

**STUDY OF MATERNITY BENEFITS IN INDIA IN LIGHT OF LIBERAL FEMINIST APPROACH
WITH REFERENCE TO SOCIALISM: A COMPARATIVE ANALYSIS**

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Abstract

Feminism is the anti-thesis of masculist.¹ To put it simply, feminism means rekindling the prowess of women and bracing womanhood in ways and means that were condemned in society in earlier times.² The pervasive norms concerning menstruation, childbirth and menopause have been dynamically inculcated recently, owing to feminism. Feminism can be defined as a movement to end the gendered dichotomy which has restricted women to beholden within the four-cornered domain of their sex and its apparent assigned role. This paper attempts to throw light on the works of feminist jurists who have put forward their opinions on maternity benefits and the conception of liberal feminism, which seeks women's equality in both social and professional and interpersonal spheres. The paper furthermore endeavours to discuss the legislation on maternity benefits in India and abroad, especially USA, UK, Singapore, and Australia. The paper penultimately concludes the feminist debate and lastly provides suggestions for the inculcation of liberal feminist views in the legislation.

Keywords - feminism, liberal feminist, maternity benefits, childhood care, International Labour Organisation, USA, UK, Singapore, Australia.

I. INTRODUCTION

Feminist jurisprudence is the branch of law that purports feminism and class legislation. It combines all the needs of women, including the genders which identify with women, like trans-man, trans women, and queer, to name a few and recognizes their rights.³ The gender norms have segregated societies into being matriarchal

¹ Jackson E, "Feminist Legal Theory" (1997) 5 Feminist Legal Studies 121 <<http://dx.doi.org/10.1007/bf02684861>>

² Jesseman C, "Nancy E. Dowd and Michelle S. Jacobs (Eds.), Feminist Legal Theory: An Anti-Essentialist Reader; Wendy McElroy (Ed.), Liberty for Women: Freedom and Feminism in the Twenty-First Century" (2004) 12 Feminist Legal Studies 113 <<http://dx.doi.org/10.1023/b:fest.0000026116.49542.29>>

³ George D. Pappas Jurisprudence Lecture Feminist Jurisprudence February 2006, Esq. International Center for Legal Studies page 13

and patriarchal. The cost that is born by a woman to carry a child in terms of physical labour is something which cannot be equaled or calculated. Having a child is one of many wonders of the world. However, this responsibility is only made biologically possible by a mother. With the growing industrialization, globalization and capitalism, men and women are considered equal and integral to the growing economies. Employment with the cut-throat competitive tendency in the country carries with itself so much value that it could not be sacrificed even for childbirth.

There are multifold theories in the field of feminist jurisprudence wherein several contributors, from jurists to philosophers, authors, and professionals, have propounded the purpose of legislation relating to women and the role and status of women in societies.⁴ one of the most prominent theories is that of liberal feminism which promotes that idea that Instead than only having nominal equality, women now have true equality in all spheres of life. Individual freedom is the top goal, and there shouldn't be any excessive pressure due to political, economic, or legal restraints. Liberal feminism, according to Jagger, focuses more on topics like equality in the workplace, education, and political rights.⁵ In India, maternity benefit was a concept that laid its foundation even before the making of the Constitution, owing to the enraging feminist debate.

Neeta Khurana has participated in this gendered debate by questioning society's notions of when a woman is accepted as an individual. Is it only the criteria of childbirth which makes a female worthy of womanhood?⁶ The researcher also debates whether, for a woman, "being simply is not enough" for her to actually "become to be" a mother to claim her status as an individual in society. It is argued that the workplace alone acts as a battlefield for a woman to not only stand shoulder to shoulder with a man and work out her way in the workplace but also safeguard herself from sexual remarks, harassment, general disregard for belongingness to a weaker sex, and the possible discrimination arising out of it, apart from voluntary childlessness for professional or personal reasons which causes traumatic experiences to women in the workplace. Regardless, no legislation, per se, has shielded women in umbrella protection. In her work, "Introduction to Feminist Jurisprudence," Hilaire Barnett attempts to address the questions feminist jurisprudence has raised. According to John Rawls' theory of western democracy, the public and private realms of life must be separated so that the state cannot intrude on anyone's affairs.⁷ Individual rationality rather than a 'rational life plan' should also be a focus for the state. Another fundamental principle of the liberal democratic way of thinking is that no one should be allowed to violate another's freedom or equality because of their privilege.⁸

