SOCIAL SECURITY AND MATERNITY BENEFITS FOR WORKING WOMEN IN INDIA: AN ANALYSIS OF THE PRACTICES AND IMPLEMENTATION IN THE STATE OF PUNJAB

A Thesis

Submitted in partial fulfillment of the requirements for the

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DOCTOR OF PHILOSOPHY
In

LAW

By

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Supervised By

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2023

DECLARATION

I, the undersigned, hereby declare that the research work on the topic titled, "**Social Security And Maternity Benefits For Working Women In India: An Analysis Of The Practices And Implementation In The State Of Punjab"**, is done by me under the guidance of Dr. Showkat Ahmad Wani, Assistant Professor in the School of Law, Lovely Professional University, Phagwara Punjab.

The findings and conclusions drawn in the thesis are based on data and other relevant information collected by the researcher during the period of the research study for the award of Ph.D. Degree in the Faculty of Law, Lovely Professional University, Phagwara Punjab.

I, further declare that the research submitted on this topic is my original research work. Neither the work published in any journal or anywhere else and has not formed the basis for the award of any degree, diploma, associate ship, fellowship, titles in this or any other University of Institution of higher learning. All the material and data obtained from all other sources have been properly acknowledged in the thesis.

Place: Phagwara

Date: 13-03-2023

Ms. Priyanka Arora

(Researcher)

CERTIFICATE

This is to certify that the work contained in the thesis entitled **“**“**Social Security And Maternity Benefits For Working Women In India: An Analysis Of The Practices And Implementation In The State Of Punjab”**, submitted by Ms. Priyanka Arora, Registered Number 41900329 for the award of the degree of **Ph.D.**to the **Lovely Professional University Phagwara, Punjab** is a record of bonafide research works carried out by him under my direct supervision and guidance.

I considered that the thesis has reached the standards and fulfilled the requirements of the rules and regulations relating to the nature of the degree. The contents embodied in the thesis have not been submitted for the award of any other degree or diploma in this or any other university.

Date:13-03-2023

Place: Phagwara **Signature of Supervisor**

(Dr. Showkat Ahmad Wani)

ABSTRACT

I, as a researcher on the present research study in the name of, "**Social Security And Maternity Benefits For Working Women In India: An Analysis Of The Practices And Implementation In The State Of Punjab",** carried out detailed research for the benefit of working women in private educational organizations in Punjab.

The motivations to choose this topic were the attitude of private organizations in implementing "social security" especially "maternity benefit provisions" with respect to female workers. In India, there are many women friendly legislatures, one among them is Maternity benefits Act, 1986. I found some vacuum in that particular topic hence, I had decided to carry out and accomplish the research on that topic.

In a civilised society, right to life and dignity is the basic right of every person. Since ages, the idea of justice and of equality has always been the focus of all the concerned in a given society. The concept of social security has attained a special reference in the light of growing economic independence in the contemporary society. Social Justice means the attainment of socio-economic objectives lay by the planners and protected by the area of human rights both internationally and nationally.

Social Security is recognised as a human right to which every individual is entitled through national effort and cooperation by the international communities. Further this right to social security of each person has been recognised in the situation that is the outcome of occurrences such as unemployment, sickness, disability, widowhood, old age and others in circumstances that are beyond the control of a human.

Today, when the world has headed and reached the height of industrialisation, the situation remains the same and it has thus becomes an important task for the state to ensure and provide basic protection to the employees working in different industrial undertakings. Maternity Protection (Amendment) Act, 2017 lay various facilities like crèche for nursing moms, work from home option before and after delivery and medical bonus for working female employees in every establishment.

The social security legislation has undergone a sea change with the passage of time. There is revolutionary modification and widespread remodelling of social security legislation from its limited scope to the tremendous progress in the area. Even the Indian Courts have specified the need of maternity care for working women irrespective of their job status in an organisation by passing various judgements in this regard.

Maternity Protection is a very delicate issue and affects a very large number of women who are employed in one or the other organization. In the course of this study, an attempt is made to analyze if the working female employees are happy with the present "maternity law" with respect to their maternity leave and salary or other benefits during that period. The study also aims at analyzing the implementation of "maternity benefits" in private universities, colleges and schools of Punjab.

It is found that private employees are aware of the Maternity Benefits but do not claim them under the fear of losing their jobs. The aim is to suggest measures to strengthen the enforcement of maternity laws in private organizations, especially the private educational institutions in Punjab. It is hoped that this research, despite its shortcomings, will serve as a useful tool for decision makers to frame "uniform social security and maternity laws" throughout the country.

Hence, I decided to pursue my research (Ph.D.) on this topic. In this research, I used doctrinal and non-doctrinal research methods to collect the data. The Doctrinal approach will help in analyzing the existing legal and constitutional provisions and cases by applying reasoning power.

In non-doctrinal methods of research, I circulated questionnaire in the nature of Google-forms among the faculty of various private Universities, Colleges and Schools. The responses collected from these respondents were supportive for me to understand the nature and pasture of the present research topic.

The hypothesis testing has been completed in each and every chapter of my research topic. Every hypothesis was tested with the help of doctrinal and non-doctrinal data and observation counted on each chapter of this thesis. The conclusion of hypothesis testing was given in Chapter VI of the

thesis. The statistical conclusion validity is mentioned in the VI chapter on the basis of non-doctrinal observation evaluated on the basis of various pie charts.

Thank You.

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The work of thesis may look like a solitary hard work and effort. However to complete such degree of work it is necessary that there must be a strong network of support. Hence it is my obligation to express my gratitude towards one and all that have supported me and co-operated with me directly or indirectly during the journey of completion of entire work.

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The research requires references of many books and journals, which were made available from the library hence I am profoundly indebted to the librarian Mr. Lal Singh (Rayat Bahra College of Law, Hoshiarpur) and Ms. Neeru, Assistant Librarian, Swami Sarvanand Giri Regional Centre, Punjab University located at Hoshiarpur for their cooperation.

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Place: Phagwara

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STATUES REFERRED

THE NATIONAL STATUES

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- The Employees' State Insurance Act, 1948\
- The Employees' Provident Funds & Miscellaneous Provisions Act, 1952
- The Equal Remuneration Act, 1976
- The Factories Act, 1948
- The Industrial Disputes Act, 1947
- The Maternity Benefit Act, 1961
- The Payment of Gratuity Act, 1972
- The Social Security Code,2020
- The Unorganized Sector Workers' Social Security Act, 2008
- The Employees' Compensation Act, 1923

INTERNATIONAL STATUTES

- The Convention on the Elimination of All Forms of Discrimination Against Women, 1979
- The International Covenant on Civil And Political Rights, 1966
- The International Covenant on Economic, Social And Cultural Rights, 1966
- The Universal Declaration of Human Rights, 1948
- The International Labour Organisation

ABBREVIATIONS

AD	Apex Decisions
AIR	All India Reporter
AWC	Allahabad Weekly Cases
CAT	Central Administrative Tribunal
CCL	Child Care Leave
CCS	Central Civil Services
DA	Dearness Allowance
DLT	Delhi Law Times
DRJ	Delhi Reported Judgements
EDLI	Employees Deposit Linked Insurance Scheme
EPF	Employees Provident Fund
EPFO	Employees Provident Fund Organisation
ESI	Employees State Insurance
EPS	Employees Pension Scheme
FLR	Federal Law Reports
HC	High Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
ILLJ	Indian Labour Law Journal
MANU	Manupatra
MLJ	Madras Law Journal
NDC	National Development Council
NGO	Non Government Organization

NLI	National Labour Institute
NOC	No Objection certificate
P&H	Punjab and Haryana
PLR	Punjab Law Reporter
PRI	Panchayati Raj Institutions
RITES	Rail India Technical and Economical Services
RLW	Rajasthan Law Weekly
RSJ	Recent Service Judgements
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SCT	Service Cases Today
SLJ	Srinagar Law Journal
SLR	Service Law Reporter

LIST OF APPENDECIS

SR. NO.	APPENDICE NAME	APPENDICE NUMBER
1.	**Google form of Questionnaire** (Questionnaire for Working Women on the Maternity Benefits Act, 1961)	I
2.	**Article Published** (Social Security of Woman in the form of Maternity Benefits: A Human Rights Perspective in the Journal of Positive School Psychology, September, 2022)	II
3.	Conference Certificates • International Seminar on Human Rights and Gender Justice organized by Kerala Law Academy Campus, Thiruvananthapuram on 4th December, 2021. • One Day National Seminar on Assessing 75 Years of Human Rights in India organized by Parul Institute of Law, Vadodara, Gujarat on 11th December, 2021. • International Conference on Human Rights during Covid-19 Pandemic: Issues and Challeng.es organized by Maharishi Markandeshwar University, Ambala on 27th December, 2021.	III

CHAPTER-1

INTRODUCTION

1.1 Introduction

"Motherhood is the biggest gamble in the world. It is the glorious life force. It's huge and scary; it's an act of infinite optimism." —Gilda Radner

In a civilised society, "right to life" and "dignity" is the basic right of every person. Since ages, the idea of "justice" and of "equality" has always been the focus of all the concerned in a given society. The concept of "social security" has attained a "special reference" in the light of growing "economic independence" in the contemporary society. "Social Justice" means the attainment of socio-economic objectives lay by the planners and protected by the area of human rights both internationally and nationally.

"Social Security" is a major institution in all industrialised societies aiming to protect the population from grave financial risks or social distress caused due to unemployment, gender, old age, death, destitution, retirement, backwardness etc. So, social security guarantees financial security in the form of compensation to the citizens by the State, who have lost it or their livelihood as a consequence of any eventuality at any point of time.[1]

"Social Security" is recognised as a "human right" to which every individual is entitled through national effort and cooperation by the "international community's".[2] Further this right to social security of each person has been recognised in the situation that is the outcome of occurrences such as "unemployment", "sickness", "disability", "widowhood", "old age" and others in circumstances that are beyond the control of a human.[3]

"Social Security" in general relates to the protection that the society provides to its population in case of troublesome situations over which none has any control and to support everyone at each phase of life. The "social security" is a

[1] *Available at*: Shodhganga@INFLIBNET: Social security in India problems and perspectives (last visited on October 10, 2020).

