



Rights of working mothers- A constitutional framework

Harsimranvir Kaur

Assistant professor of Law, VMS College of Batatla, Guru Nanak Dev University, Amritsar, Punjab, India

Abstract

The foundations of duties and responsibilities of the government are enshrined in the Constitution of India in the form of Directive Principles of State Policy. Rights of working women in their early stage of motherhood are also enshrined in form of fundamental rights. Women participation in labour force is always full of obstacles due to certain reasons. Labour legislations although many times protect women but constitutional protection to working mothers is always of paramount importance and is regarded as the backbone of any other legislation prevailing in our country. Social justice as enshrined in our Constitution cannot be expected without equal opportunities and equal treatment to working mothers. Women's participation in employment sector is necessary for the accomplishment of social and economic development of society. To make attempts in analyzing the condition of women workforce through the provisions of Indian Constitution and to reveal the provisions of the Indian Constitution to protect maternity rights is the need of time. It is an important task to analyze the concept of social justice in employment sector through constitutional framework.

Keywords: Maternity benefits, responsibilities of the government, labour legislation

Introduction

One of the greatest sorrows of women is that they have been facing the infringement of rights relating to maternity benefits as provided by the Constitution. From ancient times to still today the rights and privileges of women in India are not secured properly. Women are struggling to find her social status and a respectable place in the society even at the time of development of country. There was a need of some laws in order to improve the social position of Indian women and to ensure proper safety against their mental and physical torture. At that time Dr. B. R. Ambedkar, Author of our constitution took constructive steps in favour of Indian women to make them independent and socially strong and today we can see the revolutionary change in the position of Indian women.

A Constitution has been briefly defined as a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the government of a state and declares the principles governing the operation of those organs. It is the basic or fundamental document of a society or a country and contains the basic, the fundamental, the first law of the country. All the laws in the country are enacted under this document and within this document which is known as the Grundnorm of the country.

Historical background of maternity rights

Labour legislation in India originated with the spread of industry. India was known as an agricultural country during the eighteenth century. It was a great manufacturing country too. Asian and European markets were mainly depending upon the looms supplied by India. But the British government in India oppressed Indian manufactures of England to give an effect to their policies. Their policy was to make India subordinate to the industries of Great Britain and to make Indian people grow only raw materials for England. The British oppression in India continued for a long time which awakened Indians to think of the growth of

Indian industries and to a vigorous renaissance. Nationalism was obviously an economic aspect which in our country was reflected in the urge for economic reforms and for industrialization. In India Assam industry was the first to be stamped under legislation. A number of Acts were passed from 1863 onwards to regulate the recruitments of workers. These legislations protected more the interests of the employers than safeguarding the interest of workers.

Maternity benefits Act, 1961 was passed after independence. It was amended in 1973, 1976, 1988, 1995 and in 2008. Employees State Insurance Act also provided maternity benefits. Maternity Benefit Amendment Act 2017 extended the provisions and protections to women workers to achieve the objects sought in 44th, 45th, and 46th session of Indian Labour Conferences to synthesize the International Instruments such as Universal Declaration of Human Rights (Art. 25) and The Convention on the Rights of Child (Art. 4 and 6). As per the recommendations of second National Commission on Labour, 2002 existing set of labour laws should be broadly compiled into four or five groups of laws as per their category i.e. Industrial relations, Wages, Social security, Safety, Welfare and working conditions and so on. The Commission recommends that the definition of the term 'worker' should cover the same in all groups of laws subject to the condition that social security benefits must be available to all employees. The employees should include administrative, managerial, and supervisory and the category of workers excluded from the category of workmen and others not treated as workmen or excluded from the category of workmen. The Commission is of the view that reformation of labour laws should be made so that a well defined social security package can be there to give benefit to all workers. organised or unorganised sector should also be covered. Administrative, managerial and other categories which have been excluded from the purview of the term worker should also be covered.

Meaning and definitions of maternity benefits

Maternity benefits are generally understood as the benefits in form of money, leave and in other forms, provided to a woman employee before and after birth of a child by an employer. In Oxford Dictionary, its meaning is “a payment or other allowance made by the state or an employer to a woman during pregnancy or after childbirth”. In Cambridge Dictionary it means something like a medical insurance or payment received by a woman employee.

Maternity benefits are comprised of leave for a certain period before and after the birth of a child, cash benefits including wages, employment protection and non-discrimination, health protection, breastfeeding arrangements at work and childcare facilities. As per ILO’s Maternity Protection Convention No.103, 1952, maternity benefits seem to mean medical, leave and cash benefits. Medical benefits includes before and after delivery confinement and post-natal care with institutional delivery by authorized medical practitioners as well as hospitalization care if it is necessary. Freedom of choice of doctor and freedom of choice between a public and private hospital should be there.”

