

SOCIAL SECURITY TO WOMEN UNDER LABOUR LAWS: NATIONAL AND INTERNATIONAL PERSPECTIVE

*Dr. Harpreet Kaur*¹

Art 25(2) of the Universal Declaration of Human Rights women are one half of the world but until a century ago..... It was a man's world. The laws were man's laws, the Government a man's Government. The country a man's country..... The man's world must become a man's and a woman's world.

*Martha Thomas American Educator (1908)*²

Introduction

The Sociologist had described the women by propounding difficult perceptions. In India, the history speaks that the women are considered a divine force, but the multi-cultured Indian society placed the women at different positions. Thus there is no uniform status of women in the Indian society. However, civilization showed to overall upliftment of women's position. The Indian philosophy poses the women with dual character. On the other hand, she is considered fertile patient and benevolent, but on the other hand, she is considered aggressor and represents 'shakti'. In the sphere of industrial law the women have been assigned a special position in view of their unique characteristics physically and mentally. The constitution of India which is the fundamental law of the land contains number of provisions to protect the interests of women and also to prohibit gender discrimination. The preamble specifically declares that one of the main purposes of the constitution is the secure social, economic and political justice along with equality of status and of opportunity to all the citizens, this is irrespective of the gender. This specific mandate given to the state has resulted in number of protective beneficial and health provisions made in various enactments for the benefit of women.³ That is why the phenomenon of social security is originated under labour law to provide protective cover to workers either males or females on disability arise due to any reason. Social security is new concept and it represents society's current answer to the problem of economic insecurity. However, the story will instead be taken up from the 1930s because this period is important in the evolution of social security. There are two approaches which define the concept of social security, first approach is called as the

¹ B.A., LL.B., LL.M (Gold Medalist) Ph.D, Assistant Professor, Khalsa College of Law, Amritsar.

² G.B. Reddy's, Women and the Law 115 (Gogla Law Agency 1998).

³ G.B. Reddy's, p. 116.

specific approach, and one of the best known exponents of this approach is Lord Beveridge. The term 'social security' contained in his report has been used to denote the securing of an income to take the place of earnings when they are interrupted by unemployment, sickness or accident, to provide for retirement through age, to provide against loss of support by death of another person, and to meet exceptional expenditures, such as those concerned with birth, death and marriage. It can be defined in this way; social security is equivalent to income maintenance, i.e. to provide cash benefits to meet certain specified contingencies. Another approach is the philosophic approach; main exponents of this approach are Pierre Laroque, President of the National Social Security Fund in France. Social security represents a guarantee by the whole community to all its members of the maintenance of their standard of living or at least of tolerable living conditions, by means of redistribution of incomes based upon national solidarity. According to V. George, the term social security is really a combination of three separate trends first is economic policy, second medical policy and third a policy of income distribution aimed at modifying the results of the blind interplay economic forces and at adapting the income of each individual and each family to that individuals or family's needs, having regard to all the circumstances which may affect such income in the future.⁴ In the modern India, it was only during the present century that the alien rulers tried to look into the problem of social security. The different sessions of International Labour conference, the Recognition of social security as responsibility of the state of different states in Europe and America and advances made in these countries inspired the government of India to study the problem. Thus the Constitution of India under its chapter IV embraces principles and policies pertaining to social security measures which we shall discuss later on.⁵ As far as women are concerned they have equal rights like males as per law under article 14 and 15 of the constitution. All fundamental rights from article 12 to 32 are given to all citizens of country without having any discrimination on the basis of gender.

Objectives of the Labour Laws

There is long list of labour laws under which males and females have equal rights according to their job. But in some of the legislations under which, women can claim special rights on the basis of motherhood and on the basis of special status given to female as weaker section of the society. Some of the legislations are here, under which women are entitle to

⁴ Dr, V.G. Goswami, Labour and Industrial Laws 1-9 (Vol. 1, Central Law Agency, 2011)

⁵ Dr. V.G. Goswami, pp.15-17.

