



Maternity Leave: A Constitutional Right of Female Students

Biju Antony

(Asst. Professor, BSOLS, Choondy, Kerala;
Research Scholar, JJT University, Rajasthan)

Suranya S Kumar

(Asst. Professor, BSOLS, Choondy, Kerala;
Research Scholar, JJT University, Rajasthan)

Abstract

The welfare of mother and child is very important in every civilized society and it can be established only through guaranteeing the bread earning source. Women work force have many challenges of motherhood phenomena implanted by the creator in them as a blessing. The blessing becomes a hurdle if the society does not consider procreation as a sacred sign. The international law and many constitutions of civilized society have realized the importance of female workforce for welfare of individual, society, state and its economy. To alleviate and protect the challenges that are faced by women in their career, the Maternity Benefit Act is introduced. The notion of MBA is an outcome of ILO in the year 1919 and it sprang to many constitutions of international community. The research article is developed from the history of MBA, its development, moved ahead with the necessity of main streaming of the women workforce with data, precedents of courts and its further extension and application in Indian Universities. Education is the foundation of all growth and development of individual, society, state and it is a constitutional fundamental right. Equal opportunity in education of women enhances the heights society as welfare society. The research article is developed with primary as well as secondary sources. It is a doctrinal research article.

Key Words: Maternity Leave; women's workforce; Maternity Benefit Act; working woman; equal opportunity; maternity benefit precedents; women empowerment; Constitutional Right.

INTRODUCTION

Maternity leave is the protective leave legally permitted before and after the birth of the child to a mother for the welfare of both of them. It is an internationally accepted humanitarian, social and legal right. The notion of maternity leave had its impetus from the 3rd convention of the International Labour Organization (ILO) in the year 1919. It had its follow up in the ILO conventions held in the years 1952 and 2000. According to the 2000 convention (No. 183) the term maternity benefit means the leave that is to be given to a child bearing woman with guaranteed salary which extended to medical insurance, job protection, non-discrimination and right to breast feeding (Oceanio, n.d.). It has become part and parcel of the legislation of the members of the international community during the 20th century as maternity protection acts. Right to equality and equal protection of law for a dignified life is a fundamental right imparted by the constitution of India. The ultimate purposes of the maternity leaves are to safeguard the dignity of women's

motherhood, social acceptance of motherhood, provide circumstances for the health care of mother and child, to attend the motherly duties without any apprehension of her life engagement, to protect her right to continue self-reliant and economically safe now and in future.

NOTION OF GENDER MAIN STREAMING

Gender equality is an internationally accepted concept which imparts all human beings though varied in gender has equal right, opportunities and responsibilities. Gender inequality is an age-old social phenomenon which is always hindered the progress of the society and its welfare. Realizing the hazards of gender discrimination, the international community has raised its voice for the upliftment of women flock as well as transgenders which would amount more than half of the total world population. In the year 2014 as per the international statistics 143 states have opted and concreted the notion of 'gender equality' and made part of their constitution(What's the Goal Here?, n.d.). The sporadic effects of gender inequalities are poverty, unemployment, security, child marriage, health care deprivation, division, growth of criminality, limbing of social and economic growth(Nomoto, 2017). The notion of gender main streaming through the implementation of international treaties and constitutional provisions of the country is to empower woman personally, politically, socially and economically. It is a streaming to control the destiny of women by themselves. The article 15 (3) promote gender streaming which support the empowerment of women through protective laws and further article 21 considers right to reproduction as a fundamental right to privacy, self-respect and physical integrity of a woman(Dr Dhananjaya Y Chandrachud, 2022). Basis of career founded on education and it is essential to extend maternity benefit to all female students who are over menstrual age so that they may overcome the menstrual stress and strain.