Under Section 3(h) of Maternity Benefits Act 1961, definition is referred in Sec.5 which does not specifically define “maternity benefits”. It describes only the benefits that are included in the term. These benefits are:

- Leave from the employment after the delivery of child with average pay for 6 weeks;
- A medical bonus of a specified amount, if the employer does not provide free medical care to the woman;
- An additional leave with pay up to one month after the woman shows proof of illness due to the pregnancy, delivery, miscarriage or premature birth;
- In the case of miscarriage of woman employee, six weeks leave with average pay from the date of miscarriage;
- Work of a light nature which does not interfere with her pregnancy, for ten weeks (six weeks plus one month) before the date of her expected delivery, if she demands for it;
- Two nursing breaks daily in the course of her employment until the child is 15 months old;
- No order of discharge or dismissal while she is on maternity leave;

Constitutional provisions on maternity rights

The Indian Constitution has been loaded with the principle of gender equality in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only ensures equality to women but also provides justice in every aspect to women. It also empowers the state to make laws and frame policies for the welfare and protection of women. The Constitution is the prime source of legislations. The Constitutional provisions relating to labour welfare are therefore necessary to be viewed. There are three lists in seventh schedule of Constitution, I. central list, II state list and III concurrent list under Article 246. Central legislation can make laws related to matters in central list, state legislation can make laws related to matters in state list and both central and state legislations can make laws related to matters in concurrent list. Matters related to Labour welfare are covered in list III (concurrent list) in the following entries.

Entry No. 22- Trade unions: industrial and labour disputes.

Entry No. 23 - Social security and social insurance.

Entry No. 24- Welfare of labour including conditions of work, provident funds, employer’s liability, workmen’s compensation, invalidity and old age pensions.

Matters in union list

Entry No. 55- Regulation of labour and safety in mines and oil fields.

Entry No. 61- Industrial disputes concerning union employees

Entry No. 65- Union agencies and institutions for vocational training.

Thus both central and state legislatures can make laws in respect of labour matters. However most of the laws are passed by union government thus uniform all over India. Some of the Acts have been modified by state governments as per their requirements. Maternity benefits are covered in concurrent list. The guiding philosophy of preamble strives to secure to the people of India social, economic and political justice. Article 19(1) (c) of the Constitution of India guarantees the fundamental right to every citizen to freedom of association. Workers in the unorganized sector can form trade unions and assert their rights. The question that often comes up for consideration by the Courts is whether a particular grievance is a trade or industrial dispute thereby giving a forum for the aggrieved trade union to air its grievances. Further collective agreements are absolutely essential in every employment for women workers to express and negotiate their rights.

Article 42 requires that the state shall make provisions for securing just and humane conditions of work and for maternity relief.

In the words of Justice V.R. Krishna Iyer “Social justice is the source and strength of the industrial branch of third world jurisprudence. It is also proclaimed in the preamble to the constitution. A myriad devices, half hidden in fold after fold of legal forms, depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislations casts welfare obligations on the real employer, based on Articles 38,39, 42, 43 and 43A of the constitution. Industrial justice is not an application of rigid formula but, in consonance with part IV of the constitution, the award of wages that are substantially just, subject of course to the well recognized principles evolved by this court.”

Labour laws and employment laws have been essentially derived from socialist republic state. Only the socialist republican state can best define the true usage of industrial labour laws because moral and ethical standards are the bedrock of a Social republican state and are hence given high importance. Labor and employment laws are quite important as they give structure to workplace, define what both employees and employers are responsible for and in some cases, also outline the federal regulations in order to give both parties, the direction necessary for resolving workplace conflict. These laws are also important because they enable businesses to devote more of their focus to productivity and profitability rather than giving constant energy and resources to problem solving. Thus state governments can also make laws related to maternity benefits. The Constitution of India envisages a comprehensive framework in which the issues related with labors can be dealt.

Fundamental rights

These are regarded as fundamental as they are most essential for human beings in a democratic society. Labour rights are also thus included in fundamental rights. Part III of the Constitution of India is the base for labor laws in India. Also, Part III (Article 12 to 35) of the Constitution covers the fundamental rights of its citizens which includes Equality before the law, Religion, Sex, caste, place of birth, the abolition of untouchability, freedom of speech and expression and prohibition of employment of children in factories.

Under Article 12, fundamental rights are available only against state. The constitution of India is the supreme source of law in India. It elaborates the general rules for law making and policy formation. Further, it provides the fundamental rights which are guaranteed to every citizen and in some cases non citizens. The obligations are upon the state with regard to the protection of these rights. Though fundamental rights are generally enforceable against the state yet, if the private employer is regarded as state by way of judicial activism by Indian courts then these rights are also available against them. In matters relating to employment in the public sector fundamental rights also be extended to employment in the private sector. Employee in such circumstances can take protection of Article 21. Article 13 states that state shall not make any law which takes away fundamental rights in any way. It will be void to the extent of the contravention. Thus state cannot make any labour law provisions of which are ultra virus of the constitution.