The more one works, the more benefits one reaps. But is this statement true when availing maternity benefits for a woman? Feminists propound that women should be treated equally and their choices should be respected. If a woman chooses not to avail of the maximum period of maternity benefits, is this invocation of her rights

⁴ Barnett H, Introduction to Feminist Jurisprudence (Routledge 1998)

⁵ Jeong-Sook Hahn, "Aleksandra Kollontai and Feminism: From Criticism of Liberal Feminism to Socialist-Radical Feminism" (2008) 18 러시아연구 287 <<http://dx.doi.org/10.22414/rusins.2008.18.2.287>>

⁶ Khurana N, "Feminist Perspective on Maternity Benefits: Disparities in Legal Jurisprudence" (2018) 6 International Journal of English Language, Literature in Humanities 76

⁷ Moon JD, John Rawls: Liberalism and the Challenges of Late Modernity (2014)

⁸ Auchmuty R, "Book Review: Feminist Legal History: Essays on Women and Law" (2012) 21 Social & Legal Studies 262 <<http://dx.doi.org/10.1177/096466391202100202>>

of personal preference, or is this cruelty to a child with a risk of rehospitalization? Studies have found that more than sixty percent of infants have been rehospitalized, of those women who have not availed the entire period for maternity benefits due to the risk of reduction of child mortality.⁹

Socialism in India

In India, feminism emanates from the ideas of socialism adopted as a preambular characteristic. Socialism means and includes that it is the responsibility of the state to bring about norms of equality in the country through social and economic revolution, ideals of which are also recognized under the Constitution's Directive Principles of State Policy, herein referred to as 'DPSP.' These principles were not merely the non-justiciable set of ideas defined in the law of the land. Still, these were the dreams and aspirations of the Constitution makers to be shaped into justiciable and enforceable legal and constitutional rights in the prospective time so that the Constitutional guidelines would evolve with the need of the time. These principles evoked the State to take positive steps for social justice, Free legal aid, employment rights, maternity rights, children rights, development of rural local self-governments, small industries, educational institutions, social and cultural protection, and recognition of some liberal intellectual rights concerning the applicability of a uniform civil code, and respect and adherence to the international laws and conventions. These have been recognized as statutory rights by bringing about favorable legislation by the State.

Since pro-woman legislation started to emerge in India owing to the socialistic tendencies of democracy, there has been a conventional dilemma on whether these legislations work on equality. Socialism has been formed from the purposeful interpretation of the Constitution, and social justice has come from the constitutional order of socialism. India's society, ideally regarded as a secular democratic socialist nation, does, in fact, exhibit socialism.¹⁰ The Indian Constitution is ostensibly a social constitution meant to usher in a socio-economic revolution.¹¹ The Indian Constitution's main objective and preambular goal are to promote fraternity. Also, the fraternity would support the nation's integrity and togetherness while elevating each person's dignity.

Furthermore, it is to be understood that the mere fact that such a person exists in society makes achieving social justice for everyone in every community necessary. An organization may guarantee such constitutional goals simply by virtue of its existence. Similar to maternity benefits, maternity benefits draw a qualification that a woman is eligible for benefits simply because she is pregnant and falls under the Act's applicability provision. Put bluntly, and it is determined that maternity benefits are equivalent to social fairness for pregnant ladies.

Socialism operates under two tenets: freedom of thought, speech, and belief; and equality of status and opportunity. When these narratives are viewed in the context of maternity benefits, it becomes clear that, in

⁹ Staehelin K, Berteau PC and Stutz EZ, "Length of Maternity Leave and Health of Mother and Child – a Review" (2007) 52 *International Journal of Public Health* 202 <<http://dx.doi.org/10.1007/s00038-007-5122-1>>

¹⁰ Omvedt G, *Reinventing Revolution: New Social Movements and the Socialist Tradition in India* (1993)

