

MATERNITY BENEFITS AND EMPLOYMENT SECURITY: AN ANALYSIS OF LABOUR LAW PROTECTIONS IN INDIA

-Ms. Anjali

Ms. Akanksha¹

ABSTRACT

The involvement of women in the labour force has been on the rise over time and thus maternity protection has become a necessary feature of the labour law and social justice. Pregnancy and birth are natural life events that women should not be exposed to job insecurity and discrimination at work place. The paper evaluates the constitutional mandate of gender equality and social welfare, in comparison to Articles 14, 15(3), 21 and 42 of the Constitution of India, and the statutory authorization provided by the Maternity Benefit Act, 1961, as revised in 2017, and the Code on Social Security, 2020. The importance of international labour standards such as maternity protection framework of an International Labour Organization and Convention on Elimination of All Forms of Discrimination against Women in the framework of shaping the national labour policies are also included in the study.

It is mainly a doctrinal and analytical study. The paper critically assesses the validity of current legal safeguards of women in their workplaces throughout pregnancy and even after delivery. It lists several ongoing issues such as access to maternity benefits being unequal between the various types of employment, poor execution of the statutory requirements, unfairness in recruitment and promotion and the lack of access to childcare assistance at work places. The paper proposes that providing more robust enforcement measures and encouraging shared parenting roles would help create a fairer labour market. This study illustrates that a broader framework is necessary to underpin both maternity and work.

Keywords: *Maternity Benefits, Employment Security, Labour Law, Women Workers, Social Security.*

¹ Ms. Anjali, Research Scholar, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana, Ambala, Haryana, India and Ms. Akanksha, Research Scholar, Department of Law, M.M.H. College, Ghaziabad, Uttar Pradesh, India.

1. INTRODUCTION

Women contribute a lot towards the economic and social growth of any country. Over the past decades, women have become more involved in the workforce due to the provision of more education, economic liberalisation and modification of social attitudes. In spite of this advancement, when it comes to pregnancy and motherhood, working women are still faced with challenges. Others are subjected to discrimination during hiring, being refused maternity leave, job loss, and they do not get promotion opportunities. These practices not only have negative implications on the economic autonomy of women, but also on their constitutional rights to equality, dignity, health, and livelihood.

Maternity is a biological process that is supposed to be embraced as the way of life of a woman and is not supposed to be a hindrance to work or even promotion. Maternity protection has been identified by the labour laws in modern societies as a basic labour right, not as a kind of welfare. Maternity legislation aims at trying to allow women to be safely conceived and have been delivered without losing their jobs or income as well as ensuring that the maternal and child health is achieved.

The maternity protection in India has been developed based on the provisions of the constitution, the legislature of labour, interpretation by the courts, and international engagements. Articles 14, 15(3), 16, 21, 39(e), 39(f), 42, and 43 in the Constitution of India ensure these, especially as a guide towards equality, social justice, humane working environments and maternity benefits. Working women have had their labour laws developed based on these principles of the constitution.²

The main law under maternity protection is the Maternity Benefit Act (1961) that entitles to paid maternity leave, employment protection, nursing breaks, and other benefits. These protections were tightened by the Maternity Benefit (Amendment) Act, 2017, which built on the twelve weeks of paid maternity leave and provided some creche facilities where practicable required by all existing establishments and a recognition of work-at-home where practicable. The Code on Social Security, 2020 went another step further and formalized maternity protection as part of the overall Indian social security. Nonetheless, women in the informal sector of employment, contract jobs, household workers and platform-based jobs still have little access to these statutory benefits.³

² The Constitution of India, 1949, Articles 14, 15(3), 16, 21, 39(e)–(f), 42, 43.

³ S. N. Mishra, *Labour & Industrial Laws* (Central Law Publications, 29th ed. 2021).