[2] The Universal Declaration of Human Rights, art.22.

[3] *Id.*, art. 25.

kind of protective umbrella to increase the intellectual or moral wellbeing of a person. It becomes a necessity for the below mentioned reasons:-

- **Compensation:** It ensures security of income to an individual to prevent him to suffer double harm i.e destitution or loss of job.
- **Reinstatement:** It signifies to put an end to an individual's disease or ailment and to bring him back to his earlier state in which he is able to work.
- **Prevention:** It implies the avoidance of the loss of productive capacity of a person as a result of sickness or unemployment.

Definitions of "Social Security"

Although the word social security is dynamic and cannot be limited to few words or grammatical definitions, still some effort is made by various ideologists, authors, jurists, economists and organisations to define it and few are mentioned below:

The "International Labour Organisation" defines "Social security" is as "the result achieved by the comprehensive and successful series of measures for protecting the public from the distress that in the absence of such measures, would be caused by stoppage of earning in sickness, unemployment or old age and garter death for making available to that same public medical care as needed and for subsidising families bringing up young children. It is an arrangement of the society which gives protection or security to some members of the society against future uncertainties and risks."[4]

Further ILO again regards social security as some sort of protection that an individual and its household a society provide to individuals and household receives from the society. It is guarantee of access to "health care" and "income security", particularly in situations like "old age", "unemployment", "sickness", "invalidity", "work injury", "maternity" or loss of the only earning hand in the family due to death or accident.

The Lexicon Universal Encyclopedia[5] says that "Social Security consist of public programmes intended to protect workers and their families from income

[4] "International Labour Standards on Social security", *available at:* International Labour Standards on Social security (ilo.org) (last visited on January 21, 2021).

[5] Shivani "Social Security" *available at:* Social Security: Meaning, Definition, Concept and Measures (economicsdiscussion.net) (last visited on December 20, 2020).

losses associated with old age, illness, unemployment or death. The term is sometimes used to include broad system of support for all those who have for whatever reason is unable to maintain them".

The Universal Declaration of Human Rights[6] provides that "Everyone, as a member of society, has the right to Social Security and is entitled to realisation, through national effort and international cooperation and in accordance with the organisation and the resources of each state, of the economic, social and cultural rights, indispensible for his dignity and the free development of the personality"[7].

According to William Beveridge the term social security means "securing income when the earnings are hindered by way of unemployment, sickness or accident. It also has the purpose of providing retirement as a result of old age and means to sustain the loss that resulted from the death of a family member. It is a measure to meet exceptional expenditure incurred in relation to birth, death, or marriage. The idea is to provide monetary aid up "to a minimum and also medical treatment to bring the interruption of earnings to an end as soon as possible."[8]

The Oxford Advanced Learner's Dictionary defines "Social Security"[9] means "a system in which people pay money regularly to the government when they are working and receive payments from the government when they are unable to work, especially when they are sick or too old to work". It is that money which the government pays regularly to the population that is poor, unemployed, sick etc.

The "National Commission of Labour" defines that, "Social Security envisages that the members of a community shall be protected by collective action against social risks causing undue hardship and privation to individuals

[6] The Universal Declaration of Human Rights, art.22.

[7] *Available at*: Article 22 of The Universal Declaration of Human Rights (last visited on December 23, 2020).

[8] *Available at*: Social Security: Meaning, Definition, Characteristics, Objectives, Functions (businessmanagementideas.com) (last visited on December20, 2020).

[9] *Available at:* social-security noun - Definition, pictures, pronunciation and usage notes | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.com (last visited on December 23, 2020).

whose private resources can seldom be adequate to meet them. The concept of social security is based on ideals of human dignity and social justice. The underlying idea behind Social Security measures is that a citizen who has contributed or is likely to contribute to his country's welfare should be given protection against certain hazards."

"Social Security" is thus, the programme of government that aims to provide the basic protection and security to the individuals and their dependants against social risks that may arose due to physical, social or social incapacity and which cannot be met by a person on his own with his resources. It is a guarantee undertaken by the State to compensate its citizens against losses suffered by them in case of "death", "unemployment", "sex", "old age", "infancy", "industrial injury", "pregnancy" etc.

1.1.1 Social Security in India

The evidences of "social security" plans and initiatives have been found in India in the form of "Guilds", "Joint families", "Panchayats". They have also been traced in various religious or charitable institutions that remained at the forefront to provide "assistance" in order to meet various risks owing to "tragedies" or "disasters". "Kautilya's Arthshastra" as well as "Manusmriti" have also been a proof to the fact that the social fabric and the Codes even in those days were designed to provide social security to everyone.

The first weapon of defence to meet the misfortunes of the society was the then prevalent joint Hindu family system which was approached whenever there is a major harm. "Rigveda", "Upanishads" and other "ancient literatures" throw light on the fact that it was appealed to the fellow "guilds" to offer help in case of serious contingency. The "collective purpose" and "objective" was to provide some sort of security of "life", "property" to fight the "miseries" and "calamities."[10] But our Constitution is the provider of the recent organised "social security" measures.

"Maternity" has always been treated as a step back as it is a state among females state during which she feels disabled from taking any sort of job responsibility. She feels herself unfit for any employment during that phase of few days before and after delivering a baby. As the system of wage labour

[10] *Available at:* IJSDR1905035.pdf (last visited on January 22, 2021).

developed among the labour in industries, many organisations are inclined towards removing a female "employee" from her services on their getting "pregnant". The employers felt that a female worker's pregnancy would act as a hindrance to perform of her ordinary duties. Therefore, she was compelled to accept an "unpaid leave" for securing her job.[11]

Similarly, in most of the industries, due to certain kinds of variations in business activity or health or other factors like old age, the working class consisting of men and women have been subjected to "periodical unemployment". While on one hand, where these factors affect the earning capacity of a worker, on the other hand the capitalist having sufficient means and resources feel no shame and has no problem in facing risk of lives of the working class.

To add upon this misery the worker whether male or female has no option but to undergo that risk as he or she has no other alternate source of livelihood. Such circumstances that surround the workforce have underlined the demand for the emergence of provisions that aim at the social security to poor working class. Naturally, it is also then when the government has the responsibility to lend a helping hand to the needy working class and to provide them courage to face and overcome that phase of misfortunes and unfortunate happenings.

Today, when the world has headed and reached the height of industrialisation, the situation remains the same and it has thus becomes an important task for the state to ensure and provide basic protection to the employees working in different industrial undertakings.

As of when the world is also talking and heading towards women empowerment, it is essential to acknowledge the reproductive aspect of a working woman. Various aspects of a woman's life are directly or indirectly affected by her authority to exercise power and control over certain things. But it is often found that she is still treated by the norms of the patriarchal society where the relationship between women empowerment and pregnancy has not received much attention.

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[11] *Richa Jhanwa* **,** The Need for Maternity Benefits for Women Employee, *available at: https://www.lawctopus.com/academike/the-need-for-maternity-benefits-for-women-employee/* (last visited on March 11, 2020).

Nowadays, women are going out to earn and are becoming a "dominant" fraction of work "organisation" by acquiring higher posts with intellect and skill. This economic independence of women is not free from problems. In the economic sphere of life, the discrimination as a consequence of the biological role of women in nature of childbearing is one aspect. "Maternity Benefits" must be provided to every working female employee in order to ensure her economic independence and to provide her with to sufficient time to look after her newborn.

Women need benefits as "child bearing" and "delivery" is tormenting. A female undergoing it may not be able to work efficiently to increase productivity at work. The concern also prevails as India has already changed to a "nuclear family" approach, so "maternity protection" at work is required to preserve the heath of the "mother" and her "offspring".

So, it should be prioritised that are provided with all the comforts for bringing a new life. They must be provided full "benefits" for "rearing a baby" whatever be their nature work. The "Right to life" and "Personal Liberty" does not merely mean "to protect one's body" but also extends to "just and favourable" conditions of work.[12]

It is not only limited to one's desire to stay alive while having mere soul and breadth with no rights and security but it means the right to live a "meaningful", "complete" and "dignified" life. Therefore, it is the government's responsibility to ensure working women all sort of "assistance" and that she requires while taking care of her offspring as well as to secure and protect her employment.

The "social security" legislation has undergone a sea change with the passage of time. There is revolutionary modification and widespread remodelling of social security legislation from its limited scope to the tremendous progress in the area. Even the Indian Courts have specified the need of "maternity care" for "working women" irrespective of their job status in an organisation by passing various judgements in this regard.

The social security system in India is characterised by multiple schemes with narrow coverage. These schemes are administered by different agencies so

[12] The Constitution of India, art.21.

there is no uniformity in their coverage. None is able to receive the full range of benefits made available by the government. Many voluntary organisations, central government and the state government s have introduced various "social security" schemes as per their own perception of the requirements.

This has consequently led to a wide gap in the coverage and sometimes overlapping. As for instance various states like Delhi, Maharashtra have their own Maternity benefit laws. They follow and provide those benefits to their population instead of obeying the provisions or laws made by the government at the centre.

Provision of Social Security for Pregnant Working Women in India

"*There is no tool for development more effective than the empowerment of women"* **.... Kofi Anan**

Earlier, women lagged too far and at the back of men when it comes to have an access to secure and paid work throughout the globe as behind this there exist a belief and perception of women in the role of only housewives. They were often looked as only being caregivers, mothers and a secondary option of household income. This in return limited their opportunity to a descent salaried employment. "Lack of maternity" protection pushed the women into higher degrees of "depression", "defencelessness" and "fragility".

Later in view of women empowerment, the need was felt for salaried employment to women in order to make her economically independent. To make women self sufficient, various employment benefits, especially the maternity benefits are the additional rewards and the surprise package of the government for her welfare. Maternity protection is recognised as an essential tool to combat gender discrimination for women's rights and to support man-woman workplace equality. It is an important intervention of the law that recognizes women's rights related to reproduction both in the formal and informal sectors.

The maternity leave further created an environment for them to easily balance their work life and family life. Though there are various "legislative protections" for the "social security" of "working women" but the question of "maternity benefits" in India needs wide discussion and analysis.