get benefit under the provision mentioned under these legislations. Firstly, The Employees State insurance Act, 1948 is enacted with the object to provide social security to the workers (either male or female) of the industry can be provided by self-balancing scheme of social insurance or by public assistance or combination of two methods. This enactment was first measures adopted in India to provide for social insurance to the labourers. Many fields of social insurance like health and unemployment are still left untouched.⁶ Similarly, Object of The Factories Act, 1948 is to protect human beings from being subject to unduly long hours to bodily strain of manual labour. It also provides that employees should work in healthy and sanitary conditions so far as the manufacturing process will allow and that precautions should be taken for their safety and for the prevention of accidents.⁷ Accordingly, the Maternity Benefit Act 1961 came to regulate the employment of women in certain employments for certain periods before and after child birth and to provide for maternity benefit and certain after benefits.⁸ This is very significant piece of legislation exclusively devoted to the working women in factories, mines, plantations and establishments wherein persons are employed for the exhibition of acrobatic and other performance.⁹ This enactment is intended to achieve the objective of doing social justice to women workers.¹⁰ Therefore in interpreting the provisions of this Act beneficial rule of construction, which would enable the women worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output has to be adopted by the court.¹¹ Article 42 which is a part of Directive principle of state policy directs that the state shall make provision for securing just and humane conditions of work and for maternity relief the constitution gives laws making power to central as well as to states by keeping maternity benefit. In entry no. 24 of list III under schedule VII of the constitution, the entry reads as welfare of labour including conditions of work provident funds, employee's liability workmen's compensation invalidity and old age pensions and maternity benefits.¹² The Equal remuneration Act 1976 has been enacted with an objective to pay equal remuneration to men and women workers for the same work or a work of a similar value and for the

⁶ S.N. Misra, Labour and Industrial Laws 389 (21st edition, Central Law Publications 2005)

⁷ Dr V.G. Goswami, p.345.

⁸ Manjula Batra, Women and Law and Law Relating to Children in India 270. (Allahabad Law Agency 2003)

⁹ Dr V.G. Goswami, pp.654.

¹⁰ S.N. Misra, P.813.

¹¹ B. Shah V. Labour Court, Coimbatore, AIR 1978 SC 12.

¹² Krishna Pal Malik, Women and Law 254 (Allahabad Law Agency 2009)

prevention of discrimination on grounds of sex.¹³ Equality of remuneration has proved a difficult target to achieve. The fight for equal pay started hundred years ago and it has still not been won. It is true that the principle of equal pay for equal work is not expressly declared by our constitution to be a fundamental right but it certainly is a constitutional goal.¹⁴

- **Beneficial Provisions for Women Under Constitution as Directive Principles of State Policy**

1. It is duty of state to give effect to the objectives expressed in the preamble to the constitution, by securing a social order for the promotion of the welfare of the people. It is the star by which we are expected to chart our course. It is to achieve the goals echoed in article 38 that part IV contains various provisions.¹⁵ The state shall direct its policy towards securing that there is equal pay for equal work for both men and women.¹⁶ The doctrine of equal pay for equal work is equally applicable to both men and women even the daily wagers are also entitled to the same wages as other permanent employees in the department employed to do the identical work. But in case work is of the same type both men and women should be paid equally without any discrimination.¹⁷ Article 39 (e) says of protecting health and strength of the workers and the tender age of children against abuse. Relying on this Directive Principle, the court issued directions to state Governments for ensuring that care homes must provide at least the minimum conditions ensuring human dignity.¹⁸ Right to work has been deliberately kept by the founding father in Directive Principles chapter and hence made unenforceable because, they in their wisdom realized that while it was their wish that everyone should be given employment, but the ground realities of our country could not be overlooked.¹⁹ Constitution of India directs the state that it shall make provision for securing just and humane conditions of work and for maternity relief.²⁰ The maternity relief has been extended to women (muster roll) employees, working on daily wages.²¹ In addition to this, the compulsory closure of the industrial concerns on National and Festival

¹³ G.B. Reddy's, p. 116.

¹⁴ Randhir Singh V. Union of India, 1982 1 LLJ 344 SC.

¹⁵ Article 38 (1), Constitution of India, 1950.

¹⁶ Article 39 (d), Constitution of India, 1950.

¹⁷ Dr. S.C. Tripathi and Vibha Arora, Law Relating to Women and Children 14-15 (Central Law publications 2008).

¹⁸ Dr. Narender Kumar, Constitutional Law of India 465 (Allahabad Law Agency 2008).

¹⁹ Article 41, The Constitution of India, 1950.