2. CONCEPT AND IMPORTANCE OF MATERNITY BENEFITS AND EMPLOYMENT SECURITY

Maternity benefits are relevant aspect of labour welfare and social security. They safeguard the health, dignity and financial safety of the women in the process of pregnancy, childbirth and in the postnatal period. Maternity is not only a personal duty, but a societal role that is important in the welfare of the society. Thus, it should not make women lose their jobs, earnings as well as career prospects owing to their pregnancy. Maternity protection will allow women to heal after giving birth, take care of the baby and become self-sufficient by going back to their work without losing their jobs or financial availability.⁴

Employment security is mostly associated with maternity protection. It makes sure that women are not rejected, discriminated against, or subjected to poor conditions of service due to pregnancy or maternity leave. Maternity protection is not only in the form of paid leave but also job security, equal “treatment safe work environment, nursing and childcare facilities. These policies encourage substantive equality and women can enter the workforce without the fear that their jobs will be terminated.⁵

Increased involvement of women in various fields like education, medical care, information technology, production, and services has made the maternity protection more paramount. Many women however remain in the informal sector, which has a low accessibility to paid maternity leave, and social security benefits. Consequently, there are numerous women, who are forced to work at later periods of pregnancy or abandon work after giving birth because of lack of legal protection.

Maternity protection is also another tool in promoting the health and economy. Adequate maternity leave helps maternal healing, breastfeeding, and child caring as well as enhance worker productivity and retention in the workplace. Socio-legal, maternity benefits would level the playing field of gender on the basis of the biological nature of pregnancy since the woman is accorded due legal protection as opposed to being disadvantaged in the workplace.⁶

Even with the legal framework in place, there is still an unequal implementation in the form of lack of awareness, enforcement and coverage of women involved in informal, contractual and

⁴ S. N. Mishra, *Labour & Industrial Laws* (Central Law Publications, 29th ed. 2021).

⁵ Maternity Benefit Act, 1961 (No. 53 of 1961), Sections 5, 11, 12.

⁶ S. C. Srivastava, *Industrial Relations & Labour Laws* (Vikas Publishing House, 6th ed. 2012).

platform-based employment. Thus, maternity benefits and job security ought to be regarded as fundamental labour rights and achieve social justice, gender equality and inclusive economic growth.⁷

3. CONSTITUTIONAL FRAMEWORK FOR MATERNITY PROTECTION IN INDIA

The Constitution of India gives grounds on how to safeguard working women and guarantee maternity relief as part of social justice. Though not a primary right, maternity benefits are individually the subject of protection by several Fundamental Rights and Directive Principles that guarantee and protect the health, dignity and employment of pregnant women and foster substantive equality.

Article 14 secures the equality in front of the law and this means women are not going to be discriminated against due to pregnancy. Article 15(3) gives authority to the State and to take special measures towards women and children, and this was the foundation of special constitutional protection legislation like the Maternity Benefit Act, 1961.⁸

Article 21 incorporates the right to dignity, health, livelihood and reproductive autonomy. Maternity protection is therefore assumed to be part of the right to life which protects the health of both mother and child.⁹

Maternity protection is further enhanced in the Directive Principles. Articles 39(e) and 39(f) puts a duty on the State to conserve the health of workers and children and Article 42 narrowly focuses on the State by advising it knowingly to remunerate and fairly the conditions of work and maternity leave. Labour legislation and policy reforms have been informing by these principles.

In this way, the Constitution will encourage the gender equality as the motherhood will not be an obstacle to work. It still influences the legislative changes and judicial interpretation of safeguarding the rights of working women.

4. STATUTORY FRAMEWORK GOVERNING MATERNITY BENEFITS IN INDIA

⁷ *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, (2000) 3 S.C.C. 224, 230–32 (India).

⁸ The Constitution of India, 1949, Articles 14, 15(3).

⁹ The Constitution of India, 1949, Article 21.

In India maternity protection is largely regulated by the Maternity Benefit Act, 1961, which came to protect the health and dignity of the woman, their employment, during pregnancy and childbirth. The Act aims at making sure that a woman does not have to decide between motherhood and work by offering paid maternity leaves, and guarding women against discrimination or loss of work during this time. It is applicable to the factories, mines, plantations, shops and any other premises that are subject to the Act and it provides benefits to women that meet the eligibility requirements that are set.