Women constitute a major portion of Indian population. Their participation in the workforce is on an increase as the modern Indian society has given freedom to women to a certain extent. They are allowed to pursue higher education and make career choices after marriage. A woman has been successful in making a special pace in industrial laws in India.

Indian Government always support women labour force and has also enacted various laws for their benefit to prevent them from juggling between work and home and giving equal importance to both aspects of life. Women friendly Laws have been enacted especially the Maternity Benefits (Amendment) Act, 2017 to make this journey smooth for every woman as she plays multiple roles from being a creator to the nurturer of life.

But these provisions carry certain difficulties also for the women workers and the employers. Additional requirements mentioned under the Act would need more expenditure. As a result, most organisations might avoid hiring female workers. Moreover the number of paid leaves for a woman employee is increased it will bring about a hardship for the employer as he alone will have to bear the whole financial burden. Pregnancy of working women will open doors of new expectations and unexpected challenges for her to face. As a consequence, many women may chose to quit job as when asked to decide between love, care of the child and their job.

1.1.2 Social Security in Other Countries

A. China

China's "Social Security" system is controlled by the Central Government but its administration is governed by the local authorities. China provides for four types of Insurance[13]:-

1. **Medical Insurance-** Both Employer and Employee are required to make the contributions every month as medical insurance which is refunded to the designated hospital that carries out the treatment.
2. **Unemployment Insurance-** Employers make a monthly contribution as Unemployment Insurance Fund. However, a person not working in China is not eligible to it.

[13] Social Security: A Comparative Study between India, China and USA, *available at: https://thelawbrigade.com/wp-content/uploads/2019/05/Harshit-Shivani-1.pdf (*last visited on December29, 2022).

3. **Occupational Injury Insurance-** This covers all work related injuries and diseases. Only employer makes the contribution to this fund that covers the entire treatment cost of the employee**.**
4. **Maternity Insurance-** The employer makes the monthly contribution to this fund based on the average salary of the women**.**

A. America

Financial benefits are available to all workers in America from the U.S. Federal Government who at some time in their lives relies upon Social Security benefits. It may be when they retire or during their lives on becoming disabled or survivors benefits upon the death of a worker. The eligible persons can apply to the Social Security Administration (SSA) for receive these benefits under the following schemes[14]:

1. **Social security Child's benefits**- These benefits are paid to the biological child, adopted child or dependent stepchild of the worker.
2. **Social Security Disability Insurance Benefits** – This benefit is paid to people who are unable to work because of a disability that has lasted or will last for at least 12 months or end in death.
3. **Social Security Spouse's Insurance Benefits** - Such benefits paid to the spouse of a worker who entitled to Social Security Retirement or Disability benefits.

1.2 Review of Literature

Arun Monappa (1990)[15] in his book titled "Industrial Relations" had discussed in detail the labour welfare, social security and other related measures. He also examined the different types of complications and objections that administration faces in the application of the welfare measures.

P.C Tripathi (1998)[16] in his book titled "Personal Management & Industrial Relations" discussed that the present day facilities are not up to the mark to provide the sufficient "social security" and so it is required that some "social

[14]Harshit Hasssanwalia and Shivani, "Social Security: A Comparative Study between India, China and USA" 4(2) Journal of Legal Studies and Research 91 (2018).

[15] Arun Monappa, *Labour Welfare and Social Security in Industrial Relations* 243-271 (Mc Graw-Hill Publishing Company Ltd., New Delhi, 1990).

[16] P.C Tripathi, *Labour Welfare and Social Security*: Personal Management and Industrial Relations, 325-363 (Sultan Chand & Sons, New Delhi, 1998).

security" provisions in relation to "sickness benefits", "maternity", "medical care" etc**.** may be amended**.**

M.V Pylee and Simon George (2003)[17] in their book argued and suggested that the organisation must provide the "retirement benefits" as "gratuity", "pensions" and "provident fund" to their employees so that they should have no fear of social problems**.**

S Sakthivel, Pinaki Joddar (2006)[18] had analysed and revealed that the coverage of "social security" schemes is very meagre among the "economically" and "socially" dependent classes of the Indian society. They have further pinpointed that any sort of social security that depends entirely on the scheme of employer employee contribution, is bound to fail badly. It could stand in the situation of unreasonableness and poor institutional mechanism.

Patricia Justino (2007)[19] discussed that "social security" policies are very important in developing economies. The fact was proved using empirical evidence gathered from the country. The results of their study throw light on the aspect the reduction of poverty and India's enhanced economical growth have played a remarkable role in earmarking the policies that strengthen the accessibility of "socio – economic" security of Indian masses.

Binoy Joseph, Joseph Injodey and R. Varghese (2009)[20] discussed about the changes and the additions in the Indian Labour welfare scene. The paper examined the measures of Indian "Planning Commission" for enhancing the worker's benefit in different areas such as "child labour", "bonded labour", "female labour" and "occupational safety" and "health" in both the "Public Sector" and the "Private Sector" organizations.

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[17] M.V Pylee and Simon George, *Retirement Benefits in Industrial Relations and Personal Management* 153-160 (Vikas Publishing House Pvt. Ltd., New Delhi, 2003).

[18] S Sakthivel, Pinaki Joddar, "Unorganized sector workforce in India: Trends, patterns and social security coverage" *Economic and Political Weekly,* 2107-2114 (2006).

[19] Patricia Justino, "Social Security in developing countries: Myth or necessity? Evidence from India" 19(3) *Journal of International Development: The journal of the Development Studies Association* 367-382 (2007).

[20] Binoy Joseph, Joseph Injodey and R. Varghese, "Labour Welfare in India" 24 *Journal of Workplace Behavioral Health* 221-242 (2009).

The paper suggests that provision of "housing facilities", "education", "prevention of child labour" and "bonded labour" and other related "women welfare" measures are additional activities for the benefit of the population. This article also pinpoints the framework of a "welfare state" relies absolutely on its "social security" web. It also points that the "Government", "employers" and "trade unions" are doing a lot for promoting better working conditions. However, there is still a lot more required to be done in this area.

Dhruba Hazarika (2011)[21] discussed that women faced difficulties in getting their status being recognised equal to men since ages. But after Independence of India, the Constitutional makers have tried and strongly demanded equal social status for women as of men. Today women have been seen occupying respectable positions in varied occupations but still they are not absolutely free from harassments at work place and are fighting for establishing their potentials**.**

Sashi Bala (2012)[22] discusses widely about the effective implementation of maternity benefits of women and the measures that have been adopted for their "upliftment" and "benefit" in "Post- Constitution period" in relation to "maternity leave" provisions, the time span of "maternity leave", the benefits that a female can avail in relation to pregnancy and child birth and the source of funding. The paper aims at the implications of Indian Legal Provisions on "maternity benefits" for examining the "employer" and "employee" viewpoint towards "Maternity Benefits Act" because she requires it for her protection and of her baby.

Mamta Mokta (2014)[23] has discussed that the "principle" of "gender equality" enshrined in the "Preamble", "Fundamental Rights" as well as "Directive Principles of State Policy". It is further discussed that "empowerment of women" means making them financially active and assert control over the factors that affect their lives.

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[21] Dhruba Hazarika, "Women Empowerment in India: A Critical Study" 1(3) *International Journal of Educational Planning & Administration* 199-202 (2011).

[22] Sashi Bala, "Implementation of Maternity Benefit Act" *NLI Research Studies Series* 099 V.V Giri National Labour Institute, Noida (2012).

[23] Mamta Mokta, "Empowerment of Women in India: A critical Analysis" 60(3) *Indian Journal of Public Administration* 473-488 (2014).

This article discussed the measures for promoting "women empowerment" taken by the "Government" of India. This work is done by analysing India's position in "Gender Inequality Index" and coming to the conclusion thereafter that women need recognition. The society should play an active role to ensure "equal status" to the women in all fields of life.

Jean Dreze and Reetika Khera (2017)[24] discussed about the five programmes: "school meals", "child care services", "employment guarantee", "food subsidies", and "social security pensions" that lay a partial foundation for the system of "social security" in India. They have also discussed in their paper some of the general issues in respect of the "social policy" in India. The issues revolve around the arguments for "universalisation" of various benefit policies versus targeting the approach of society that supports value of rights of every individual

Nadola Prata et al (2017)[25] discussed that women empowerment is multidimensional-a women may be empowered in one aspect (financial) but not in another (health care, sexual or reproductive decisions). It is also mentioned that certain issues like relationship between "women empowerment" and "pregnancy" or "childbirth" have not yet received the required attention.

Kusuma Naik M.V., et al (2017)[26] talked about the outcomes of "pregnancy" and the "risk factors" for women. It discusses the aspect of increasing women participation and their continuity towards work during "pregnancy". This paper portrays risk factors like "anaemia", "postpartum psychosis", "reduced plasma volume" and "hormonal imbalance" and their effects on women's health during pregnancy. It also categorises the physical activity that every

[24] Jean Dreze and Reetika Khera, "Recent Social Security Initiatives in India" 98 *World Development,*
Elseiver 555- 572 (2017).

[25] Ndola Prata, Paula Tavrow & Ushma Upadhyaya, "Women's Empowerment related to pregnancy and childbirth: Introduction to special Issue" *BMC Pregnancy and Childbirth* 352 (2017).

[26] Kusuma Naik M.V., Vedavathy Nayak, Renuka Ramaiah, Praneetha, "Pregnancy Outcome in Working Women With Work Place Stress" 6(7) *International Journal of Reproduction, Contraception, Obstetrics and Gynaecology,* ISSN: 2320-1789 (2017).

woman should undertake at "pregnancy" to overcome her stress level and to fight against the risk factors that can deteriorate her health and her fetus.

Katja Hujo et al, 2017 discussed in their paper "social security" as an "inalienable human right". It is the outcome of a political and bureaucratic process that appropriately- resourced as asserted by the "United Nations Universal Declaration on Human Rights of 1948".