²⁰ Article 42, The Constitution of India, 1950.

²¹ M.C. of Delhi v. Female workers, AIR 2000 SC 1274.

holiday has been justified under Article 43 so as to enable the workers to fully enjoy their leisure and participate in social and cultural activities.²² In industries, right of workers to be heard in the winding up proceedings of the company is right, which has been upheld by Supreme Court.²³

- **Beneficial Provisions For Women Under Labour Laws**
- **Benefits Given Under The Employees State Insurance Act, 1948**

1. *Maternity benefits in case of Miscarriage (Section 46 3(b))*

An insured woman who is qualified to claim maternity benefits shall in case of miscarriage as medical termination of pregnancy be entitled on production of such proof as may be required under the regulations to maternity benefits at the rates specified for all days on which she does not work for remuneration during a period of six weeks immediately following the date of the miscarriage or medical termination of pregnancy.²⁴ It would not be worth mentioning that no woman can claim maternity benefit for miscarriage causing of which is punishable under Indian Penal Code because an intentional miscarriage amounts to an offence punishable under the provisions of the Indian Penal Code.²⁵

2. *Maternity benefits in case of sickness arising out of pregnancy*

Employees State Insurance Act scheme provides special protection to working women in industrial establishments to which the provisions of this Act apply for maintenance of their health and newly-born child.²⁶ An insured woman who is qualified to claim maternity benefits in case of sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage or medical termination of pregnancy shall on production of such proof as may be required under the regulations be entitled in addition to the maternity benefits payable to her under any other provisions of the Act, for all days on which she does not work for remuneration of maternity benefits at the rates specified for all days on which she does not work for remuneration during an additional period not exceeding one month.²⁷

²² M.R.F. Ltd, V. Inspector Kerala Government, AIR 1999 SC 188.

²³ National Textile Workers Union V. P.R. Ramakrishanan, AIR 1983 SC 75.

²⁴ Krishna Pal Malik, pp. 259-60.

²⁵ Section 2(14-B), The Employees State Insurance Act, 1948.

²⁶ Dr V.G. Goswami, p.315.

²⁷ Krishna Pal Malik, pp. 259-60.

- **Benefits Given under the Factories Act 1948**

Section 19 provides that there shall be provision of latrines and urinal accommodation at convenient places for workers. Separate enclosed accommodation for males and female will be provided by factory owner. Such accommodation shall be adequately lighted and ventilated as especially in writing by the chief inspector, all such accommodation shall be maintained in a clean condition at all times. Sweepers shall be employed whose primary duty it would be to keep clean latrines, winds and washing places.²⁸

6. *Creches (Section 48)*

The factories Act 1948 specifically provides that in every factory where more than 30 women workers are ordinary employed, they should be provided with suitable rooms for the use of their children below 6 years of age. Such rooms should provide adequate accommodation along with adequate light and ventilation. The employer should maintain such rooms in the clean and sanitary condition and he should appoint well trained woman to take care of the children and infants. Thus section 48 imposes a statutory obligation on the employees to provide the crèche faculty for the children of woman employees.²⁹

- **Benefits Given Under the Equal Remuneration Act, 1976.**

Article 39 of the constitution of India provides that the state should direct its policy in such a way that it will secure equal pay for equal work for both men and women. Despite this directive the women in India continued to be discriminated against in payment of wages in comparison to men for doing the same job to remove these anomalies and to give effect to the constitutional mandate, the equal remuneration Act was enacted in 1976.³⁰

1. *Equal remuneration to women workers:*

Section 4 of the Act provides that a woman working in any establishment should not get wage lower than what the workers of the opposite sex get for doing same or similar type of work. There is a statutory obligation on every employer to pay equal remuneration to men and women employees when they are performing any work of a similar nature. Restrictions have been laid down under Section 16 of the Equal remuneration Act, authorizing the employer to maintain difference in payment of remuneration to the men and women workers based on a factor

²⁸ Manjula Batra, P. 285. Faridabad, 2003, p. 284.

²⁹ S.N. Misra, P.664.

