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# Mothers at Work: Analysing Labour Law Protections for Working Mothers in India

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## ABSTRACT

*The traditional Indian society observed a normative gender role, where men were wage earners and women were workers at home. However, with the advent of modernisation and industrialisation, the need for a more gender-egalitarian economic arrangement was felt. This resulted in the dual-breadwinner model, where women, like men, stepped outside their domestic realm for paid work. Although participation of women in the workforce initially remained significantly low, Census 2011 records the ratio of female workers to be 25.51%. Among these women are also mothers, who carry the double burden of caregiving duties to their children and responsibilities towards the paid employment. This peculiar twofold challenge faced by working mothers call for exclusive protective measures in the social welfare legislations safeguarding labour rights.*

*The Indian Constitution under Article 42 protects mothers in workspaces by directing the State to “make provision for securing just and humane conditions of work and for maternity relief.” The aforesaid Directive Principle is manifested in ‘the Maternity Benefit Act, 1961’, which is a ground-breaking legislation entirely for maternity relief. While ‘the Employees’ State Insurance Act, 1948’, too provides for maternity benefits, the Parliament through noteworthy labour legislations like ‘the Factories Act, 1948’, ‘the Plantations Labour Act, 1951’, ‘the Beedi and Cigar Workers (Conditions of Employment) Act, 1966’, and other kindred legislations, additionally organise for child care facilities for working mothers. International instruments like ‘Maternity Protection Convention, 2000 (No. 183)’ of the International Labour Organisation contribute considerably to the welfare of working mothers. This paper aims to complementarily and critically analyse the current laws and the forthcoming Labour Codes basing on ground reality.*

**Keywords:** *maternity relief, working mothers, welfare legislation, labour rights*

## I. SOCIO-HISTORIC OVERVIEW

*“No employer can perceive childbirth as detracting from the purpose of employment. Childbirth has to be construed in the context of employment as a natural incident of life...”*

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- Dr Justice Dhananjaya Y Chandrachud<sup>2</sup>

The traditional primitive societies around the world have long celebrated a standardised practice of gender roles, especially in employment. As for men, they earned the bread for the family by participating in paid employment, and women were the quintessential homemakers and caregivers basing their work within the domestic realm. Therefore, this gendered apportionment of labour involved men earning the wages by working in the public domain, while women engaged in the unpaid domestic chores.

Friedrich Engels in his much-appreciated work, '*The Origin of the Family, Private Property and The State*'<sup>3</sup> navigates the development in gender roles in labour through different stages on economic development in the society. He observes that in the stages of pre-historic culture, which included savagery and barbarism, men were hunters and women were gatherers. India too, in its conservative days, associated with this dogma. However, with the global modernisation and industrialisation that fructified in the nineteenth century, there was a remarkable shift from the agrarian traditionalist culture to a more urbanised way of life. The Industrial Revolution transubstantiated the primitive social, educational, cultural, economic and political set up with installation of upgraded trade and commerce *via* factories and industries, and developments in science and technology. This new advent demanded expansion of cities, human resources and *laissez-faire*. The erstwhile gender-based division of labour saw a notable variation and women were not anymore workers at home. The ensuing capitalism necessitated the dual-breadwinner concept, wherein both the husband and wife were required to assume the role of wage earners to sustain the family in the new economic system.

The shift was anything but seamless for women. Owing to the residual effects of the traditional gender roles, while the women stepped out for work that acknowledged their services with monetary rewards, their responsibilities at home saw no changes. Amongst these working women were also mothers. Unlike in the case of men, this transformation for women doubled their burdens with an abundance of caregiving duties towards their children and elders at home, and accountability towards their salaried employment. It was only pivotal and pressing that welfare laws be framed and fulfilled to protect women at workplaces from hostility, discrimination and regression, courtesy their inability to attend to their additional domestic duties.

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<sup>2</sup> *Deepika Singh v. Central Administrative Tribunal and Others*, 2022 SCC OnLine SC 1088 (India).

<sup>3</sup> FRIEDRICH ENGELS, *THE ORIGIN OF THE FAMILY, PRIVATE PROPERTY AND THE STATE* (Penguin Group, 2010) (1884).

