[26] of the International Labour Organization covers maternity leave, cash benefits, health protection and employment security and provides for a minimum of fourteen weeks' maternity leave. Since India has not ratified Convention No. 183, it must be regarded as a comparative standard and not as a treaty obligation which India has accepted by means of ratification.

The need for special protection for mothers before and after giving birth is recognized in article

[25] Convention on the Elimination of All Forms of Discrimination Against Women art. 11, Dec. 18, 1979, 1249 U.N.T.S. 13.

[26] Maternity Protection Convention, 2000 (No. 183), June 15, 2000, International Labour Organization.

10(2) of the International Covenant on Economic, Social and Cultural Rights,[27] this including paid leave or adequate social-security benefits. Also, article 25(2) of the Universal Declaration of Human Rights recognizes the right of motherhood and childhood to special care and assistance.[28]

It is clear from these instruments that maternity protection is seen as a vital component of equality, social security and human dignity.

10. A critical analysis together with some suggestions

Although India has established a substantial legal framework concerning maternity protection, there is still a major concern regarding the gap between what is legally entitled to and actual access to it.

Women should first be given better access to protection in the case of informal and insecure employment, and this can be achieved through the establishment of clear procedures, increased awareness, and improved coordination with social-security schemes.

Second, the way in which funds are raised should be reviewed with a view to reducing the burden of costs on individual employers. A form of pooled financing or social insurance could retain the benefits for women while at the same time reducing the incentives for discriminatory recruitment.

Thirdly, enforcement must be strengthened. The labour authorities should efficiently investigate any complaints and employers should keep accurate records as well as communicate their employees' maternity rights. Workers should be able to obtain redress without having to suffer unnecessary delays or costs.

Fourthly, the childcare infrastructure should be improved; the crèche facilities had better be both safe and easy to access, and in appropriate cases shared facilities may be considered provided that the relevant law allows it.

Fifth, companies should establish fair return-to-work policies and offer flexible arrangements where this is compatible with the nature of the job. Women should not be deprived of opportunities for promotion or of their professional responsibilities merely because they have exercised their maternity rights.

In addition, policies ought to promote shared caregiving and enhance data collection; reliable information regarding benefit claims, refusals and workplace outcomes would enable

[27] International Covenant on Economic, Social and Cultural Rights art. 10(2), Dec. 16, 1966, 993 U.N.T.S. 3.
[28] Universal Declaration of Human Rights art. 25(2), G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

policymakers to evaluate whether legal reforms are effective.

The reforms would help to make sure that maternity protection is both important for women and can be maintained by employers.

11. Conclusion

The right of women to receive maternity benefits is an important part of labour welfare, reproductive autonomy and gender equality since it acknowledges that pregnancy and childbirth should not compel women to have to decide between their health, their family duties and keeping their jobs.

The constitution of India specifically Articles 14, 15, 21 and 42, offers a solid basis for the protection of mothers.[29] The Maternity Benefit Act of 1961 and the 2017 amendment increased the statutory rights, whereas the Code on Social Security of 2020 brought together the relevant provisions.[30]

Judicial rulings have reinforced this form of protection by placing a strong emphasis on beneficial statutory interpretation, on the inclusive treatment of workers, and on respect for reproductive autonomy. Yet informal employment, unequal access, weak enforcement, difficulties associated with childcare, and the possible employment repercussions of employer-provided benefits are still major concerns.

The way to proceed is not to cut back on maternity protection but to make it more inclusive and sustainable by having wider social-security coverage, shared financing, effective enforcement, accessible childcare and fair return-to-work policies.

Maternity benefits should not be seen as a special favour given to women; rather they form an important means of safeguarding dignity, equality and social justice. In order for a fair labour system to exist, it must allow women to make their reproductive choices without forcing them out of work or preventing them from having professional opportunities.

Footnotes

1. The Constitution of India, articles 14, 15, 16, 21, 39 and 42.
2. The Maternity Benefit Act, No. 53 of 1961, in the Indian Code (1961).
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[29] INDIA CONST. arts. 14, 15, 21, 42.

[30] The Maternity Benefit Act, 1961, No. 53 of 1961; The Maternity Benefit (Amendment) Act, 2017, No. 6 of 2017; The Code on Social Security, 2020, No. 36 of 2020.

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1. The Convention on Elimination of All Forms of Discrimination Against Women was adopted on 18 December 1979 and is published in volume 1249 of the United Nations Treaty Series, page 13.
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5. India Code, Code on Social Security, 2020: https://www.indiacode.nic.in/
6. The website of the International Labour Organization, NORMLEX: https://normlex.ilo.org/

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