The Maternity Benefit (Amendment) Act, 2017, that has greatly empowered the rights of working mothers, was a significant reform. The amendment expanded the paid maternity leave, which had been 12 weeks of paid leave to women with not more than two living children to 26 weeks, to become one of the few countries with relatively higher paid maternity leaves. It also increased 12 weeks of maternity leave of adoptive and commissioning maternity thus acknowledging the evolving family arrangements and fostering inclusive maternity provisions.¹⁰

The amendment also stipulates that facilities that have an employee population of 50 or above should offer crèche services, so that mothers can be able to take care of their children as they pursue their jobs. Women are allowed to pay visits to the crèche at the time of working and also work-from-home agreements are welcomed in the Act wherein the nature of employment allows the same. These will promote work-life balance and help women to have a second career after giving birth.

Besides paid leave, the Act has a number of protective measures of pregnant women. Employers are not allowed to do heavy or dangerous duties which can negatively influence the health status of the mother or child. Women are also denied the right to be dismissed, discharged, or have service conditions changed against them during maternity leave as is safeguarded by the Act. Moreover, qualified women are given entitlement against nursing breaks following their resumption to work and medical benefits where necessary thus guaranteeing them of employment security as well as maternal benefits.¹¹

The other significant legislative change is the Code on Social Security, 2020, which unifies numerous social security labour legislation, such as maternity benefits. Although it does not abolish the substantive provisions of the Maternity Benefit Act, the Code will make labour

¹⁰ S. C. Srivastava, *Industrial Relations & Labour Laws* (Vikas Publishing House, 6th ed. 2012).

¹¹ P. L. Malik, *Industrial Law* (Eastern Book Co., 25th ed. 2020).

laws easier and the inclusion of social security benefits to those in the unorganised, gig and platform industries via government schemes an opportunity.

Although these reforms are progressive, it has become a great challenge to implement. Employers shoulder a significant part of the burden of maternity benefits thus influencing the hiring of women, especially in the, private sector. Moreover, many women who practised informal jobs, household duties, farming and contract labour still exist out of the sphere of practical coverage of maternity laws. Thus, to make sure that every working woman is provided with proper maternity protection and employment security, stronger measures of enforcement, further expansion of the scope of the law, and governmental assistance are needed.¹²

5. INTERNATIONAL LEGAL FRAMEWORK ON MATERNITY PROTECTION

Maternity protection is one of the basic labour and human rights that are well established in the international law. International instruments underscore that pregnancy and maternity should not lead to discrimination or loss of jobs and economic insecurity. They are pushing States to implement legislative and policy changes that would ensure paid maternity leave, workplace job security, healthcare, and equal access to opportunities by women at the workplace. As a member of the global community, India has been receiving a lot of direction on such standards as it has been formulating its domestic legal system.

The International Labour Organization (ILO) has become a pioneer in ensuring maternity protection by coming up with numerous conventions and recommendations. The most notable one is the Maternity Protection Convention, 2000 (Convention No. 183) that gives the right to maternity leave, cash and medical benefits, employment protection, health, and maternity leave. It also acknowledges the need to take a break during breastfeeding and the member States of the country are expected to have no women discriminated on the basis of maternity. Despite India not having ratified Convention No. 183, most of its provisions are echoed in domestic laws, specifically, the Maternity Benefit Act, 1961 and its 2017 amendment.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 is yet another significant international instrument, sometimes called the international bill of rights of women. Article 11 of the Convention stipulates that State Parties must eradicate any discrimination towards women in the employment field and must also come up with

¹² S. C. Srivastava, *Industrial Relations & Labour Laws* (Vikas Publishing House, 6th ed. 2012).

maternity leave with pay or any other form of social benefits without losing the job, seniority or social security. It also requires the States to forbid termination on basis of pregnancy or maternity leave and gives impetus to creating childcare facilities where parents can mix family issues with work. CEDAW was ratified in India in 1993 and its values have had a great impact to judicial interpretation and labour policy.¹³

The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 also recognises the importance of maternity protection. Article 10 states the mother is entitled to specific protection in a reasonable time frame before and after childbirth, pregnant with paid time or even with adequate social security advantages. Covenant: maternity protection is linked to the more general rights to health, social security and an adequate standard of living, which strengthens the idea of maternity benefits as an inalienable right of human dignity and social justice.