This paper mentions "social security" administrators are key actors to meet the commitment of the international community towards progressive and universal "social security" coverage. However, this role may be authoritative and imperious but if this commitment fails to respect people's differences this will end in putting at risk the goals envisaged by the human right to "social security". To sum up, there is an urgent need to develop an understanding that it is necessary that universal coverage of "social security" must also be responsive to the personal needs of an individual.

Priyanka, A. Sreelatha (2018)[27] discussed the importance of providing "maternity benefits" to working women in view of increasing women participation in labour market. They also discussed the objectives of maternity legislation in India that aim at protecting the dignity of the God's gift to a female i.e. to be a 'Mother' by providing her and her offspring with adequate health care facilities. The paper also highlights importance of maternity benefits to a woman so that she may be able to spend valuable time with her child and develop an emotional bond with it without having this fear or worry in mind that she may lose her job and her source of income.

A. **Gokulkrishnan, Dr. D Vezhaventham (2018)**[28] discussed about the maternity benefit scheme that is implemented by the government to the women and the problems that are faced by the women in this scheme. It is also discussed that compared to other sectors women in unorganised sector does not get their every benefit as the women get who are al employed in the organised sector.

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[27] Priyanka, A. Sreelatha, "Effective Implementation of Maternity Benefit Act of 1961" 120(5) *International Journal of Pure and Applied Mathematics*, 1329-1338 (2017).

[28] G. Gokulkrishnan, Dr. D Vezhaventham, "A Study of Maternity Benefits Scheme in India" 120(5) *International Journal of Pure and Applied Mathematics* 4393-4408 (2017).

Dr. Lalit Dadwal, Dr. Kusum Chauhan (2018)[29] discussed that there has been a rapid increase in the women work participation and their attitude towards work. But women workers are at a disadvantage due to some "biological" reasons. The paper discusses various concerns for "maternity rights" at "national" and "international" levels with special reference to the "Maternity Benefit (Amendment) Act", 2017. Further, it has put light on certain cases pertaining to the matter of "maternity rights". It also threw light on the "loopholes", "drawbacks" and least "motivational" effect towards "maternity rights" of women.

Manvendra Singh Jadon, Ankit Bhandari (2019)[30] had discussed women have contributed in the "skilled labour workforce" of the country. So they need support and care during maternity period. They further discussed that the "Maternity Benefits (Amendment) Act", 2017 can help protecting the women in delicate situations like "pregnancy" from being harassed in the name of work commitment and in achieving "social equality" for women.

Anita Nath, et al. (2019)[31] in their paper discussed the "psychological" changes experienced by females and the anxiety levels amongst those pregnant women who are living in countries that are economically weak and bear great expenditure for living in those nations while arranging the bare necessities. It also explains that the anxiety and depression problems are very commonly faced by women in their pregnancy and so they need care and time to overcome them.

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[29] Dr. Lallita Dadwal, Dr. Kusum Chauhan, "Maternity Rights for Women and Law in India: A Critical Analysis" 03(12) *International Journal of Social Science and Economic Research*, ISSN-2555-8334 (2018).

[30] Manvendra Singh Jadon, Ankit Bhandari, "Story Unspoken: An Analysis of Maternity Benefits Amendment

Act, 2017 and its Implications on the Modern Industrial Discourse" 8(2) *Christ University Law Journal* 63-84 (2019).

[31] Anita Nath, Subashree Venkatesh, Sheeba Balan, Chandra S Metgud, Murali Krishna, "The Prevalence and Deteriments of Pregnancy- Related Anxiety Amongst Women" 11 *International Journal of Women's Health* 241 (2019).

Pramita Gurung (2019) [32] has discussed that "Labors", all over the country plays a considerable role as it is recognized as an important source of production. No thoughts "legally" or "socially" were devoted for their protection. They have contributed both manually and mentally for production. Feeling of security enhances employee's efficiency and efforts. The "working community" therefore has the right to "just and humane" condition of work and not only wages. In this context this paper attempts to analyze the evolution and development of the concept of "social security" in organized sector in India.

Muzna Alvi, Manavi Gupta (2020)[33] had discussed the implications of lockdown. It discusses the problems that "lockdown" induced schools and rural child care centres have to face. The closure of "educational" sector and that of child care centres health worsened the situation for the "rural" and "urban" poor. Further they put forward an argument that the impacts of such closure are likely to be harsh on children, especially girls belonging to a ethically disadvantaged group. They had also suggested ways in which existing social security programmes can be developed so as to improve the condition of such neglected and affected groups in the society.

Dr. Randive Admane (2020)[34] discussed that "maternity" is one such condition of females during which they do not work for a long duration thereby affecting their capacity to earn their livelihood. Therefore it becomes obligatory to provide "maternity benefits" to females employed in all fields of work. He conducted a study on "maternity benefit" with special reference to those working in "Construction Company" by collecting data through face to face interview of women workers.

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[32] Pramita Gurung, "Evolution and Development of the Concept of Social Security in Organized Sector in India" 4(5) *International Journal of Scientific Development and Research* (IJSDR) 209-216 (2019).

[33] Muzna Alvi, Manvi Gupta, "Learning in times of Lockdown: How Covid-19 is affecting education and food security in India" 12(4) *Food security* 793-796 (2020).

[34] Dr. Randive Admane, "A study on Effectiveness and Impact of Maternity Benefit (Amendment) Act, 2017

on Employment in Unorganised Sector with reference to Construction Company" 29(3) International *Journal of Advanced Science and Technology* 6298-6311(2020).

Gayathri Devi M, Dr. K Logasakthi (2020)[35] in their paper focused on the maternity benefits available all over the world to the female population. They have discussed about the issues women faced during pregnancy and suggested ways that could help women to overcome problems related to her health and wellbeing. The paper also mentions about various maternity benefits made by the government for women employees working in "organized sectors" and "unorganized sectors". Their paper is an attempt to understand in an elaborate manner the facilities that the maternity benefit schemes provide for a woman, to compare them with those provided in other countries and at last to bring out the differences between them.

Mrs. P. Pandi Rani and Dr. M.P Sivakumar (2021)[36] In Their Paper had discussed that a crucial change has been brought about by the "Maternity Benefit (Amendment) Act 2017" by enhancing the "maternity leave" from "12weeks" to "26 weeks". They have also mentioned that now India has become one of the few Nations that provide support for women enhancement.

Ehtisham Ahmad et al (1991)[37] This Book attempts to define Social Security" and examine the programmes suitable for developing countries. It explores and describes "social security" provisions in various regions of India, China, Lain and South America and aims to put the subject of "social security" on the development front with a view to enhance further research in this area. It focuses on the measures that have emerged as components of "Social Security Systems" of developed countries.

Jonathan Gruber (1999)[38] His paper aims to provide an overview of the interaction between social security and the labour force behavior of older persons in the Canada both today and overtime. It also suggests that Canada

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[35] Gayathri Devi M , Dr. K Logasakthi, "A Comparative Analysis On Maternity Benefits In India With Other Countries" 7(3) *European Journal of Molecular & Clinical Medicine* 4928-4938 (2020).

[36] Mrs. P. Pandi Rani and Dr. M.P Sivakumar,"A Study on Maternity Benefits Acts In Corporate Sector" 13(6) *International Journal of Current Research* 17836-17840 (2021).

[37] Ehtisham Ehmad, Amratya Sen, *et al.(eds.),* Social Security in Developing Countries (Oxford University Press, U.K, 1991).

[38] Jonathan Gruber, "Social Security and Retirement around the World" Volume ISBN: 0-226-31011-6 e *National Bureau of Economic Research* 73 – 99 (1999).

may be required to consider a number of reforms to its social security system over the coming years.

Europian Commission (2010)[39] In the work has discussed about various social security benefits with respect to "old age", "health care", "sickness", "maternity", "paternity", "old age", "survivors" and "invalidity" and benefits in case of "accidents at work", "occupational diseases" and "unemployment". The work also describes the people entitled to such benefits, what is covered under these heads and how these benefits can be accessed in the United Kingdom.

Harshit Hassanwalia & Shivani Dewalla (2018) [40] This paper discussed that **"**Social Security" system is a composition of a various schemes and programs spread through a variety of laws and regulations throughout the globe. It has also thrown light over different social security provisions in countries like India, USA and UK.

1.3 Need for the Study

Social security means the safeguard by the society at the time of need arising out of contingent situations such as "sickness", "death", "unemployment", "retirement", "accident", "maternity", "old age" etc. is social security. During this period they may need "monetary assistance", support in other form to maintain them and their families. This economic and social support is a measure of "social security". "Social security" is the security to the members of the society against some odds so that they can survive in times of risk.

The literature survey on various papers relating to "women empowerment", "social security" and "maternity benefits" is done and it is found that:

1. Till now the main focus has been on the basic study of all the "social security" provisions. Research has been done on the social security relating to old age persons or women workers in the construction companies or semi rural areas. But no work especially a combined doctrinal and empirical yet is done

[39] Europian Commission, "Your Social Security Rights in the United Kingdom" *Employment, Social Affairs and Equal Opportunity* (Europian Union, 2011).

[40] Harshit Hassanwalia & Shivani Dewalla, "Social Security: A Comparative Study between India, China and USA" 4(2) *Open Access Journal 76-98 (2018).*

on the effective implementation of these social security provisions with respect to maternity benefits in private sector organisations.

2. It is doubtful and hence imperative to analyse whether the different organisations are effectively implementing the Maternity Benefits Law as framed by the central government or there is some sort of fluctuation among the maternity benefits as provided by different private institutions.

3. It is necessary in the present day scenario to examine the awareness and satisfaction level of working female employees with respect to maternity benefits.

Thus there is need to capture the awareness and satisfaction level of women workers about the "Maternity Benefits Act", 1961 and to find out that a woman who by law is considered to be the natural guardian of her child is getting sufficient time to take care of that nature's gift while she is working.

With this background, the researcher idea has been developed and undertaken by the researcher as "**Social Security and Maternity Benefits for Working Women in India: an Analysis of the Practices and Implementation in the State of Punjab".**

1.4 Scope of the Study

The research work aims to find out the awareness level of maternity benefits law among working women in private educational sector. It also intends to analyse the efficiency of the Maternity Benefit Act, 1961 in securing the satisfaction level of women employees and the organisation in which they are working. So for this purpose, the researcher has prepared a questionnaire and distributed it among married working women in different private institutions. The researcher collected data from them through personal contacts and making personal calls. The "secondary data" is collected from various resources like "books", "journals", "internet websites", "government reports" and other published work related to the topic.