¹¹ Nabil Ahmad A and Karrar HH, "Capitalism, Nature, and Socialism in South Asia: Perspectives on Ecology from India and Pakistan" (2015) 26 *Capitalism Nature Socialism* 48 <<http://dx.doi.org/10.1080/10455752.2015.1067633>>

terms of equality notions, women have a right to protection under mandates of Article 15(3), which does not contradict the ideas of equality but rather serves as an enabling and safeguarding provision for the State to enact special laws for the protection of women and children. Nonetheless, it is up to the state to decide what qualifies as particular protections for women and children. The reason for this clause of Article 15(3) of the Indian Constitution was that women and children were always viewed as vulnerable. Given the situation, it was expected that the Indian society would act proactively and prudently in favour of women and children through its representatives and the Constituent Assembly. The law requiring maternity leave is not just supportive of women; it also places a strong emphasis on children. Despite the controversy surrounding the equality principles of Article 15(1), which forbids discrimination based on sex, Article 15(3) only adds a saving clause for the protection of women and children; Article 14 assures equality before the law and equal protection under the law. The landmark case of *Air India v. Nergesh Mirza* also highlighted the controversy linked to dismissing a woman solely because of her pregnancy.¹² The Court concluded that such laws that terminated women from their employment due to pregnancy are unjust and arbitrary, violating Article 14 of the Constitution.

Maternity Benefits Act, 1961

It was the efforts of Dr. Babasaheb Ambedkar, along with N.M Joshi and M.K Dixit, who had initially thought of introducing maternity benefits in India back in 1929 at the Bombay Assembly. This Bill was introduced in light of the rights of Bombay's Cotton factories workers, which largely comprised women. This Bill focused on the government's and the employer's responsibilities for considering women's entitlement to rest during their pre-natal and post-natal periods. However, this Bill, which defended the rights of working women and elaborated upon the employer's responsibilities, did not see the light of the day despite being debated at length at the Bombay Assembly. Subsequently, the International Labour Organisation's Maternity Benefits Convention took place in 1952, and the 1961 legislation for Maternity Benefits of Women was brought into force by ratification of the Convention by India.

The preamble of the Act lays down two-fold legislative intent: firstly, to regulate women's employment during the prenatal and post-natal period and, secondly, to provide maternity benefits to the women. The Act provides for a period of twenty-six weeks of maternity benefits to the mothers and twelve weeks of maternity benefits to the commissioning mothers. Apart from maternity benefits for pregnancy, the provisions for medical termination benefits and miscarriage have also been enumerated in the Act. Post-natal requirements also comprise the facilities for day breaks, creche, subsequent medical illnesses and medical bonuses. The Act is comprehensive in terms of benefits and redressal mechanisms which provides for supervision of the establishments by the designated inspectors and penalties for employers in case of contravention of the Act. The Act provides that for a first and second pregnancy, the maternity period can be extended up to twenty-six weeks; on the other hand, for third and subsequent children, such period cannot go beyond twelve weeks. The Act also puts statutory responsibility upon the employer to inform all women employees in the establishment about provisions of maternity benefits In writing and display such conditions in a conspicuous place of

¹² *Air India Etc. Etc vs Nergesh Meerza & Ors*, AIR 1981 SC 1829

employment and vernacular language so that employees from all walks of life could decipher and avail such benefits, by being vigilant and aware about their statutory rights. Contravention of such provisions attracts penal liabilities upon the employer.

International Aspects

Regarding the international convention, the researcher had already investigated the objectives of the International Labour Organisation, which had chosen to take the first opportunity rather than provide maternity benefits globally. The Organization, which was transnational in nature, had advanced three agreements in 1919, 1952, and 2000.¹³ In terms of its policies regarding health and safety risks, strict entitlement to maternity relief, advanced provisions relating to child healthcare, and the essential breastfeeding breaks that are unavoidable for maintaining a child's nutrition and growth, the most recent convention, which is the maternity protection convention number 183, furthered the revolutionary protectionist regime. The rules also cover women's work security and protection, enabling them to maintain financial stability even while on leave due to paid maternity benefits. Nearly all domestic laws now take a four-dimensional approach, with the first dimension being the length of the break, the second being the compensation received during the break, the third being the beneficiary's job protection, and the fourth being the financial benefits and security that are to be streamlined or divided according to the beneficiary's needs and the pre and postnatal time. As a result, the worldwide regulations, which are still developing, have greatly influenced India's maternity rules and are certain to improve.