³⁰ Dr. Syed Maswood, *Law Relating to Women 139-140* (Orient Law House 2004)

other than sex, provided such an obligation is given by a declaration of the appropriate govt.³¹

2. *Non-Discrimination in recruitment of wages*

The employer is prohibited for making any discrimination against women only on the ground of sex in matters of recruitment or any condition of service subsequent to recruitment such as promotions, training, transfer or incentives or increments.³² The Supreme Court held that the principles of equal pay for equal work by holding the differentiation in pay scales among government servants holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation.³³

• **Benefits Given Under Maternity Benefit Act, 1961**

Every women is entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence that is the period immediately before the day of delivery and the a actual day to delivery and any period immediately after that day.³⁴ A women shall be entitled to maternity benefit only when she has actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery. Thus the qualifying period is 80 days of actual working. Thus the qualifying period is 80 days of actual working.³⁵ The maximum period for which any women is entitled to maternity benefit is 12 weeks of which maximum 6 weeks shall be before the date of her expected delivery.³⁶

The point for determination by the court was whether in calculating 160 days period which will entitle a woman employee to get maternity benefit, the work on half days can be included or not. It was held that according to explanation to section 5 (2) of the maternity Benefit Act, the period during which a women worker was laid off should also be taken into consideration for ascertaining the eligibility. During the lay off period a women worker cannot be expected to have actually worked in the establishment, so actual work for 160 days cannot be insisted as a condition precedent for claiming the maternity benefit.³⁷ In the case of death of the

³¹ Section 4 and 16, The Equal Remuneration Act, 1976.

³² *Air India v. Nargesh Meerza* (1981) 4 SCC 335.

³³ *Federation of all India Customs and Central Excise stenographers (recognized) v. Union of India*, 1988 SCC (L&S) 673.

³⁴ Section 5 (1) Maternity Benefit Act, 1961.

³⁵ S.N. Misra, Pp.815-816.

³⁶ Section 5 (3), *The Maternity Benefit Act*, 1961.

³⁷ *Ram Bahadur Thakur (p) V. Chief Inspector of Plantation*, AIR 1978 SC 12.

women either during or after her delivery, the employee is liable for the maternity benefit for the entire period as mentioned above. However if the child also dies during the said period the employer shall be liable to pay maternity benefit only for the period up to and including the date of the death of the child.³⁸

- **Other Benefits Provided to Women under the Maternity Benefit Act, 1961**

1. *Payment of Medical Bonus (Section 8)*

Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of two hundred and fifty rupees. If a woman worker does not get pre-natal confinement and post-natal care by employer free of charge.³⁹

2. *Leave for miscarriage as medical termination of pregnancy (Section 9)*

In case of miscarriage a woman shall on production of such proof as may be prescribed be entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage.⁴⁰

3. *Leave for illness arising out of pregnancy delivery premature birth of child or miscarriage (Section 10)*

A woman suffering from illness arising out of pregnancy, premature birth of child or miscarriage, medical termination of pregnancy or tubectomy operation shall on production of such proof as may be prescribed be entitled in addition to the period of absence allowed to her under section 6 of the Act or as the case may be under section 9 of the leave with wages at the rate of maternity benefit for a maximum period of one month.⁴¹

4. *Nursing Breaks (Section 11)*

Every woman delivered of a child who returns to duty after such delivery shall in addition to the interval for rest allowed to her be permissible in the course of her daily work breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.⁴² *In Municipal Corporation of Delhi v. Female workers (muster Roll) and another 2000 SCC (L&S) 331.* A just social order can be achieved only when the inequalities are obliterated and everyone is provided what is legally due, women who constitute almost half of the segment of our society have

³⁸ Dr Syed Maswood, pp. 246-47.

³⁹ Section 8, The Maternity Benefit Act, 1961.

⁴⁰ Section 9, The Maternity Benefit Act, 1961.

⁴¹ Dr V.G. Goswami, pp.664.