Article 14 provides equality and equal protection of law. The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Equality before the law is interpreted in labor laws as "Equal pay for Equal work". It does not mean that Article 14 is absolute. There are a few exceptions in it regarding labor laws such as physical ability, unskilled and skilled labors shall receive payment according to their merit. Women cannot be denied maternity benefits as motherhood cannot be taken as a ground of discrimination against others. In the case of *Randhir Singh vs. Union of India*, the Supreme Court said that "Even though the principle of 'Equal pay for Equal work' is not defined in the Constitution of India yet the goal can be achieved through Article 14,16 and 39 (c) of the Constitution of India.

Article 15 prohibits state from making discrimination against any citizen on the grounds only of religion, race, sex, place of birth are any of them. Special provision for women and children has been made in Article 15(3). the welfare of women is always of vital significance in a welfare state. All the labour legislations are consequences of these precious provisions in fundamental rights so that upliftment of women can be made and she must not be discriminated against male counterparts. Supreme Court recently sought response from centre on a plea challenging constitutional validity of Section 5(4) of Maternity Benefits Act, 1961(SS Code, 2020 is not implemented yet by many states) as it is discriminatory and arbitrary. This section provides maternity leave only to those mothers who have adopted a child under 3 months of age. It neglects orphaned and abandoned children.

Article 16 creates a right to equal treatment and equality of opportunity not only at the time of appointment but in pay, transfer, promotions and all facets of employment. Citizens cannot be discriminated on the ground of religion, caste,

sex, race, and descent, place of birth or residence. So the upliftment of women can be made and she must not be discriminated against male counterparts. Article 19 of the Constitution guarantees citizens to form a union or association. The Trade Union Act, 1926 confirms Article 19 of the Constitution. It liberates workers to form trade unions. Trade Unions provide the power to raise voice against atrocities done to the workers. The feeling of unionization inspires to the laborers. Trade Unions discuss various labor-related problems with the employers, they conduct strikes, etc.

The guiding philosophy of preamble is elaborated in part III of the constitution which comprises of the sacred fundamental rights of the people. Thus, Article 14 guarantees equality before law and also stands for the establishment of an order under which there is no place of any arbitrary discrimination by the laws themselves or in their administration. However the most profound expression of the citizens rights are available under Article 19, consisting of six rights or freedoms out of which three form the basis of the edifice on which the modern democratic labour legislation has been formulated.

Law as a social machinery requires to remove the existing imbalances and to further the progress serving the needs of the socialist democratic republic under the rule of law. Prevailing social conditions and actualities of the life are to be taken into account to adjudge the dispute and to see whether the interpretation would sub serve the purpose of the society. There is no dispute that the right to life would include right to receive wages. Deprivation of the wages during pregnancy does affect the very right of life and livelihood itself. The Apex Court has held that the right to livelihood is a fundamental right, as right to life is protected under Article 21 of the Constitution of India.

The question on the calculation of days of maternity leave was brought up in a case. The issue arose in court was whether Sundays, being wageless holidays, should be included in the calculation of the maternity benefit period. It was held by the Supreme Court that the benefit that was conferred by the Maternity Benefit Act, read with Article 42 of the Indian Constitution, was directed to help women to not only safeguard her maternity rights but also preserve her effectiveness as an employee and keep her efficiency level stable. She, therefore, requires any amount that may become payable to her, in lieu of the medical expenses and wellbeing of the child. The law makes maternity benefit compulsory so as to help women balance their employment and reproductive roles efficiently. Thus, the court, in accordance with the rule of beneficial construction, stated that Sundays would be included in that period.

The Himachal Pradesh High Court has given very remarkable judgment that every woman, irrespective of her employment status, is entitled to maternity leave. Maternity leave aims to protect the dignity of motherhood and ensure the well-being of both the woman and her child.

The court however held that denying maternity benefits to any woman, regardless of her employment status, would amount to a violation of the principles. The object of maternity leave is to protect the dignity of motherhood by providing full and healthy maintenance to the woman and her child, maternity leave is intended to achieve the social justice to women, motherhood and childhood, both require special attention.

Directive principles of state policy

Industrialization is the main goal towards growth in every sphere in almost all developing nations. The coordination between employer and employee is the objective of labour law. For the planned, progressive and purposeful development in the state it is always the prior concern of the state. No country can enhance its economy without making labour friendly laws and policies. After Independence the evolution of laws in India with many small scales and large scale industries and factories has been witnessed. Along with the industrial revolution, labours also awakened towards their rights and duties. As a result a new branch of law i.e. Industrial Jurisprudence has put steps in our country. Industrial Jurisprudence consists of many labor and industrial legislations for the welfare of labours as well as employers. Many principles have been followed by High Courts and Supreme Court in giving many landmark judgments. The principles of social justice, social equality and natural justice have been applied by courts to protect national economy as enshrined in part IV of our Constitution.