The Universal Declaration of Human Rights (UDHR), 1948 also acknowledges that motherhood is one area that needs special care and help. Article 25 defines the right to motherhood and childhood as one that should be treated and supported specially and the right to work, good conditions of work and social security is in Articles 23 and 25. Even though the UDHR is not a legal source, it has had a strong impact on the formation of the international human rights law and national constitutions jurisprudence.¹⁴

Another indication of this is seen in the comparative international practices, that have seen numerous countries implement systems of comprehensive maternity protection underpinned by social insurance instead of making this entirely the responsibility of employers. In Sweden and Norway and other countries, social security funds are the primary source of financing maternity and parental benefits, and in these countries, it lowers discrimination by women during the recruitment and employment processes. There are also some jurisdictions which have initiated parental leave whereby fathers are given a share of child caring and gender equality is promoted in the workplace. These models make an emphasis on joint responsibility at the State level, the part of employers, and families in the context of successful maternity protection.

6. LANDMARK CASE LAWS

¹³ S. C. Srivastava, *Industrial Relations & Labour Laws* (Vikas Publishing House, 6th ed. 2012).

¹⁴ S. K. Kapoor, *Human Rights Under International Law and Indian Law* (Central Law Agency, 2014).

6.1 *B. Shah v. Presiding Officer, Labour Court, Coimbatore*¹⁵

This case embraced one of the beneficial and purposive interpretations of legislation in the area of maternity-benefits. The Court stressed that the maternity legislation is a social-welfare law that aims to safeguard female laborers during a pregnancy and childbirth. The term every day as used in the Maternity Benefit Act was construed to the benefit of the woman employee and which includes Sundays and holidays when in paternity-leave. The ruling shows that the maternity laws have to be construed in accordance to their social-objective and not using a narrow, or technical methodology.

6.2 *Neera Mathur v. Life Insurance Corporation of India*¹⁶

What the Supreme Court did in this instance was to deal with discrimination of a woman employee related to pregnancy and maternity. Petitioner was an employee of the LIC, who had to supply intrusive information about menstruation, pregnancy and personal issues. Her probation was probed and her services were terminated after she availed maternity leave.

The Supreme Court was appalled by the necessity to reveal such personal intimate information and reversed the firing. The Court took into consideration that pregnancy cannot be considered as an award winning reason to disfavor a woman in the workplace. Of special relevance is the decision regarding the connection of gender equality and dignity, privacy and employment security.

6.3 *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*¹⁷

This is probably the largest Supreme Court ruling to present paper. Municipal Corporation of Delhi v. Female Workers (Muster Roll), the Municipal Corporation did not provide the female employees with maternity benefits under the claim of the regular employees since the employees were on a muster-roll/daily-wage basis. The Supreme Court dismissed the differentiation on the basis of simply the employment.

The Court was of the view that the female muster-roll workers were entitled to get maternity benefits as required by the Maternity Benefit Act in 1961. It has also highlighted that maternity protection is in line with the constitutional goals enshrined in Articles 39 and 42 and to India in line with its international commitments, such as CEDAW. The Court took a proactive attitude towards equality instead of allowing the employment classification to obviate the protective nature of maternity laws.

¹⁵ (1978) 4 SCC 42.

¹⁶ 1992) 1 SCC 286.

¹⁷ (2000) 3 SCC 224.

6.4 Rattan Lal v. State of Haryana ¹⁸

In *Rattan Lal v. State of Haryana*, the case in which an arbitrary measure of repeatedly appointing teachers on an ad hoc basis and terminating their services prior to the vacation in summer was explored by the Supreme Court. The principles of the case are relevant to employment security and equality under Articles 14 and 16 although the case is not directly related to maternity benefits.