## II. INTERNATIONAL PRINCIPLES SAFEGUARDING MATERNITY WELFARE

‘The Maternity Protection Convention, 1919 (No. 3)’ of the International Labour Organisation (“ILO”) is one of the earliest international documents that made provisions pertaining to “*women’s employment, before and after childbirth, including the question of maternity benefit*”<sup>4</sup> in industrial and commercial undertakings. Article 2 of the said Convention includes all female persons, irrespective of their marital status, age or nationality within the term ‘woman’. It single handedly elevated the international labour standards of gender parity by protecting working women’s rights during maternity period. It prohibited employers from dismissing expecting mothers from their job on the grounds of availing maternity benefits like guaranteed pre-natal and post-natal leaves, medical bonus, nursing breaks, *et al.* Earlier than ILO’s Convention No. 3 was the 1908 judgment of the Supreme Court of the United States in *Muller v. Oregon*<sup>5</sup>, wherein the Court while protecting limited working hours for women is quoted saying, “*As healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race*”<sup>6</sup>.

The Swiss Factory Act of 1877 also records one of the oldest provisions for maternity reliefs with a guaranteed eight-week maternity leave. The United Nations General Assembly adopted the ‘Convention on the Elimination of All Forms of Discrimination against Women’ in the year 1979. The Convention in Article 11(2) records protection of women from discrimination on the grounds of marriage or maternity. It directs the State Parties to ensure women’s effective right to work by prohibiting termination from or discrimination in work based on marital status, pregnancy or maternity leave. It further directs special protection to women during pregnancy, including paid maternity leave without any jeopardy to job security or seniority as well as enhancing social services that can enable parents to pursue a balanced work life and public life along with family obligations.

The International Labour Organisation, being the principal standard-setting body on matters relating to labour, has been a steady advocate for maternity relief measures through its various conventions, primarily the ‘Maternity Protection Convention, 2000 (No. 183)’.

Improving on the ‘Convention concerning the Revision of the Maternity Protection Convention (Revised), 1952’, ‘the Maternity Protection Convention, 2000 (No. 183)’ extends its application to even women working even in atypical forms of dependent work<sup>7</sup>. Article 3 provides for

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<sup>4</sup>C003 - Maternity Protection Convention, 1919 (No. 3), Preamble.

<sup>5</sup> *Muller v. Oregon*, 208 U.S. 412 (1908).

<sup>6</sup> *Id.* at 421.

<sup>7</sup> C183 -The Maternity Protection Convention, 2000 (No. 183), Article 2.

health protection of pregnant and nursing female employees by directing the Members to excuse them from performance of works that shall be prejudicial to the safety of the women or her children. In addition to prenatal and postnatal maternity leave of a minimum of fourteen weeks under Article 4, the Convention also directs for maternity leave in the occasion of ailments or complication resulting from pregnancy or childbirth under Article 5. According to Article 6 of the Convention, women availing for the aforesaid maternity leaves are authorised to receive cash benefits (including medical benefits) in a manner confirming with their respective national laws, ensuring that she is able to maintain herself and her child with decent standards of living and proper health. Article 8 provides for protection of employment from termination, detrimental treatment or demotion on the grounds of pregnancy, childbirth and associated adjustments in her conditions of work.

behaviour.

### III. INDIAN LABOUR LEGISLATIONS REINFORCING MATERNITY RELIEF

In Indian culture, motherhood is perceived to be not just a usual biological course in a woman's life, but is almost equated to divinity. The Hindi word *Mā*, meaning 'mother', is not only used to address one's biological mother, but is also affectionately attributed to Hindu goddesses. Furthermore, as a reflection of true patriotism, even the country is embodied as *Bharat Mātā*, meaning Mother India in Hindi.

The traditional appreciation for mothers shapes the Indian scenario of working mothers considerably. The attitudes towards mothers goes well beyond laws, legal documents, policies, and deeply encapsulates emotions and symbols that halt the norms of women as a caregiver and a nurturer of the family. Such culturally and spiritually constructed notions complicate the realities that working mothers contend with, where the engrained notion of the selfless mother collides with the obligations of a professional career. Hence, although there have been promises in the legal provisions towards working mothers, the socio psychological context of motherhood enhances her experience as a working woman in India.