HISTORY OF MATERNITY BENEFIT IN INDIA

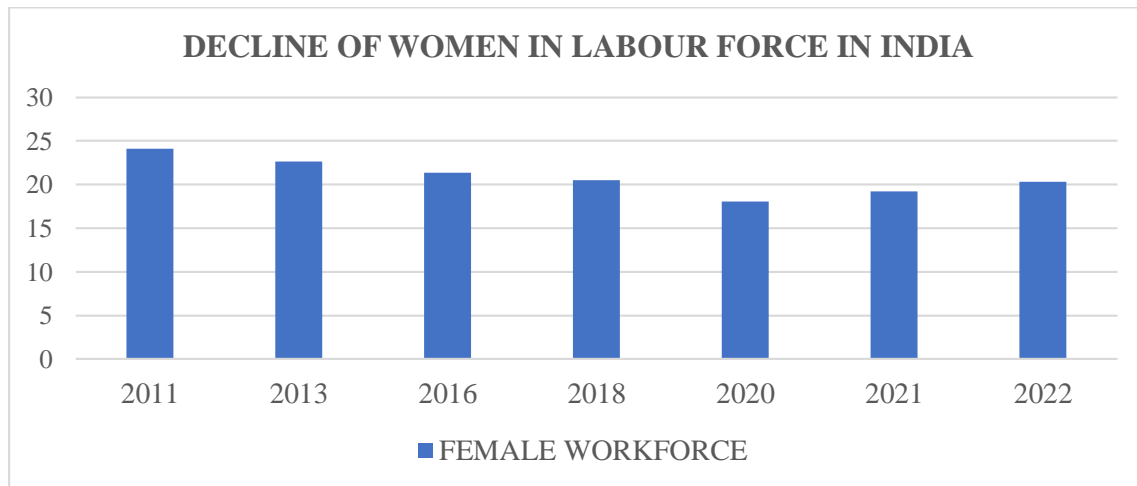
The waves of ILO 1919 had effect all over the world including India. There should be an equilibrium in adequate child rearing as well as safety of women life. Conception of child should not tamper the future of women nor the child. At present 120 countries of the world extent paid maternity leave to women. The maternity benefit notion existed in India long back and a clear trace can be fetched from the year 1929 when N.M. Joshi proposed a Maternity Benefit Bill with the number 31/1924 in the central legislature of India and it was accepted by the legislation. There was also a women movement preceding to establish maternity rights in the steal factory of Jamshedpur in the year 1920. As a continuation to the efforts central government had taken initiative to introduce the Mines Maternity Benefit Act, 1941, Employees State Insurance Act, 1948; Plantation Labour Act, 1951 and it eventually opened the door for introducing the Maternity Benefit Act (MBA) in the year 1961. The only purpose of MBA,1961 was to regulate, legalize and codify the maternity benefit of women before and after the birth of a child all throughout the Indian Territory(Venkata Vara Prasad Janjanam, 2018). Realizing the ground reality of maternity benefit the central government further amended the MBA in the year 2017 and it came into force on 1st April 2017 with stringent provisions which would do much to assist the needs of pregnant woman at their prenatal as well as postnatal period(XP, n.d.). In the amend the maternity leave span was increased to 26 weeks instead of 12 weeks(*Maternity Benefit Amendment Act,2017, n.d.*).

The MBA, 2017 extended its platform to the case of legally adoptive mothers also. The act ensures that women have guaranteed right to carry out their career after the prescribed leave of maternity benefit. It also enabled them to take a halt for delivery and continue to carry out the career to which they are engaged. The concept of work from home is also included in the amendment act, 2017 if employers and employees are satisfied with the duty and nature of the work assigned to the employees. The Kannur university in the year 2019 gave a direction in its circular regarding maternity leave to female students of the University and the leave is extended up to 6 months and special consideration was given for readmission of female students(Kannur University, 2019). Other universities of India have further started

to accommodate the instruction of UGC regarding the maternity leave and menstrual leave for the female students for building up a female friendly campus.

IMPACT OF FEMALE WORK FORCE

The impacts of female work force play a very major role in the development of the economy of a country. All over the world the female growth rate of employees is growing fast in all walks of employment. The world employability rate in the year 2022 is 51.44 while it was 41.25 percent in the previous year. It is quite thunderstriking to the Indian Economy that its female labour force is far behind the international average and it is only 20.3 percent in the year 2022. It is alarming that only 9 countries in the world are having less than that of the female labour force of India. Long term trends indicate that the neighbouring countries such as Sri Lanka, Pakistan and Bangladesh have a better participation of female workforce than India and the backbone of Indian economy is shaking due to slow rate of female workforce.



The female workforce employed in India in the year 2011 was 24.51 and it had graduation decrease into 22.65 percent in 2013; 21.35 percent in 2016; 20.53 in 2018; 18.06 percent in 2020 and 19.23 in 2021 and 20.3 percent in 2022. It is far less than the world female employment ratio and it is a negative sign of the Indian Economy and growth. It is high time to foster gender equality to increase female workforce which is an inevitable to the economy (Chahal et al., 2020).

PRECEDENTS OF MATERNITY BENEFIT IN INDIA

The empowerment of women is an essential factor of the development of any nation. The honourable courts of India especially constitutional courts of India have made verdicts for the upliftment and protection of women force in all realms of their career. The female work force growth rate of a country would solely depend upon the work friendly atmosphere created by the state. The following are the noteworthy precedents made by the constitutional courts of India for the welfare of women and for better working atmosphere. In *Preeti Singh v. State of UP* the apex court made it clear that it is the duty of the employer to grant maternity leave to female employees and there is no 'minimum duration of two years between pregnancy' inserted in the U P Maternity Benefit Act is ultra-virus to the central Act and the term would defeat the object of the central maternity Act (Justice Saurabh Lavania, 2021). In *Richa Shukla v. State of U. P.* also the apex court has made the verdict that it is the duty of the employer to give an average daily earning for the period of maternity leave as per the provisions of the Maternity Act (Justice Abdul Moin, 2019). In *Hamsaanandini Nanduri v. Union of India* the Apex Court of India went deep into the constitutional validity of Section 5 (4) of the MBA, 1961 since the section stated that mothers of adoptive children would receive there may be antibranes towards adoptive children and orphans and directed to issue notice to the respondents (*Hamsaanandini Nanduri vs Union Of India*, 2021). In *Sunita v. M/o Law and Justice and Company* case the apex court of the country decided that maternity leave must be granted to surrogate mothers as well as commissioning mothers which is essential to create a love bond with a child and

its mother. The ultimate object of maternity leave is to avail social justice as well as to safeguard the fundamental right of women and children for a dignified life (Justice K N Shrivastava, 2018).