The Court frowned upon the false imposition of temporary appointments in order to deprive legitimate benefits on employment by the State. This case has since on been referred to in maternity-leave litigation cases involving temporary and contracting women workers.

6.5 Deepika Singh v. Central Administrative Tribunal ¹⁹

The decision in *Deepika Singh v. Central Administrative Tribunal* issued by the Supreme Court is one of the significant modern trends in the jurisprudence with regards to maternity issues. The appellant, who is a nursing officer, was not given the maternity leave since she had given her husband a child-care leave of his former wife. The authorities considered such children as being pertinent to the limit on maternity leave.

The Supreme Court has dismissed this meaning and determined that there is no single entitlement of maternity and child-care leave. The presence of two children in the household of the husband of the appellant as a result of his former marriage did not take away her right to maternity leave on the birth of her first biological child. The Court used a purposive interpretation of rules on maternity related services and identified the varying modern day constructs of families.

7. SOCIO-LEGAL CHALLENGES IN ENSURING MATERNITY BENEFITS AND EMPLOYMENT SECURITY

Even with an elaborate constitutional and statutory framework, the practices of a maternity benefit system in India have yet to be effectively realized due to some serious socio-legal issues. Although women working in the organized sector are generally covered by statutory protection, a significant number of the female workers in the labour market have not been adequately covered by the protection of the labour laws. These gaps in implementation compromise the goal of having gender equality and decent working conditions.

¹⁸ (1985) 4 SCC 43.

¹⁹ 2022 INSC 834.

The huge informal labor force is one of the greatest problems. Government estimates indicate that most of the working women in India work in agriculture, homes, buildings, home industries, street vendors among other menial jobs. These laborers do not have written work contracts, social security, paid maternity leave and job security. As a result, there is a high number of women who work until pregnancy terms or workers that lose jobs post-delivery due to lack of affordability to have unpaid leaves. Despite the small amounts of financial aid offered by welfare programs like the Pradhan Mantri Matru Vandana Yojana (PMMVY), they do not offer job security and omnipresent maternity benefits similar to those afforded by statutory labour rights.

Discrimination at the workplace is another crucial issue. One way the employers (both those in the government and the private sector) might be reluctant in hiring or promoting women of childbearing age is the perceived cost implication of giving them paid maternity leave among other statutory mandates. To circumvent the liability which may come with the maternity law, some employers may want to have short-term contractual appointments or even fixed-term jobs. These practices effectively segregate women and deny them the chance of career growth yet there are constitutional provisions that equalities are guaranteed.

The rise of the gig economy and hiring through platforms has brought about legal complexities. Employees of digital platforms (such as women driving as delivery partners, ride-hailing drivers, freelancers, and workers) do not normally rely on the conventional employer-employee relationship as established in labour laws. This also causes them to not be eligible to receive statutory benefits on maternity even when they have made great contribution to the labour market. Despite the fact that the Code on Social Security, 2020 acknowledges gig and platform workers regarding some of the social security schemes, there is no comprehensive maternity protection afforded to these groups and it mainly relies on future government policies.

There is also a lack of access to crèche facilities. Even though the Maternity Benefit (Amendment) Act, 2017 would demand that the establishments with fifty or more employees offer crèche facilities, the situation is not always in accordance. Most facilities fail to set up crèches or those that are set up have their facilities that are below the recommended standards. Lack of care centers that are affordable often requires women to halt their careers or even quit their jobs after giving birth. This not only increases the low rate of participation of female labour force but also expands gender differences within the labour force.

The other issue is the burden in terms of money that is left to the employers. With the current legal system, the total cost of paid leave is paid by employers during maternity. Although this

is a sure way of protecting all eligible employees instantly, it has a tendency of deterring hiring of women especially in small and medium sized businesses. Some of the professionals have proposed that there should be integration of social insurance system whereby the government, companies and the social security organizations have the joint financial obligation to provide maternity benefits. This type of model would lessen discriminatory employment policies and would provide universal protection of maternity.