Part IV of the Constitution of India contains the “Directive Principles of State Policy”. This part aims to make laws and policies for the welfare of its citizens. These principles cannot be enforced in the court of law, but these principles are directions to the legislature for making labor laws in India.

Article 39 (a) directs that the State shall, in particular, direct its policy towards securing its citizens, men and women equally, have the right to an adequate means of livelihood. It means that every citizen of the country has the right to earn a livelihood and not to be discriminated on the basis of their sex. Article 39 (d) of the Constitution says that the State shall, in particular, direct its policy towards ensuring equal pay for equal work for both men and women. Wages will not be determined on the basis of sexual discrimination rather it will be according to the amount and nature of work done by the worker.

Article 41 of the Constitution provides “Right to Work” which means that every citizen of the country has the right to work. With its greatest efforts the state will secure the right to work and education by making various laws and policies. Article 42 provides for the protection of the workers and to improve working conditions for workers. It talks about setting up of a suitable and human friendly workplace. This Article also talks about maternity benefits. it provides for leave provided to women when they are pregnant. it directs that the state shall make provisions for securing just and humane conditions of work and for maternity relief.

Article 43 directs the state about the “living wage” for its citizens. Living wage not only includes the “bare necessities of life” but also the social and cultural upliftment of the person. It also includes education and insurances for a person. The State shall make best efforts to create opportunities in the fields of Agriculture and Industries with special reference to cottage industries.

Article 43 A was inserted in 42nd amendment 1976. The workers participation in management, sharing in decision making and policy making with the management and transfer of decision making right in the enterprise or undertakings can be included.

The rights and protection offered to women in India find a

prominent place in the country’s Constitution among fundamental rights and among the directive principles. It is pertinent however that India has not ratified the latest ILO Convention on maternity benefits - The Maternity Protection Convention, 2000 (No.183)19.

Recent initiatives in form of labour codes

The Indian government had decided to reform the existing labour laws into four codes, in the years of 2019-20s. The codes involved code on wages, social security, occupational safety, health and working conditions and industrial relation, of which, the Code on Wages Bill, 2019, has already been passed in the past year. The government has approved the remaining three labour codes and consolidated labour Acts, affecting a major reform that has been on the table for at least 17 years. 29 central laws have merged into four codes reducing compliance hassles, and streamlining laws – which have been the demand from the industries and business houses for decades. The key motive here is to attract heavy foreign investments.

The three codes on social security, industrial relations and occupational safety are to bring industries flexibility in business. The hire and fire rule can be stopped. By making industrial strikes difficult and promoting fixed employment codes will do better. Minimization of influence of trade unions is also on the agenda. Expanding social security network for informal sector workers and the regulations around the safety and working conditions of employees will be another result. This is being viewed as a landmark step. Balancing the interests of the employers and the workers with restricting the powers of the labour unions. Maternity benefits are covered under social security code, 2020.

It covers women workers who are employed in an establishment which is covered under definition of establishment. The definition is inclusive in nature. It includes every establishment being a factory, mine or plantation including any such establishment belonging to government. Every shop or establishment in which 10 or more employees are employed or were employed on any day of the preceding 12 months and other shops or establishments notified by the appropriate government are also included. The maximum period of maternity benefit available to woman employee is 26 weeks, if she has no surviving children.

If a woman has two or more surviving children, then she will be entitled to a leave of 12 weeks only with pay instead of 26 weeks. If a woman dies during the period of maternity benefit availed by her, then such benefit is payable up-to the day of her death. However, if she dies and leaves a child behind, then she will be given maternity benefits for the full period. If the nature of the work assigned to a woman is such that can be done on a ‘work from home’ formula, then even after the expiration of her maternity leave, she can do it by mutual agreement with employer. Nursing breaks and crech facilities are also provided.

Maternity benefits are inclusive of leave, cash benefits, employment protection and non-discrimination, health protection, breastfeeding arrangements at work and childcare. As per ILO’s Maternity Protection Convention No.103, 1952, maternity benefits can be assumed to be included medical and cash benefits.

Concluding remarks

The codification of labour laws is aimed to reduce the multiplicities and contradictions often arise due to multiple interpretations of the laws. Critics have viewed codes with several anomalies like excessive hiring and firing provisions, the possibility of abuse of power of bureaucrats to change provisions during rule making. It has also been blamed for ignoring of important recommendations of the standing committee on labour. The industry and the economist sector are viewing this as a great reform that will give a big support to investment and improve business process in India by reducing multiplicity of definition. There is still a hope for further protection of constitutional status of labour laws with the focus shifting towards state labour reform.

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