1.5 Research Questions

- **Whether Private Institutions are providing social security benefits to its employees as are recognised by various Statutes and Conventions?**

- **Whether the private educational Institutions are effectively implementing the Maternity Benefits Laws as made by the Central Government?**
- **Whether social security rights have been recognised as a Human Right apart from statutory obligations of the institutions?**

1.6 Hypothesis

"Maternity Benefits" have the basic to protect the "pride" of a woman and also to grant her the protection in general. The impact of changes in "social security" benefits particularly the working women both in "organised sector" and "unorganised sector" have always remain a bone of contention with regard to its implementation. This study will focus on the multidimensional scale of beneficial satisfaction and also at the discrepancy model to examine the determinants of maternity beneficial satisfaction to a working woman. The Hypothesis of the present study is that Maternity Benefit Law is not implemented properly.

1.7 "Objectives"

The goals of this "research work" are:-

- To analyse that "social security" as a "human right" is recognized.
- To study the awareness of "Maternity Benefits Act", 1961 amongst the working women employees.
- To compare the social security benefits provided by different organisations/ establishments to working women and the satisfaction level of those women.
- To study the issues and challenges of "social security" measures faced by the working women.
- To study and examine the "judicial approach" with regard to "social security" benefits to working women.
- To examine if the "Social Security Code", 2020 is in itself sufficient to recognize and honour women's right to social security.
- To find out the implementation of the "Maternity Benefit" scheme in "private" sector.

- To examine the adequacy of “maternity benefits” and the shortcomings of the legislature.
- To study the comparison between the Old and the New Law on Maternity in India

1.8 Research Methodology

The researcher adopted a combination of “Doctrinal” method as well as “Non Doctrinal” method for the study and collection of data. Thus it has been collected from both “primary sources” and “secondary sources” of “data collection”. The details about the “Maternity Benefit” Law will be collected from “secondary sources” viz. “Books”, “Journals”, Bare Acts, “Internet” (Websites), “Research Papers” whereas a “Questionnaire” of close ended questions is prepared to carry out an “Empirical Study” on the topic. The sample of 28 “Private Educational Institutions” that includes “Private Universities”, “Private Colleges” And “Private Schools” is selected for conducting the research in “Punjab”. For the selection of sample of Districts Simple Random Sampling (Probability Method of Sampling) adopted and them to identify the Educational Institutions the researcher adopted the Convenience Method and collected data from the specifically targeted respondents.

The respondents for “data collection” are married female employees working in different educational institutions (contractual, adhoc or regular) and the questionnaire is administered among them to find out the “awareness” and level of “implementation” of this law. The focus of research remained the “collection” and “analysis” of “qualitative data” as well as “quantitative data” from the sample of 100 respondents. The research started with the “Exploratory Research” to understand the problem and once it is indentified the researcher described the problem by collecting the quantitative data.

1.9 Significance of Study

“Social Security” provides adequate financial assistance to families in times of disability and death of the only “breadwinner” in the family. It covers most employees including females and provides “social protection.” Females

nowadays form the major part of the population of India and with the advent of "industrialization" and "modernization", their role in different sectors has increased. They have become economically independent but face problems in balancing their household and work, especially when it is about giving birth and taking care of a child. Therefore, adequate maternity benefits would help them to enjoy their motherhood without putting at risk their health and that of their child under workplace pressure and retain job security**.** Moreover, awareness about various "social security schemes" and programs is must as every Indian Citizen and their employer is entitled to their coverage that is spread throughout variety of "laws and regulations". This research work will help tracing out whether there is awareness among the working women regarding social security in the form of maternity benefits. It will also help finding out if they are provided such benefits by the organisation in which they are employed.

1.10 Research Study- Chapertisation

The present research work has been presented with Seven Chapters. A brief summary of the chapter has been mentioned below.

The **First Chapter** Introduction is devoted to the brief overview of the Topic Title "**Social Security and Maternity Benefits for Working Women in India: An Analysis of the Practices and Implementation in the State of Punjab"** along with the Review of Literature, Research Methodology, Objectives, Hypothesis and the Significance of the study.

The **Second Chapter** on **"Social Security and Welfarism to Working Class: Conceptual Framework"** deals with the social security conceptual framework and welfare legislations for the working class**.**

The **Third Chapter** on **"Growth and Development of Social Security Laws in India"** deals with the stages of development of social security laws in pre and post Independence era in India.

The **Fourth Chapter** on "**Maternity Benefit as a Human Right and Role of ILO"** deals with the growth and recognition of social security as a "Human Right" and study of various "ILO conventions" on "social security" to labour especially females.

The **Fifth Chapter** on **"Role of Judiciary in Enforcing Maternity Benefits"** deals with the study of various Apex Court and High Court Judgements in which Judiciary has taken stand for providing "maternity benefits" for female workers irrespective of their job status.

The **Sixth Chapter** on **"Enforcement and Implementation of Maternity Benefits: An Empirical Analysis"** deals with the analysis of "awareness" on "maternity benefits" among female workers and implementation of maternity benefits in various "private" educational institutions.

The **Seventh Chapter** on **"Conclusion and Suggestions"** deals with the Conclusion of the study with various suggestive recommendations on the topic for further improvement in maternity laws.

The "social security" and the "maternity benefits" which are implemented by the "central government" throughout the country remain irresolute to its "uniform implementation" in the "organised" and "unorganised" sectors. "Social Security" laws are being marked as "human rights" and so the checks and balances need a thorough analysis. The Social Security laws passed by the central government cannot be discriminated because these laws are interconnected with "human rights" that aim at a more equal society. In this study it is imperative to make an "extensive research" of the implementation of the "social security" benefits in general.

CHAPTER-2

SOCIAL SECURITY AND WELFARISM TO WORKING CLASS: A CONCEPTUAL FRAMEWORK

2.1 Introduction

A "Welfare State" is a concept of government which is based on the principles of "equality of opportunity", "equitable distribution of wealth" and "public responsibility" for those who are unable to avail themselves of the basic necessities. The State plays an important role in the "protection" and "promotion" of the "social" and "economic" wellbeing of its citizens**.**

In the broader sense, a "Welfare State" is a government that provides for "physical", "material" and "social" needs to assure equitable living standards of living for all in the form of "education", "housing", "sustenance", "healthcare", "pensions", "unemployment insurance" and "sick leave" or off time due to injury.

A "Welfare State" can be organised in two ways:

- As per the first model which is dominant in US, the state is primarily focuses upon directing the resources to the needy that requires maximum interference in the lives of the people to find out the ones who are in need. This requires a strict "bureaucratic control" over the people concerned.
- The second model which is dominant in Scandinavia requires the state to assure and distribute welfare with little "bureaucratic interference" to the population.

The growth of the concept of "Social Security" lay in the liberal and socialist ideology of the British to the problem of poverty. Two factors that contributed to the evolution of the concept were the rising expectations and the fear that was generated by the newly acquired "manhood franchise". The ominous beginning was the growing interest of the government and the role of municipality in "social reform." So the "State help" and "Self help" became the centre of discussion on the subject of the welfare state. The state helped to the possible extent in solving the problems of want, disease, ignorance and

misery and later publicized them which added urgency to efforts for overcoming these.

Hence the "welfare state" emerged in consequence to the "maturing economy", "laissez faire attitude" and developed "self interest".[41]

Since the times, India achieved its Independence many financial and economic problems have been faced by the Indian government. But it has put the establishment of a "social security" program, as one of the first measures in it's for making reforms and improvements at domestic level.

"Political thinking" throughout the world revolves around three "political systems" viz., "capitalism", "Marxism" and "Socialism" at the inception of independence. The framers were greatly influenced by socialistic thought in the process of making the Constitution. They have visualized an "egalitarian social order" by incorporating provisions for eliminating "inequalities" and preventing "concentration of wealth" in few hands. With the advent of industrialization and modernization, greed for materialistic needs of man increases. The "Constitution" makers have imbibed in it the provisions to ensure the welfare of the people including women and the working class during the process of shaping the Constitution of our country.

2.1.1 Concept of Welfare of Workers

"Human asset" and the "presentation of most recent innovation" are the two powerful elements which contribute to development of any industry. The procedure of globalization led to "innovation", "expanded rivalry", "work escalation", "broadening of the workforce" and "increasing number of females in the workforce". The obscuring of limits amongst work and family has affected the workplace as people spend a significant proportion of their lives at work. So fostering a work culture that "promotes work-life balance", "employee growth and development", "health and safety", and "employee engagement" can be the key to achieving sustainable employee well-being and organizational performance. "Welfare" is another expression of well-being. "Labour" is a crucial factor of production. "Labour Welfare" measures are

[41] Concept of Welfare State and its Relevance in Indian Scenario, *available at:* https://www.legalservicesindia.com/article/507/Concept-of-Welfare-State-and-Its-Relevance-in-Indian-Scenario.html (last visited on December 28, 2022).

very important for efficient production since they have strong impact on workers willingness to work and their productive capacity.[42]

The aim of "Labour Welfare" is total development of workers and to minimize exploitation of workers. The objective is to provide to the employee "social comfort"," financial support" and "healthy working conditions" by "employers", "trade unions", "governmental" and "non-governmental institutions" and "agencies". This helps in keeping the morale of the employees' high and creating "industrial harmony" by providing insurance against "disease", "accident" and "unemployment" to them and their families.[43] It will further develop the "sense of belonging" among employees as they will feel attached with the organization and this in turn would help the creation of "permanent labour force".

2.1.1.1 Theories of Labour Welfare

There are various theories that constitute the conceptual framework of "Labour Welfare" activities**:**[44]

A. The Police Theory –It is based on the contention that a minimum standard of welfare is necessary for labourers. The theory assumes man as a selfish being that without "compulsion", "periodical supervision" and "fear of punishment", no employer will provide even the minimum welfare amenities to its workers. Human being always tries to achieve his own ends even at the cost of the welfare of others. Therefore the theory hypothecates that the "welfare state" has to step in to prevent these atrocities and exploitation. Thus various laws are promulgated to provide the minimum standard welfare measures by the organization. It is seen that this theory emphasis on the "fear" and not on the true spirit of "welfare".