Absence of awareness of the employer and the employee also contribute to the illegality of the implementation of maternity laws. Numerous women especially rural and informal sector do not have awareness about their legal rights. Just as with the smaller establishments, not all establishments will have sufficient understanding about the statutory requirements pertaining to the labour laws. Inadequate labour inspection measures and low enforcement capacities lower standards of adherence to maternity laws.²⁰

8. CRITICAL ANALYSIS

India has achieved a lot in identifying maternity protection as a labour right either via constitutional stipulation, labour or case law. Maternity Benefit Act, 1961, Maternity Benefit (Amendment) Act, 2017 and the Code on Social Security, 2020 provide a comprehensive legal framework to protect working mothers. The twenty-six weeks of paid maternity leave, the acknowledging of adoptive and commissioning moms, and the inclusion of crèche services are all indicators of efforts by the legislature to make the employment of women better.

Nevertheless, these legal safeguards are not very effective because of some systematic and practical issues. The current system mostly favors women who work in the organized sector and a significant percentage of the working Indian women are in informal, contractual, domestic, agricultural and platform jobs. Such employees often lie beyond the efficient provision of maternity laws, even when they make a lot of impact to the economy.

The next issue is that the current legislation makes virtually the whole financial burden of maternity benefits the employers. Although this will safeguard the qualified female employees, it can also lead to discrimination whereby employers do not hire or keep female employees of childbearing age. As a result, indirect discrimination on grounds of gender may persist even though legal measures against unequal treatment prohibit such practices. Slow pace in

²⁰ International Labour Organization, *Maternity Protection Resource Package: From Aspiration to Reality for All* (2012).

enforcement, poor labour checks and insufficient awareness among the employer and employees also create a further undermined practicality of maternity laws.

Thus, the success of the maternity protection system in India depends, despite its progressive nature, on its effective practices, increased coverage, responsibility of institutions, and enhanced coordination among the State, employers, and social security institutions.

9. RECOMMENDATIONS

In order to enhance maternity protection and employment security, a number of reforms may need to be taken into consideration.

To begin with, maternity leave should be provided to the women in the informal industry such as domestic workers, agricultural laborers, women in self-employment, and the gig and platform workers. Through universal maternity protection, all women in employment would enjoy the benefits of legal protection regardless of the type of employment.

Secondly, the social insurance model should be a sharing of the financial burden of maternity benefits among the government, employers and social security funds. This would decrease the unwillingness of employers to hire women as it would provide sustainable funding of maternity benefits.

Thirdly, the enforcement of labour laws needs to be enhanced, in terms of increased labour inspections and effective grievance redressal mechanisms, and harsher penalties on failure of other non-enforcement of maternity laws. The digital monitoring systems can also enhance accountability and transparency.

Fourthly, employers are urged to provide flexible working arrangements, work-from-home programs, good quality crèche facilities, nursing rooms as well as childcare services, to help them create family-friendly workplaces. These would enable the retention of the women employees once they had a child and enhanced work-life balance.

Lastly, employers and employees should be held awareness programmes on their maternity rights, equality at work and social security benefits. There will be increased co-operation among the agencies, employers and trade unions and the civil society organizations to ensure better enforcing of the law on maternity protection.

10. CONCLUSION

Protection of maternity is a necessary aspect of labour rights, social justice, gender equality and human dignity. The current paper has proven that the phenomenon of pregnancy and maternity cannot be perceived as a simple and personal or even biological issue due to their direct correlation with the involvement of women in the economic and professional field. Legal system which safeguards women against discrimination throughout pregnancy as well as employment security in case they became mother is beneficial not just to the well-being of women and children but also the overall purposes of social and economic growth. In India, the constitutional set up, the statutory provisions, judicial rulings and the international obligations all have a formidable basis in safeguarding rights of the working women.