USA

The hegemony of the USA is uncontested. Despite being one of the most developed countries in the world for introducing the notions of liberty, the maternity benefits provisions have broader applicability but a narrower extent. The maternity and paternity benefits are regulated by the Family and Medical Leave Act of 1993. This Act not only enables an expectant mother to take paid leave for up to twelve weeks but also enables the person who is a caregiver to sick families or partners who are married to or are in relation with expectant mothers. The period of maternity benefits has been criticized for being below the prescribed period of sixteen weeks as laid down by the World Health Organisation.¹⁴ This Act only applies to employments with more than fifty employees in the last twelve months. The nation's federal structure has allowed different states in the USA to enact special laws, fourteen of which have relaxed the minimum employee requirement from fifty to ten to expand the scope of the Act. Twelve states have opted not to legislate for this matter and are applying the 1993 Act. However, seven US States have relaxed the provisions and extended maternity leave for pre-natal and post-natal care to children. The American academic of Paediatrics has recommended at least six months for

¹³ International Labour Organization (ILO): Maternity Protection Convention, 2000, and Maternity Protection Recommendation, 2000” (2001) 40 International Legal Materials 1 <<http://dx.doi.org/10.1017/s0020782900010949>>

¹⁴ Vahratian A and Johnson TRB, “Maternity Leave Benefits in the United States: Today’s Economic Climate Underlines Deficiencies” (2009) 36 Birth 177 <<http://dx.doi.org/10.1111/j.1523-536x.2009.00330.x>>

breastfeeding a child after birth, which amounts to 24 weeks, twice the permissible period for paid maternity leaves in the US.¹⁵

United Kingdom

The statutory provisions for maternity benefits in the United Kingdom under the Social Security act provide employees with over fifty-two weeks of paid leave. The requirements follow a Statutory Medical pay formula wherein the average total pay is distributed weekly.¹⁶ The first six weeks of maternity leave entitles the employee to seek ninety percent of the revenue. In the other thirty-three weeks, an employee is authorized to ninety percent of the payor one hundred and fifty-six pounds, whichever is lesser.¹⁷ The provisions are similar for statutory shared Paternal leave, which the partner of the expecting mother claims. These are pre-tax and pre-national insurance benefits which are deducted afterwards. The initial half of the maternity period is called the 'ordinary maternity leave' period, while the latter half of this period is called the 'additional maternity leave period. Employees can take maternity leave only eleven weeks from the expected delivery date. Additional paid leave is only allowed if the employer offers some maternity scheme. The provision concerning the birth of a stillborn child also entails maternity reliefs if such a fetus is stillborn in the twenty-fourth week of pregnancy or dies during delivery.

Singapore

So far as Singapore is concerned, the entitlement to the length of maternity relief depends upon the child's citizenship status. The Employment Act of Singapore provides for either sixteen weeks or twelve weeks. The criteria are laid down on whether such a woman is legally married to the expectant father, whether the child was born after 1 January 2017, and whether the employee has continuously worked for at least three weeks in service. If the child is not a citizen or the woman has not worked for three months before the delivery. A period of twelve weeks of maternity relief is allowed for such a woman, while if all the criteria are fulfilled, then a period of sixteen weeks is allowed for paid maternity leave. The provisions also provide that if the first and second child is born, then the employer takes the first half period of maternity leave pay, and the second half period of maternity pay is run by the government. On the other hand, for the third and subsequent children, the full import of maternity pay is entirely borne out by the government.

Australia

The Paternity Benefits regime in Australia provides relief in two categories, that is, paid and unpaid leaves. The spent leaves entitle financial and social security to the employees, which is permissible for up to eighteen weeks. In contrast, unpaid leaves safeguard job security, which is acceptable for fifty-two weeks and

¹⁵ Eidelman AI and others, "Breastfeeding and the Use of Human Milk" (2012) 129 *Pediatrics* e827 <<http://dx.doi.org/10.1542/peds.2011-3552>>

¹⁶ Pirie S, "Maternity Rights" (2005) 15 *British Journal of Perioperative Nursing* (United Kingdom) 365 <<http://dx.doi.org/10.1177/175045890501500902>>