B. The Religious Theory – It is propounded on the concept that a man is essentially a "religious animal" and many of his acts are related to "religious sentiments" and "beliefs" even today. Hence an employer is sometimes prompted by these religious feelings to take up welfare activities in the expectation of future benefits either in his life or after it or in the spirit of

[42] Dr. Randhir Kumar Singh, "Labour Welfare in Indian Perspective" 5(11) Journal of Emerging Technologies and Research (JETIR) 610-613 (2018).
[43] Labour Welfare, *available at:* https://old.amu.ac.in/emp/studym/100000649.pdf (last visited on January 14, 2023).
[44] *Ibid.*

"atonement for their sins". Further, according to this theory man is primarily concerned with his own welfare and only secondarily with the welfare of the others. The concept of religious basis of welfare can neither be "rational", nor "universal" or "continuous".

C. The Philanthropic Theory- This theory of Welfare is based on the idea of "loving mankind". In Greek "Philos" means loving and "Anthropos" mean man and hence it means man's love for mankind. Man is believed to have an "instinctive urge" by which he strives to remove the suffering of others. Thus the "labour welfare movement" in India began in the early years of the "industrial revolution" with the avid support of Mahatma Gandhi, who stood for the welfare of the labour.

D. The Trusteeship/ Paternalistic Theory- It provides that the total "industrial estate" is held by the "industrialists" or "employers" and "properties" and "profits" accruing form them is utilized for the workers, for him, and for society. The theory assumes that the workmen are like "minors" who are "ignorant" because of "lack of education" and are unable to look after their own interests. Therefore it is the "moral responsibility" of the "Employers" to look after the interests of their workers. The main emphasis of this theory is the "moral will" and "conscience" of the "employers" to provide funds on an ongoing basis for the "well-being" of their "employees".

E. The Placating Theory – It is based on the act that "labour groups" are becoming conscious about their rights in relation to "higher wages" and "better standards" so are getting demanding and militant. Their demand cannot be ignored and hence timely and periodical acts of "labour welfare" can pacify and appease the workers.

F. The Public Relations Theory- This theory provides the basis for an "atmosphere of goodwill" between "labour and management", and also between "management and the public". The exhibition of "Labour welfare programmes" will work as a sort of an "advertisement" to help an organization to maintain its good image and build up and promote good and healthy relations between "management and labour". But at the same time such programs when lose its "advertisement value" may become "redundant" and be "withdrawn" or even "abandoned". They may lack "sincerity" and

"continuity" and may become only a "publicity stunt" rather than "labour welfare programmes".

G. The Functional/ Efficiency Theory – The concept behind this theory is that a happy and healthy person is a better and more productive worker. It is obvious that if an employer takes good care of workers, they will tend to become more efficient and will show concern for the growth and development of the industry. This concept would work well when both the parties have identical aim and have understanding of one another's viewpoint. This theory is a reflection of contemporary support for "labour welfare" that encourages "intelligent" and "willing labour's participation" in "welfare programmes".

2.1.2 "Right to Social Security" and the "Constitution"

"Preamble" declares:

WE, THE PEOPLE OF INDIA, HAVING SOLEMNLY RESOLVED TO CONSTITUTE INDIA INTO A SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC

AND TO SECURE TO ALL IT'S CITIZENS;

JUSTICE, SOCIAL, ECONOMIC AND POLITICAL;

LIBERTY OF THOUGHT, EXPRESSION, BELIEF, FAITH AND WORSHIP;

EQUALITY OF STATUS AND OF OPPORTUNITY;

AND TO PROMOTE AMONG THEM ALL

FRATERNITY ASSURING THE DIGNITY OF THE INDIVIDUAL AND THE UNITY

AND INTEGRITY OF THE NATION;

IN OUR CONSTITUENT ASSEMBLY THIS TWENTY-SIXTH DAY OF NOVEMBER, 1949, DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS

CONSTITUTION.

"Preamble" is a preface to the aims and objectives of the constitution in clear and unambiguous words. It proclaims India a "sovereign", "socialist", "secular", "democratic republic" and secures "justice", "liberty", "equality" and "fraternity" to its people. It embraces to establish "social", "political" and "economic" justice in India. It assures a democratic life to all irrespective of "caste", "creed", "colour", "sex" or "religion".

The scheme of the Constitution grants special and central place to the "dignity" of an individual. The Constitution under its "Part III" protects the individual rights of its citizens under the head "Fundamental Rights" whereas "Part IV" of the Constitution through the "Directive Principles of State Policy" secures the claims of "social good" and "egalitarianism Policy". These two parts are the "heart and soul" of the Indian Constitution by "Granvillie Austin".[45]

Where on one hand, the aim of the "Fundamental Rights" in the Constitution is to assure freedom to enjoy life, liberty and happiness according to the choice of its citizen. They recognize the significant role of individual in the affairs of the state. The state will interfere in the individual's enjoyment of his "life and personal liberty" if it is justified on the ground of "public good".

"Directive Principles of the State Policy", on the other hand, are supreme and vital in the governance of the country. The framers of the Constitution have not made the "Fundamental Rights" absolute and build a bridge to provide reconciliation sought between the "rights of an individual" and the "claims of social good".

"Constitution makers" also visualized that the idea of "welfare state" cannot be achieved by "guarantee of freedom" and "liberty" alone without implementing the "socio-economic policy" as visualized by the "Directive Principles". The drafting of "Directive Principles" was further influenced by the "League of Nations" and the "Universal Declaration of Human Rights."

The Indian Constitution through its "**Article 38 (1)"** tends to secure "social", "economic" and "political" justice to promote the "welfare" in order to reaffirm the objective of the Preamble to secure justice for its citizens in all forms. It aims at the protection of a social order in all institutions of national life as efficiently as possible. The state is directed through Clause (2) to "Article 38" to lessen the extent irregularities in income. This clause represents the notion of group equality with the primary objective of eliminating inequalities in all spheres. The idea is to provide "equality of

[45] Granville Austin, *The Indian Constitution: Cornerstone of Nation 50*, (Oxford University Press, New Delhi, 1966).

status", "facilities" and "opportunities" to individuals as well as clusters doing varied vocational jobs.[46]

"Article 39" puts forward a specific objective of securing adequate means of livelihood for its citizens. The main goal is to ensure "equal pay for equal work" which can be achieved by preventing the concentration of economic power in the hands of few capitalists. By ensuring an "economic order" it aims at the "protection of health" and "strength" of workers from "abuse"[47] for the "general good" of the masses.

"Article 41" provides for effective "social security" in the form of the "right to work", "right to education", "public assistance" in case of "unemployment", "old age", "sickness" and "disablement" and "undeserved want" among people. Attainment of this "objective" is subject to the limits of "economic capacity" of the State although this provision is an essential measure of "social security".

There are numerous other measures of "social security" under the "Constitution of India" in the form of provisions for protecting "just and humane conditions of work", "maternity relief", a "living wage" to all "wage earners". Various other provisions like just conditions of work that are sufficient for an individual to enjoy a "decent standard of life" and "full of recreation". Provisions also provide for various social and cultural opportunities to the citizens[48].

According to Chinnappa Reddy, J., the main distinction is "Fundamental Rights" on one hand aim at assuring "political freedom" to "citizens" by protecting them against "excessive state action" and "Directive Principles" on the other hand, are endeavored at assuring "social and economic freedoms" for "citizens" by the "state action".[49]

"Directive Principles" in conformity with these stated principles intends to bring out a "just and social order" in society. They are fundamental in the

[46] Added by amendment 44 of the Constitution of India.

[47] M.V.Pylee, *Indian Constitution 55,* (Asia Publishing House (P) Ltd., Bombay, 1974).

[48] The Constitution of India, arts.42, 43.

[49] O. Chinnappa Reddy, *The Court and the Constitution of India: Summits and Shallows 76*, (Oxford University Press, New Delhi, 2008).

governance of the state but are unenforceable by any organ including the courts in India.[50]

2.1.3 Social Security and Welfarism: Judicial Approach in the Light of Directive Principles versus Fundamental Rights

It was recognized that peace in the world can be established only if it is based on the idea of "social justice" by the end of the "First World War". "Preamble" to the "Indian Constitution" is dedicated to secure "social", "economic", "political" justice to all its "citizens" based on the "objective resolution" moved by "Pt. Jawaharlal Nehru" in the "Constituent Assembly". He dreamed to build the nation on the strong foundation of "socio-economic" and "political justice" to the "general public" in India[51].

"Fundamental Rights" as well as "Directive Principles of State Policy" mainly proceed on "Human Rights" for all. Under the Indian Constitution, the "State Legislature" and the "Parliament" are empowered to make laws with regard to the rights of a worker. Such laws would include the right to a "just wage" enough to safeguard his "family's living", or the "right to unemployment relief" or "unemployment insurance", "sick benefits", "social security" along with "just amenities". All these imply the "moral" and "social right" of a person to "social insurance", "employment" and "unemployment".

"Social Security" has always remained a conundrum yet is a wider term with a bundle of rights. The right to "social security" can be claimed by any person, in cash or in kind according to "Committee on the Economic, Social and Cultural Rights," "without discrimination" on any ground in order to gain protection from:-[52]

(i) "Lack of work-related income" owing to "sickness", "disability", "maternity", "employment injury", "unemployment", "old age", or "death" of a "family member";

(ii) "Unaccess to health care";

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[50] The Constitution of India, art.37.

[51] P.Nagabooshanam, *Social Justice and Weaker Sections: Role of Judiciary 4 (Sitaram Co.,Chennai, 2000).*

[52] Julia Kagan, Social Security Benefits, *available at:* https://www.investopedia.com/terms/s/social-security-benefits.asp (last visited on May 8, 2021).

(iii) "Insufficient family support", in respect of "children" and "adult dependents".