⁴² O.P. Misra, p. 249.

to be honoured and treated with dignity at place where they have to earn their livelihood.⁴³

➤ **International Efforts for Women in Labour Legislation**

• **Maternity benefits and the International labour Organization Convention**

The International Labour Organisation was constituted on 9 April 1919 to fix the minimum standard for the labour by a tripartite body. India is founding members of the ILO. In the very initial period of ILO convention No. 3 Maternity Protection convention 1919 was introduced for ratification on 28-11-1919. The convention was revised by another convention No. 103 called Maternity protection convention 1952. Recently the ILO has introduced a new convention No. 183 called Maternity Protection convention 2000, the maternity protection convention 2000 concerning the revision of the maternity protection convention 1952 entered into force in 2002 the basic features of the convention are as follows.⁴⁴

Objectives of the Convention

In order to further promote equality of all women in the workforce and the health and safety of the mother and child, the development of the protection of maternity in national law and practice; and taking into account the circumstances of women workers and the need to provide protection for pregnancy which are the shared responsibility of govt. and society.

Maternity leave included six weeks compulsory leave after child birth. In case of illness leave would be provided on production of medical certificate. This leave can be provided before or after maternity leave.⁴⁵ In order to protect women in the labour market the maternity leave benefit can be provided through compulsory social insurance or public funds.⁴⁶

⁴³ Meenu Paul, *Labour and Industrial Law 724* (Allahabad Law Agency 2011).

⁴⁴ Krishna Paul Malik, *P.261*.

⁴⁵ Article 5, Maternity benefits and the International labour Organization Convention, art. 5, 2002

⁴⁶ Article 6, Maternity Benefit and the International Labour Organization Convention, art 6, 2002.

- **The Convention on the Elimination of All Forms of Discrimination Against women, 1979**

Article 4 provides that State shall not discriminate in providing a special measure aimed at protecting maternity. Because motherhood is a natural right and women are entitled for the same.⁴⁷

Equality of men and Women

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure and on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings; logic behind is that this right is equally available to all people.
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; this right can be implemented on the guidelines of domestic law.⁴⁸
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; article 19 of the municipal law gives this right to all citizen of country.
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; this right is an objective of state policy and government is successful to attain this objective at certain extent.
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction. Our substantive labour laws are ample proof of governmental initiative on this account along with constitutional guarantee of this right to women workers.⁴⁹

⁴⁷ Kalpana Roy, Women's Opression and Protective Law 288-292 (Rajat Publications 1999)

⁴⁸ The Convention on the Elimination of All Forms of Discrimination Against women, (CEDAW), art 11, cl (1) (a) and (b), 1979.

⁴⁹ The Convention on the Elimination of All Forms of Discrimination Against women, (CEDAW), art 11 (1) (c), (d), (e) and (f), 1979.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status; we have long list of case laws under constitutional law, which promote right to equal treatment for women with men.⁵⁰
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; it is pertinent to mention that dismissal on the ground of maternity leave is violative of article 14, 19 and 21 of other constitution.
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; it cast duty on employer to arrange for crèche for women workers, it will enhance work efficiency of women worker and promote them as integral part of industrial management.
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them. Flexible nature of management will yield fruitful results i.e. honesty, integrity and hard work in work will maintain smooth and strong relationship between employer and employee.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.⁵¹ Review of things is essential in order to add new things in management and discard outdated and useless practices.⁵²

Conclusion

Our Constitution provides the guarantee for equal rights for Men and women without having any discrimination on the basis of gender. Other

⁵⁰ The Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW), art 4 (2) (a), 1979.

⁵¹ Convention on Elimination of all Forms of discrimination Against women, 1979.

⁵² Convention on Elimination of all Forms of discrimination Against women, art 11 cl (3), 1979.

substantive laws which include industrial laws are also under the ambit of the same right there is wrong perception that females have fewer rights as compared to males. Rather our legal system provides more beneficial provisions for women as they have special status as far as their motherhood is concerned. But this does not mean that they are weaker in proving their potentialities in different spheres of life. Nevertheless, Women is equal to men either as per rights given under legal system or increased percentage of women in work force. The above provisions contained in different legislations and rules amply prove that the state has made considerable efforts to provide additional facilities and benefits for the woman employees. These benefits are in addition to the other benefits which are available to both the male as well as female employees working in industries they include abolition of bonded labour system, insurance of workers, provident fund, equal remuneration minimum wages, compensation for personal injury, gratuity, canteen facilities, rest rooms & medical benefits etc. The justification for making special provisions for woman in the sphere of labour and industrial laws lies in their natural disadvantages and unique features of motherhood and the Indian Constitution which provides in its Article 15 (3) that the state may make special provision for the woman and children.⁵³

⁵³ G.B. Reddy's, p. 126.