¹⁷ Epifanio M and Troeger VE, "Bargaining over Maternity Pay: Evidence from UK Universities" (2020) 40 *Journal of Public Policy* 349

extendable up to fifty-two weeks. These provisions apply to both the expecting mother as well as the father of the child. The adoptive parents are also entitled to the benefits above. The paternity leave begins at least six weeks before the expectant delivery date of the mother, from the thirty-fourth week of the pregnancy. The adoptive parents can claim such benefits from the date of adoption of a child under sixteen. There also lies eligibility criteria for unpaid maternity and paternity leave; the paid paternity leave, which lasts upto eighteen weeks, cannot be shared by both parents simultaneously. But the unpaid paternity leave, which lasts for up to fifty-two weeks, and is further extendable to fifty-two weeks, can be shared by both parents for up to eight weeks simultaneously, while for the rest of the weeks, one of the parents has to join back the employment. Such special maternity leave is only allowed in case of illness related to pregnancy or failed pregnancy caused due to the child's marriage, the stillbirth of a child, or the medical termination of pregnancy arising out of complications which threaten the mother's life or child or both. Such reliefs in exceptional circumstances continue until the mother can return to work. These provisions make Australia one of the most progressive countries as far as benefits for paternity relief are concerned as such provisions not only equates the role of men and woman on equal footing as per the liberal feminist theory but also provides job security to the parents during the childbirth, which showcases the socialist egalitarian protectionist attitude of the country.

II. CONCLUSION AND SUGGESTIONS

It can be concluded from the previous discussion that the Maternity Benefits Act of 1961 attempts and endeavours to align with the Constitutional goals, which are a concoction of Article 14, Article 15(3) and Article 21 of the Constitution. The class legislation is equal and gives due regard to the dignity and liberty of women's choices, the notions of dignity.¹⁸ This has also been enumerated in *Justice K S Puttaswamy v Union of India* at length, which involves personal autonomy, freedom of choice and freedom of sexual expression, coming all within the constitutionally recognized right to privacy under Article 21 of the Constitution.¹⁹ It can be furthermore concluded that in every democratic society, from being developing to reaching pinnacles of development, securing social justice for one and all is essential simply because of the fact that such an individual exists in society. Mere existence is a sufficient factum to observe, preserve and protect the rights of such an individual. (Khurana, N) Merely the fact of existence is enough for an organization or employment to guarantee such constitutional goals to the individual. Maternity benefits, on similar lines, draw a qualification that simply because a woman is expecting and falling within the applicability clause of the Act, such a woman is entitled to maternity benefits. To put it in simple words, it is concluded that social justice for expecting mothers equals maternity benefits. The researcher suggests that maternity breaks should be increased from 26 weeks in India to 34 weeks so that postnatal care should be focused more diligently due to the vulnerability of newborns to common diseases and the need for constant access to mothers' milk. The legislation itself is not comprehensive per se when it comes to fixation of liabilities on the employer and awareness about its provisions, so it is further suggested that a social security scheme should be devised to assist the claimants of this critical legislation about the benefits of the Act. As far as the comparative analysis is concerned, In India, the adopting or commissioning mother is granted merely twelve weeks of maternity period which totals around

¹⁸ Sen A, *The State, Industrialization and Class Formations in India: A Neo-Marxist Perspective on Colonialism, Underdevelopment and Development* (2018)

¹⁹ *K.S. Puttaswamy and Anr. vs. Union of India* (2017) 10 SCC 1)

three months of leave; however, in Singapore, this period extends to six months. It is to be realized that commissioning and adopting mothers requires to give as much post-natal care to the child as much as a birthing mother. Therefore, this period should be extended to six months in India as well. As an outcome of feminism as well as psychological developments, the issue of postpartum depression has also come to the forefront, wherein post-natal depression is caused in some women, which could last for weeks or even for months and causes several psychological impacts from disinterest in day-to-day life to loss of affection towards the child, and in other forms and manifestations varying from person to person. Despite being considered a first-world problem, the issue of postpartum depression is also addressed by adequate maternity benefits legislation, especially by working women.²⁰

It is concluded from the aforementioned research that the most progressive and enabling statutes of the world relating to maternity benefits emancipates from the states which have adopted socialism as their political or constitutional benchmark and all such societies have represented the liberal feminist approach not merely recognizing the special rights of the women but putting the status of women at equal footing with men, thereby providing not just maternity but paternity benefits for both men and women.

²⁰ Apter-Levy Y and others, "Impact of Maternal Depression Across the First 6 Years of Life on the Child's Mental Health, Social Engagement, and Empathy: The Moderating Role of Oxytocin" (2013) 170 *American Journal of Psychiatry* 1161 <<http://dx.doi.org/10.1176/appi.ajp.2013.12121597>>