In a PIL filed by Adv. Shailendra Mani Tripathi (IA 310/2023 of SC) filed a PIL to direct all states and Union Territories to allow menstrual pain leave to female students and working woman. In this case however the apex court of India declared that the matter is related with the state policy and the petitioner may approach the Union Ministry of Woman and Child Development for the concerned Interlocutory Application (PIL of Shailendra Mani Tripathi, 2023). The court further reiterated verbally that if it is allowed it would decrease further employment of women since companies would be reluctant to appoint females.

APPLICABILITY AND ADMISSIBILITY OF THE MBA

Section 2 of the MBA, 1961 speaks about the applicability of the Act. The Act is applicable to all institutions in which 10 or more employees are employed directly or indirectly to carry out the mission of the institution. The act also instructs for the facilitation of creche by the institution for welfare and the interest of the children and mothers wherever there are 50 or more employments are done. The facilities of creche may be a separate wing or attached to it and it should be in the vicinity of the institution. The eligibility of MB is to the employees who have been working in the institution for minimum of 80 days in the last 12 months of the date of claim. The salary at the time of maternity leave would be the average daily wage of the employee for the period of actual leave as per the MBA, 1961 (*MATERNITY BENEFIT ACT, 1961*, n.d.).

MATERNITY BENEFIT TO EDUCATIONAL INSTITUTIONS IN INDIA

The University Grant Commission (UGC) has given clear mandate on the circular issued on 14th December 2021 concerning granting of maternity leave to female students. The UGC circular bearing the number D. O. No. 21 – 116/2021 (CPP-II) states that maternity leave up to a period of 240 days must be granted to all candidates who are making Ph. D. or M. Phil. The maternity leave also means child caring leave which are essential to create a rapport and care with the child and the infant. The UGC regulation further directed all its higher educational institutions, namely universities affiliated to it to make appropriate rules and regulations regarding maternity leave to students who are undergoing various courses especially in respect of the relaxation of their attendance, relaxation of date regarding submission of examination form or any other requirement which are necessary to comfort prenatal and postnatal health care of the female students and their children (University Grants Commission, 2021).

In order to boost gender equality and equal opening for female students in academic level and to reduce prenatal and postnatal hindrances faced by female students, universities of India has taken adequate relief leaves according to the direction of UGC and even before that. The Calicut university has issued a notification on 24th September 2014 issued a notification (U.O. No. 9243/2014/Admin) that the female students will be permitted to take readmission without any readmission fee if the female students have made year drop due to maternity leave (Calicut University, n.d.). It is considered as the first Indian University to grant long term maternity leave to female students of the University. The Calicut University, Kerala has granted 180 days of maternity leave as per the circular issued on 14th February 2022 (U.O. No. 4268/2022/Admin) (*Calicut University- 180 Days Maternity Leave*, n.d.). The university also consider the absence in examination due to maternity as the regular examination next time instead of supplementary examination. The Mahatma Gandhi, Kerala has given 60 days of Maternity leave for female students for prenatal and postnatal care of the child as per the circular issued on 16th January 2023. The university is magnanimous to permit 14 days of maternity leave if it is required for a student, due to any trouble such as miscarriage, medical termination etc. (No. 490/AC A 1/2023/MGU) (M G University, 2023). Right to education is a fundamental right and to attain it, it is essential to have the legal protective wings to overcome maternity and menstrual stress and strain at the time of education as well as at the time of career.

CONCLUSION

The international and the national laws of every civilized society considers each and every human being as equal in spite of gender differences. Though women face many physiological and psychological challenges they are able to cope well with men if they are given sufficient support and protection. The article 15 of the Indian constitution provide ample provisions to protect the rights of women and the protection is always do great to the nation as well as the society in its social as well as economic welfare. MBA is to safeguard and prioritize the career as well as the maternal role of women. It is an impetus to reduce the struggles of mothers, promote motherhood, welfare of mother and child stabilize the economic growth of the nation. Through the introduction of MBA, Indian women work force is legally concreted with the right to work as well as right to education envisaged as fundamental rights of the constitution of India in article 15 and is further regularized through equal opportunity in article 16, equal protection in article 14 and right to dignified life in article 21. The extension of MBA to universities further enhances the opportunity for women to have a better accessibility to education as well as their future career.

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