The Constitution of India is the grundnorm from which all laws promoting gender justice take their guidance. The Fundamental Rights secure reproduction rights and socio-economic inclusion of expecting mothers specifically *via* coveted principles of intelligible differentia and rational nexus under Article 14. Acknowledging the differences in biological anatomy between male and female, it is only necessary that maternity assistances, and customised and cooperative conditions of services be extended to pregnant working women, not as a form of charity but as a guarantee. Therefore, discriminatory treatment towards pregnant women and penalty for

pregnancy like termination of services are not only unconstitutional but also capricious. This was the ruling of the Apex Court in *Air India v. Nergesh Meerza & Ors.*<sup>8</sup>. Article 15(3) of the Constitution of India empowers the State to make special provisions for women and children. Consequently, beneficial legislations providing for maternity relief, *inter alia*, the 'Employees' State Insurance Act, 1948', along with the 'Maternity Benefit Act, 1961', became manifestations of this constitutional promise. Article 16 prohibits sex-based discrimination in matters of employment or office under the State. Therefore, denial of maternity leave, and discrimination in work allotment and promotions owing to availing of maternity benefits strikes down the very root of the instant beneficial provision. While protecting the right to practice any profession, Article 19(1)(g) defends the women's right to work even in occasions of pregnancy and maternity. Under Article 21, the right to life with dignity of the working mother is promoted by ensuring prenatal and postnatal care, breastfeeding support via nursing breaks and child care centres at workplace. The Supreme Court in *Suchita Srivastava & Anr. v. Chandigarh Administration*<sup>9</sup> has rightfully observed that, "*A woman's right to make reproductive choices is also a dimension of 'personal liberty' under Article 21 of the Constitution.*"<sup>10</sup>

The Directive Principles of State Policy too have very prominent provisions that guide the State's legislative faculties to assure maternal justice. Article 39 (e) directs State policies to secure health and strength of women workers, and that no citizen, owing to economic need be compelled to work in employments unsuitable to their strength. Article 39 (f) directs the State to frame policies providing for opportunities and facilities to children to develop in a healthy manner and with freedom and dignity. It is pivotal to note here the importance of a mother in fulfilling this constitutional object which cannot be achieved if she is economically forced to absent herself from child rearing. Article 42 directs the State to secure fairness and humaneness in conditions of service, and also to extend maternal care and support. The Constitution, therefore, establishes that maternity is not a private affair but something that demands public responsibility and sensitivity, reaffirming the ancient proverb which says, '*it takes a whole village to raise a child*'.

'The Employees' State Insurance Act, 1948,' is a pioneer legislation in the matters of covering financial security *via* maternal attention and assistance to working women. The women employees insured under this Act are eligible for maternity benefits by way of periodical

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<sup>8</sup> *Air India v. Nergesh Meerza & Ors*, AIR 1981 SC 1829 (India).

<sup>9</sup> *Suchita Srivastava & Anr. v. Chandigarh Administration*, [2009] 13 SCR 989 (India).

<sup>10</sup> *Id* at 1008.

payments accruing to hundred percent of average daily wages for a total of twenty-six weeks combining both prenatal and postnatal confinements. The women employees also get additional benefits such as medical care including medicines, diagnostics and hospitalisation through Employees' State Insurance hospitals and dispensaries. Benefits are extended in further occasions such as miscarriage, sickness arising out of pregnancy, and in case of premature birth of a child. The Employees' State Insurance Corporation disburses the said benefits directly to the beneficiaries.

'The Factories Act, 1948', is one of the first labour legislation in independent India to safeguard the rights of women factory workers. The protections range from prohibition of employment of women in identified dangerous operations and processes<sup>11</sup>, to dedicating child care facilities like creches for children under the age of six in factories ordinarily employing more than thirty working women<sup>12</sup>. The provision of creches is not just a mere facility but a binding obligation. It must be ensured that creches must be maintained in suitable rooms that "*shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.*"<sup>13</sup> The State Governments are further empowered to make delegated legislations prescribing the location and specifications in respect of construction, furniture, and other equipment of the creche rooms along with supplementary amenities like washing room, changing room, free milk and refreshment.<sup>14</sup> The Act also directs the employers to provide necessary intervals for nursing breaks to young mothers.<sup>15</sup> To ensure work-life balance for women, the Act also places restrictions on their working hours, wherein no woman shall be required to work from 6 AM to 7 PM in any factory, notwithstanding exemptions for women working in fish-curing or fish-canning factories to prevent spoilage to raw materials.<sup>16</sup>

'The Beedi and Cigar Workers (Conditions of Employment) Act, 1966', mandates every industrial establishment ordinarily employing more than thirty women employees to maintain suitable rooms to serve as creches for the children, falling below the age of six years, of such women workers. The Act, in similar tune with 'Factories Act, 1948,' gives additional directions for maintenance of the creches requiring them to be well lit and ventilated, hygienic, and staffed by women care givers to attend to the children, while also designating legislative powers to the

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<sup>11</sup> The Factories Act, 1948, §27, 34 and 87.

<sup>12</sup> Id at §48.

<sup>13</sup> Id at §48 (2).