"Indian Constitution" does not define "Social Security" anywhere but the spirit of "Social Security" has been inculcated within "Part III" and "Part IV" of the Constitution that embodies a distinct philosophy of government. It explicitly declares India to be a "social welfare state" aimed at the general welfare of the people.[53] The Constitution is thus an instrument to achieve the goal of "political", "social" and "economic" democracy.[54]

Justice Bhagwati, has rightly observed, in Francis *Coralie* v. *Delhi:*[55] "We think that the right to life includes the right to live with human dignity. It includes within it the right to achieve the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings". The importance of "social security" is inferred in the above stated words of the Hon'ble Apex Court.

"Social Justice", therefore, is a "sine qua non" of progressive "democratic nation", like India. Hence, a modern "welfare state" has to promote activities necessary for the "social and economic welfare" of the community and accepts the responsibility of meeting the "legitimate demands" of the people.[56]

So to promote "liberty", "equality" and "dignity" is the "social responsibility" of a "modern welfare State" and this "welfare idealism" is perpetrated in the "Indian Constitution" as "Part III" and "Part IV" that covers a wide range of "socio-economic demands" of a huge population. The "Fundamental Rights" as well as "Directive Principles" ensure "distributive justice" to an "ordinary man" in India. In brief, both parts of the Constitution constitute the "philosophy" of "restoring pride" and "self esteem" of "poor", the "weak" and the "aggrieved classes" of the society.

Before Justice Bhagwati has remarked that, "the directive principles enjoyed a very elevated position in the constitutional scheme" of India. But the

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[53] M.P.Jain, *Indian Constitutional Law* 16 (Wadhwa & Company, Nagpur, 2003).

[54] *Ibid.*

[55] AIR 1981 SC 746, 753.

[56] *Ram Jawaya Kapoor* v. *State of Punjab*, AIR 1955 SC 549.

Indian courts not rightly appreciated the "true nature", "importance", role and goals underlying these "Directive Principles" of State Policy. Justice Bhagwati has also remarked that the directive principles provide a framework of the socio-economic structure so they occupy a very elevated position in the constitutional scheme of India.

This framework is contemplated in the "Directive Principles" in "Part IV" of the Constitution. It is opined that if the fundamental rights will operate within this web of socio economic security only then they could become meaningful and beneficial for those masses of the population who are poor in the country and have to struggle to even the bare necessities of life[57].

The Hon'ble Court further established that criteria for "determining reasonableness" and "public purpose" in implementing the "Directive Principles", is to be found in the law itself.[58] The Court hereby, emphasize that an "executive action" or a "law" enacted to give effect to "Directive Principles" has to be "reasonable" and in "public interest" if it wants to achieve the constitutional objective of "social and economic justice" in India.

As regard the status of "Directive Principles" in respect to "Fundamental Rights" the "Constitution" always put forth the opposing opinions. The "Judiciary" ignored the "constitutional duty" put on its shoulders to implement the "Directive Principles" of the "Indian Constitution". The main focus of "Judiciary" was the unenforceability of the "Directive Principles of State Policy" that were "non-justifiable" and "non-enforceable" in character.

It is because of this feature of these principles that the belief that "Directive Principles" carry merely the desires got strengthened. Such desires could not get fulfilled as a consequence of little legal force/ backup. Another reason is that the "Directive Principles" cannot run alone and be implemented and enforced. They had to "conform" and "run subsidiary" to "Fundamental Rights" as they are "enforceable" while the "Directive Principles" are "unenforceable" in "court of law".[59]

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[57] *Minerva Mills* v. *Union of India,* AIR 1980 SC 1789.

[58] *Kasturilal* v. *State of Jammu & Kashmir,* AIR 1980 SC 1992.

[59] *State of Madras* v. *Champakam Dorairajan,* AIR 1951 SC 226.

Again, in *Re Kerala Education Bill*[60], it was observed by S.R. Das, C.J., that the court may not completely ignore the "Directive Principles" of State Policy in determining the scope of the "Fundamental Rights". They are the basic rights conferred upon an individual and relied on by everyone. So to give effect to both as nearly as possible, the Courts must adopt a "harmonious construction rule". But later, the noble Court has remarked "the provisions of the Constitution must be given a harmonious interpretation, and when so interpreted it would mean that the state should certainly implement the directive principles, but it must do so in such a way as not to take away or abridge the fundamental rights of the citizens"[61].

In "*Golaknath* v. *State of Punjab"*[62], Court laid that scheme of "Constitution" is "flexible" enough to include within its ambit and scope the "Directive Principles" with "Fundamental Rights". It adapts to the altering needs of the society so could easily and reasonably be enforced without depriving "Fundamental Rights" to anyone. The need of an "integrated scheme" of both parts of "Indian Constitution" was thus realized by the Supreme Court.

Later in "*A.B.S.K.Sangh (Rly)* v. *Union of India"*[63] Justice Krishna Iyer emphasized that in interpreting the Constitution and other laws, it is the court's duty execute the "Directive Principles of the State Policy". He expressed that "The Directive Principles should serve the courts as a Code of interpretation. Every law attacked on the ground of infringement of fundamental rights should be examined to see if the impugned law does not advance one or other of the Directive Principles or if it is not in discharge of some of the undoubted obligations of the State towards its citizens flowing out of the preamble, the Directive Principles and other provisions of the Constitution".

Later *in Unnikrishnan* v. *State of A.P"*[64] the question for determination before the Apex Court was the status of right to education. The Court held under "Article 21" of the constitution the "right to life" includes "right to basic education" when it is read in concurrence and in harmony with the provision

[60] 1959 1 SCR 995
[61] *Mohd. Hanif Qureshi* v. *State of Bihar*, AIR 1958 SC 731.
[62] AIR 1967 SC 1943.
[63] AIR 1981 SC 298.
[64] AIR 1993 SC 2178.

of "Article 41" on "Directive Principle on education". It was observed that it is not necessary to expressly mention a right "Part III" of the Constitution. "The provisions of "Part III" and "Part IV" are supplementary and complementary to each other." The "Fundamental Rights" are a means accomplishing the aspirations that "Part IV" of the Constitution lays forth.

The above examination reveals that "Directive Principles" are not used by Courts to restrict "Fundamental Rights" but to widen their scope and content for achieving the goals set out by the "Directive Principles of the state Policy". Silence regarding "Social Security" is addressed by the Courts through various "judicial pronouncements" while adopting an "Activist approach" towards the same which was also followed while dealing with labour issues by the Judiciary.

In "*Chandra Bhavan Boarding* v. *State of Mysore"*[65] the validity of "Article 14" and "Article 19(g)" of the "Constitution" was in question. The issue comprehended was whether "fixation" of the "minimum wage" of different classes of employees in "residential hotels" and "eating houses" in "State of Mysore" is "arbitrary" and "violates "Article 14" of the "Constitution". It was urged that the provision of "Section 5 (1)" of the "Minimum Wages Act", 1948 interferes in the "Fundamental Right" of a "citizen" to "trade" or "business" within a country.

It was challenged that the provision is "unconstitutional" as it confers an "arbitrary power" i.e., to fix the "rate of minimum wage" without any guidance. While placing the goal and importance of "Article 43" of the "Constitution", the Court explained the objectives of the Act while upholding its validity. The Court described the importance of "Article 43" of the "Constitution" as:- "Its (the Acts's) object is to prevent sweated labour as well as exploitation of unorganized labour. It proceeds on the basis that it is the duty of the State to see that at least minimum wages are paid to the employees irrespective of the capacity of the industry or unit to pay the same. The mandate of Article 43 of the Constitution is that the State should endeavor to secure by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage,

[65] 1970 AIR 2042, 1970 SCR (2) 600.

conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The fixing of minimum wages is just the first step in that direction."[66]

It was also observed that in a "socialist society", the workers are the "producers of wealth" and not merely the "vendors of hard work" and "struggle". The main directive of the "Constitution" is that the workers should not be treated as the "marketable commodities" that can be purchased by the owners of capital. The "social", "economic" and "political" justice shall confirm every spheres of our "national life" in order to establish a "welfare society". The workers should be regarded as "equal partners" in the enterprise as they are the one who supply labour without which capital would be useless.[67]

In the case of *National Textile Workers Union* v. *P.R. Ramakrishnan*[68], the Supreme Court pinpointed the intense concern for the workers position in Indian society in the light of "socio-economic order" conceived in "Preamble" as well as "Directive Principles" of the "Constitution". The Hon'ble court opined that in the winding up proceedings the workers do not have the "right of intervention".

It was decided that "Preamble" to the "Constitution" and its various Articles should outspell the right of a worker to intervene.[69] The directive to secure the participation of workers in "management" enshrined in "Article 43A" were accordingly read into "Fundamental Right" of the shareholder's "freedom to carry on their trade" or "business" guaranteed under "Article 19(l)(g)" of the "Indian Constitution".[70] Justice Bhagwati, thus concluded the verdict of the court as:-

"The constitutional directive is, therefore, clear, unambiguous and undoubted that the management of the enterprise should not entirely be left in the hands of the suppliers of capital. The workers should also be entitled to participate in it, because in a socialist pattern of society, the enterprise which is

[66] *Id*. at 2048.
[67] *Ibid*.
[68] AIR 1983 SC 75.
[69] The Constitution of India, arts. 38, 39, 42, 43, 43A.
[70] *Id*. at 83.

a centre of economic power should not be controlled by economic power alone but also by capital and labour."

The Apex Court's in "*The Workmen* v. *Reptakose Brett and Co. Ltd Reptakos and Co*."[71] gave a remarkable decision. The Hon'ble Court establishes that the idea of a "minimum wage" is not similar as it was years ago but in the context of "socio economic" aspect of "wage structure". It becomes necessary that in "fixing a minimum wage" the following additional components like "children's education, medical requirement, minimum recreation, provision for old age, marriage etc., should further constitute 25% of the minimum wage" and should govern the "fixation of minimum wages" of workers. In this case, "Chief Justice K.G. Balakrishnan" clearly laid the "Unorganized Sector Workers Social Security Act", 2008 in the following words:

"Needless to say, the millions of "unorganized workers" awfully need of a stable and reliable social security regime. This Act aptly contemplates the delivery of benefits to unorganized workers in instances of sickness, disability, maternity, unemployment, old age and the death of a family's only bread winner. The Act has given a wide and liberal definition of Unorganized workers so as to include casual employees, daily or monthly wage workers as well as 'home-based workers' and even farmers who work on small land-holdings. Hence, the intention of the Legislature is expansion of the social safety net as broadly as possible."