Maternity protection as envisioned in the Constitution is a constitutional right that is captured in Articles 14,15(3),16,21,39(e)-(f),42,43 of the Constitution of India. These regulations provide equality principles, dignity, social security, humane working conditions and maternity relief. Particularly, its Article 42 officially gives the State a certain constitutional guidance to achieve just and humane terms of work and maternity leave or relief. My interpretation of the Constitution has reinforced these constitutional guarantees by linking the protection of maternity and the right to dignity, health, livelihoods, equality and reproductive control. This court decision illustrates that maternity benefits are not to be seen as a good-willed gesture by a company but are a valuable aspect of a rights-based labour policy.

A key legislation in this area is the Maternity Benefit Act, 1961, along with an amendment in 2017 to the legislation (the Maternity Benefit (Amendment) Act, 2017). The inclusion of twenty-six weeks of paid maternity leave to qualified women with not more than two surviving children, acknowledgment of adoptive and commissioning mothers, assistance provisions in the crèche facilities, nursing breaks, prevention of grueling work and job security showcase the liberal nature of Indian maternity laws. The Code on Social Security, 2020 also aims at aligning the social security protection and acknowledges the necessity to cover workers in the new types of employment. These shifts suggest that the Indian law has slowly shifted it has taken a narrow welfare conception of maternity into a more expansive conception of maternity being a labour and social-security right. The role of the judiciary in transforming how maternity protection is inclusive has been one that is to be reckoned with.

The research however the existence of progressive laws does not always equate to good protection of all working women. The presence of unequal access to maternity benefits by

various groups of workers is one of the gravest failures of the current set-up. Women who participate in informal work, house work, agriculture, employees on contract, self employment and those on platforms still find it very hard to gain access to maternity benefits as well as employment security. The nature of work has also changed which has led to a further complication of the classical employer employee model which most of the labour legislation is founded on. Such social-security programs, especially those applicable to gig and platform workers, have to be new and reflect the nature of modern work.

The other significant issue is that indirect discrimination is likely to occur due to the financial implication of maternity benefits. In the case where employers incur significant costs that are associated with maternity, then the companies may be reluctant to hire, keep or promote women of child bearing age. A legal framework, therefore, that is geared towards minority protection against women, thus, may be, given insufficient funding, an unintentional spur towards discriminatory hiring. This would be achieved through a more sustainable mechanism of including more the involvement of the State and social-security institutions in financing the maternity benefits. A social-insurance-based approach will help to allocate the financial cost more fairly as well as make sure that women will not have to forgo the employment due to having to become mothers.

Institutional enforcement is also needed to be much more effective in terms of protecting maternity. The effectiveness of the current legislations is compromised because of inadequate labour inspections, poor awareness among both workers and employers, poor grievance-redressal systems and inconsistencies in following the crèche and workplace requirements. The significance of legal rights is only realized when women can know them” be able to assert and engage the rights without the threat of being lynched or lose their jobs. With such awareness, available complaint channels, increased surveillance and penalty measures on offending are vital elements towards maternity justice.

This means that the study finds maternity protection to be more of a social responsibility as compared to an obligation that individual employers have towards them. State, employers, social-security institutions, families and society collectively need to be a part of establishing a setting where motherhood and employment are not mutually exclusive. Antenatal family living and childcare initiatives, flexible work schedules, nursing programs, and joint parenting could go a long way in enhancing female retainability in the work-force following child-birth.

The aim of maternity law must ultimately not only be giving a certain amount of paid time but that there should be real employment protection during pregnancy, child birth and the postnatal

care. India has successfully developed a forward-looking legal and constitutional basis towards attaining this goal, however, the remaining is how to convert the formal rights into actual equality. There is a need to overcome the dissonance between law and lived reality by providing universal and inclusive protection of maternity, especially of women in non-standard and informal jobs, enhanced enforcement, sustainable funding and increased institutional responsibility. Maternity protection must hence be considered as a part and parcel of decent work, social security and gender justice. By making sure that no woman is no longer obliged to decide between motherhood and economic self-sufficiency, a promise of equality and dignity was not only meant to get fulfilled under the constitution but it would also allow the Indian labour market to be more inclusive, more productive and more socially just.