<sup>14</sup> Id at §48 (3)(a), 48 (3)(b), 48 (3)(c).

<sup>15</sup> Id at §48 (3) (d).

<sup>16</sup> Id at 66.

State Government to frame more detailed rules for safeguarding the women and child welfare in beedi and cigar establishments, sectors that are often associated with unorganised labour and ambiguous working conditions. In coordination with the approach adopted in the aforesaid legislation, ‘The Contract Labour (Regulation and Abolition) Central Rules, 1971’, and ‘The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980’, also meticulously frame out guidelines for the standards of construction and maintenance of child care facilities and creches. It is pertinent to note here that these delegated legislations cater to workers who are amongst the most vulnerable in the informal workforce that experience considerable job uncertainty and inferior conditions of services. Extending child care support to working mothers within such labour segments represents the highly inclusive, equitable and noble intention of the beneficial legislators. Adding to the list of legislations protecting the concerns of working mothers in unregulated sectors is the ‘Plantation Labour Act, 1951’, which provides for detailed provisions on maintenance of creches in every plantation employing fifty or more women workers<sup>17</sup>.

‘The Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996’, also make provisions for establishment of creche accommodations in construction sites employing fifty or more female building workers<sup>18</sup>. Furthermore, the Act provides for maternity benefits to be disbursed to female beneficiaries<sup>19</sup> and counts this as a pivotal function of the State Welfare Boards constituted under its provisions.

‘The Maternity Benefit Act, 1961’, is the flagship legislation for fortification of rights of mothers at workplace. The Act is known to have had a very wide application, courtesy precedents like *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Ors.*<sup>20</sup>, wherein the Supreme Court extended the benefits under the Act to women working in muster roll albeit they did not feature among regular employees, stating, “*To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working*

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<sup>17</sup> The Plantation Labour Act, 1951, §12.

<sup>18</sup> The Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, §35.

<sup>19</sup>Id at §22(g).

<sup>20</sup> *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Ors*, AIR 2000 SUPREME COURT 1274 (India).



woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear, of being victimised for forced absence during the pre- or post-natal period.”<sup>21</sup> Aligning with the philosophy of sociological school of jurisprudence, the Act went through a major overhaul with the Maternity Benefit (Amendment) Act, 2017, to incorporate substantial societal changes. The amendment Act has introduced provisions to safeguard the concerns of adoptive mothers as well as women commissioning surrogate mothers to have children<sup>22</sup>, thereby legally recognising them within the general ambit of ‘mothers’. Also, there is a substantial increase in the duration of paid maternity leave which has been extended to twenty-six weeks<sup>23</sup> from the earlier duration of twelve weeks. It is to be noted that in case of women having two or more surviving children, twelve weeks of maternity leave is sanctioned<sup>24</sup>. Women workers may also come with a mutual arrangement with their employers for availing work-from-home facilities for a quantified period following their authorized maternity leave<sup>25</sup>. In addition, workplaces employing fifty or more women workers are expected to provide facilities for creche within the prescribed distance<sup>26</sup>. Apart from leave for pregnancy, miscarriage, medical termination of pregnancy, or illness arising out of such occasions, or premature birth of child, women can avail two weeks leave following tubectomy operation post the 2017 amendment<sup>27</sup>. It is pertinent to observe that despite being a non-ratifying country to The Maternity Protection Convention, 2000 (No. 183), India boasts of strong maternity protection laws.

‘The Code on Social Security, 2020’, which amends and consolidates the ‘Maternity Benefit Act, 1961’, along with seven other social security labour legislations, also harbours workers in the unorganised sector like gig workers, who too can now avail the benefits of maternity relief.

#### IV. GROUND REALITY MADE BETTER BY THE JUDICIARY

Regardless the various maternity protection laws, the ground reality reflects the society’s rigidity to changing times and legal directives. The perspective in the workforce on hiring a woman candidate remains unstable and often biased. The judiciary, however, has been a great facilitator of change by pronouncing progressive judgments and calling out on the stubborn workplace ideology. In the case of *Mrs. Neera Mathur v. Life Insurance Corporation of India*<sup>28</sup>,

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<sup>21</sup> Id. Para 30

<sup>22</sup> The Maternity Benefit Act, 1961, §5(4).

<sup>23</sup> Id at §5(3).

<sup>24</sup> Id.

<sup>25</sup> Id at §5(5).

<sup>26</sup> Id at §11A.

<sup>27</sup> Id at §9A.

<sup>28</sup> *Mrs. Neera Mathur v. Life Insurance Corporation of India*, AIR 1992 Supreme Court 392 (India).

the petitioner was discharged from services in Life Insurance Corporation of India upon returning from her maternity leave on the grounds of unsatisfactory services and not disclosing her personal facts pertaining to menstruation and pregnancy in the declaration form she filled in her entry stage to the central government organisation. The Apex Court condemned the regressive and insensitive practice of requiring women candidates to answer questions intrinsic to their privacy, observing, “*When we are moving forward to achieve the constitutional guarantee of equal rights for women the Life Insurance Corporation of India seems to be not moving beyond the status quo.*”<sup>29</sup>

The application of the ‘Maternity Benefit Act, 1961’, experienced significant challenges in non-permanent work roles. There were considerable disparities in its implementation particularly in cases where the maternity leaves surpassed women workers’ contractual duration of service. In view of such discordances, the Supreme Court in *Dr. Kavita Yadav v. Ministry of Health and Family Welfare Department*<sup>30</sup> ruled in favour of protecting maternity benefits of women in temporary or contractual employments. Citing *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Ors.*<sup>31</sup> and *Deepika Singh v. Central Administrative Tribunal*<sup>32</sup>, the Court in this landmark judgment observed that female employees are entitled to full maternity benefits beyond the duration of their employment.

Aon<sup>33</sup> in 2024 conducted one of the largest pan India study surveys of working women, namely, Aon India's 2024 Voice of Women Study, wherein it very categorically summarised the ground reality of maternity benefits and the impacts of availing the same in the Indian labour world. In its Chapter titled, “*Paying the maternity penalty*”, it records one in three women faced a career setback after returning from maternity, where 75% experienced a career setback of up to 2 years and 25% experienced a career setback of up to 3 years and more. It states that, “*The ‘maternity penalty’ permeates multiple facets of a woman's professional life, significantly impacting role assignments, performance evaluations, promotion and advancement opportunities, and compensation structures. The compounding impact across multiple dimensions creates a formidable barrier to career progression.*”<sup>34</sup> The survey report further finds that women who engaged in constructive dialogue with their managers on prenatal and postnatal career strategy

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<sup>29</sup> Id.

<sup>30</sup> Dr. Kavita Yadav v. Ministry of Health and Family Welfare Department, 2023 SCC OnLine SC 1067 (India).

<sup>31</sup> Supra note 31.

<sup>32</sup> Deepika Singh v. Central Administrative Tribunal, 2022 SCC OnLine SC 1088 (India).

<sup>33</sup> A British-American professional services firm offering expertise in Risk Capital and Human Capital.

<sup>34</sup> Aon India's 2024 Voice of Women Study 33.

experienced positive outcomes across various professional dimensions after joining back after the maternity leave.<sup>35</sup>

In *K. Umadevi v. Government of Tamil Nadu*<sup>36</sup>, the Supreme Court vide judgment dated May 23, 2025, set aside the impugned judgment of the Madras High Court declining maternity leave to a government school teacher in Tamil Nadu for her third pregnancy, observing that, “*The object of having two child norm as part of the measures to control population growth in the country and the object of providing maternity benefit to women employees including maternity leave in circumstances such as in the present case are not mutually exclusive. The two must be harmonized in a purposive and rationale manner to achieve the social objective.*”<sup>37</sup>

## V. CONCLUSION

The journey of the working mothers, as attested by historical, international and national realities, reveals a complicated interplay between socio-cultural expectations, economic exigencies, and changing legal structures. From the days of fixed gender roles in pre-industrial societies to the double-burden reality of contemporary women at work, the position of mothers within the labour market has changed drastically. India, even with its deeply ingrained veneration of motherhood and cultural symbolism, has long grappled to synthesize the societal ideals with the experiences of working mothers. The legislative reaction, most notably through constitutional provisions, welfare legislation such as the Maternity Benefit Act, 1961 and its amendment in 2017, and the general social security regime, has persistently sought to substantiate the dignity, health, and employment rights of mothers. However, legislative advances have to be accompanied by attitudinal shifts. The persistence of workplace discrimination, vulnerabilities of the informal economy, and the unseen burden of unpaid domestic work underscore the need for strengthened implementation, employer sensitisation, and societal change. However, the positive intervention of the judiciary continues to play a crucial role in filling the vacuum between the legislations and its implementations.

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<sup>35</sup> Id at 34.

<sup>36</sup> *K. Umadevi v. Government of Tamil Nadu*, 2025 INSC 781 (India).

<sup>37</sup> Id at para 35.