In "*Air India Statutory Corporation* v. *United Labour Union"*[72] the Hon'ble Court held that "Directive Principles" are a nothing but the "Human Rights" itself. A number of workers rights are extensively included in the "Directive Principles" under "Part IV' of the Constitution, but their base is strengthened by the judicial interpretations.

All these decisions are indicating towards the urgent need to have a welfare state with a disease free work force in it. But there was a sudden noticeable drift in the approach of "Indian Judiciary" to the "new economic policies" of the government after the adoption of the "globalization" and "liberalization strategy". Thereafter, the judiciary evolved the "labour

[71] AIR 1992 SC 504.
[72] AIR 1997 SC 645.

jurisprudence" in India. This evolution served to protect the workers against all "forms of exploitation" which was evident from the decisions of the courts on labour issues particularly those involving "labour rights". The Indian judiciary or courts were also influenced to a great extent by the cries of development during the "era of globalization" to protect the interests of labour.[73]

2.1.4 Swap in the Judicial Approach towards Labour Issues

With the development and of the concept of "globalization" as well as "liberalization strategy" in India, there has been a change in the "judicial approach" towards "labour issues". Numerous decisions of the Apex Court supported the new approach of "non-interference" in "economic" and "labour policy" of the India government.

In "*M.P. Oil Extraction and Another* v. *State of M.P. and Others*"[74], the agreements made by the "State Government of Madhya Pradesh" with M/s. "Bastar Oil Mills and Industries Ltd." and "M/s. Sal Udyog (Pvt.) Ltd." to supply "Sal Seeds" for extracting oil on payment of royalty were in question. The court considered the "legality" and "validity" of the "Industrial Policy of 1979" of the "state of Madhya Pradesh", and lay that it could not be held to be "arbitrary" and is rather founded on mere "ipse dixit" of the "State Government of Madhya Pradesh".

The Court also held:

"The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in out stepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciated the need for mutual respect and supremacy in their respective field."[75]

In the case of *State of Punjab and Others* v. *Ram Lubhaya Bagga and Others*[76], the question that came up for consideration before the Apex Court

[73] *Tata Engg. And Locomotive Co. Ltd.* v. *S.C. Prasad*, (1969) 3 SCC 372.
[74] (1997) 7 SCC 592.
[75] *Id.* at 611.
[76] (1998) 4 SCC 117.

was the conditions for government employees and pensioners to become entitled for reimbursement of medical expenses. The employees have been repeatedly raising the issue of non static policy of reimbursement. His grievance was the decline of his medical expenses that he incurred while undergoing treatment in a private hospital for heart ailment.

It was rejected on the ground that such monetary claim can be made only if it is not available in any "government hospital" on the production of a "No Objection Certificate" obtained from a civil surgeon in this regard. The respondents in this case challenged the new policy that puts financial restrictions on the state of being in violation of Article 21 of the Indian Constitution. The Court adopted a liberal approach and held:

"So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. it would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints."[77]

"Bhavesh D. Parish and Others v. *Union of India and Another*"[78] is again a case that gave a glimpse of Apex Court's averseness to examine judiciously the matters of "economic policy". Here "Section 45-s" under "Chapter-III" of the "Reserve Bank of India Act",1934 lay principal restrictions on the acceptance of deposits by "incorporate bodies" under the "Banking Laws (Amendment) Act", 1983 was challenged on the ground of being violative of

[77] *Id.* at 129.

[78] (2000) 5 SCC 471.

"Articles 14 and 19(1)(g)" of the "Constitution of India". The Court while upholding the validity of "Section 45-S" of the "Reserve Bank of India Act",1934 that puts a restriction on accepting deposits by "individuals", "firms" and "unincorporated associations" held:

"In the path of economic progress, if the informal system was sought to be replaced by a more organized system, capable of better regulation and discipline, then this was an economic philosophy reflected by the legislation having its merits and demerits. But these were matters of economic policy. They are best left to the wisdom of the legislature and in policy matters the accepted principle is that the courts should not interfere. Moreover in the context of the changed economic scenario the expertise of people dealing with the subject should not be lightly interfered with. The consequences of such interdiction can have large-scale ramifications and can put the clock back for a number of years. The process of rationalization of the infirmities in the economy can be put in serious jeopardy and, therefore, it is necessary that while dealing with economic legislations, this Court, while not jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all."[79]

In "*Narmada Bachao Andolan* v. *Union of India and Others",*[80]the validity of the foundation of a huge dam was in question. The majority expressed that:-

"The determination of questions like whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and it is now well settled that the courts, are ill-equipped to adjudicate on a policy decision. Moreover, in the exercise of their jurisdiction, the courts will not transgress into the field of policy decision and will see that no law is violated and the fundamental rights of the people are not infringed except to the extent permitted under the Constitution."[81]

Supreme Court in "*BALCO Employees Union (Regd.)* v. *Union of India & Ors."* examined the "economic policy" affecting "rights of labour" in an

[79] *Id*. at 485.
[80] (2000) 10 SCC 664.
[81] *Id*. at 762.

elaborate way.[82] In this case, it was suggested by the "Disinvestment Commission" that BALCO must be "privatized". On the suggestion of the "Public Sector Disinvestment Commission" to privatize BALCO, the Government at once gave its 40% "equity shares" to its "co-partner". The Hon'ble Court held that:

"The process of disinvestment was a policy decision. Such a economic decision involves complex economic factors and is based on economic expediencies. It was also observed that the economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the Courts would decline to interfere."

It was also explained by the Court that in matters of taking policy decision, the employer is expected to take all aspects of "labour welfare" into consideration and the "principles of natural justice" had no role to play in it. This also does not entitle any worker to claim the "right of hearing or consultation" before taking the decision.[83]

Thus the Court affirmed that the employer while taking policy decisions would take into consideration the "welfare" of the "working class". Secondly, the employer will also observe that the "Shareholders Agreement" of the "Union of India" and the "Strategic Partner" provides for no "retrenchment" in the first year after the "closing date".

Later, if a need arise to reduce the strength of its employees, then in that case the employees will be given the option to voluntarily retire on favorable terms equitable to the "Voluntary Retirement Scheme" offered on the date of the arrangement by the company. The company also stated that the only "permissible mode of removal" of an employee is "dismissal" or "termination from their employment" as per the "company's Regulations" and "Standing Orders" or other "applicable laws" in relation to the staff. The Company on the date of the management's takeover by the "strategic partner" would not retrench any employee of BALCO. The Court further held:

[82] 2002(2) SCC 333.
[83] *Id*. at 342.

"Regarding providing social security to the BALCO employees at par with government employees, it is to be noted that as a matter of principle, no industrial establishment has any right to be compared with a government establishment. Hence the issue of guaranteeing the social security of the BALCO employees at par with the employees of the Government establishments may not be possible any time before or after the disinvestment."

The Court thus on interest of labour gave authority to the employer's decisions and also favored the most "infamous term" of "throwing away a workman from his job". Hence, in the context of "proliferation", "deregulation" and "denationalization" this case proved to be a lost chance in the hand of the judiciary for protecting the rights of workers.

Sadly, the decision in the matter of "District *Red Cross Society* v. *Babita Arora and Ors*."[84], was also given on the same footsteps without considering their effect on the position of the Indian workers. In this case, the respondent who was appointed as staff nurse in the appellant "District Red Cross Society, Karnal", was "terminated without retrenchment" due to the closure of the "Red Cross Maternity Hospital".

Statutory provisions laid down in "Section 25F to 25 H" were clearly violated in this case and the principle of 'first come last go' as provided by "Section 25G" of the "Industrial Disputes Act", 1948 was also not followed by the management. She also argued that her subordinates were still working under, the "Drug De-Addiction- cum-Rehabilitation Centre", "Family Planning Centre" and "Viklang Kendra Units" that received grants from the government. Only the "Maternity Hospital" was closed due to "economic limitations".

The appellant contended that the "hospitals" and "social organizations" are not covered under the provisions of the "Industrial Disputes Act", 1948 and that the services of the respondent were "terminated" on account of closing down of the "Red Cross Maternity Hospital" which was being run on "donations" and not on "government grant".

Court held that:

[84] (2007) 7 SCC 366.

"The mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act."[85]

In "*Indian Airline Officer's Association* v. *Indian Airlines Ltd. and Ors*."[86], examined conflicting interest of the "Employees Association of Indian Airlines", "Indian Airline Cabin Crew Association" and "Vayudoot Karmachari Sangh". After the government of India's decision to merge "Vayudoot" with "Indian Airline", the "Worker's Union" rights were in question to be determined.

This Hon'ble Court was approached by both the units on their merger against the "Division Bench of Delhi High Court's" order on "absorption of employees".

The Supreme Court while quoting "Justice V.R.Krishna Iyer", elaborated the "absorption of employees" with "promotional perspectives" and held:

"In Service Jurisprudence, integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the executive, not to the court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent unconstitutional 'excesses', judicial correction is not right. Under Article 32, this Court is the constitutional sentinel, not the national ombudsman. We need an ombudsman but the court cannot make-do."[87]

The Court in this case categorically held that "natural justice" requires no "prior notice" and "opportunity of being heard" to persons affected by an "economic policy decision of the Government" as a class. So according to the Court, the Government has no obligation of giving such an opportunity to the workers before deciding to disinvest. The Apex Court adopted a backstep by

[85] AIR 2007 SC 2879.
[86] AIR 2007 SC 2747.
[87] *Ibid*.

denying right to the Union of becoming a part of decision making of their establishment,

Another issue that came in the light of labour issues is the security of tenure of the labour class. In "*Secretary, State of Karnataka and Ors.*v. *Umadev and Ors.*"[88], the issue for determination was the "regularization of employees". It was laid down:

"There is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme."

Here, the Apex Court approved the "hire and fire policy of the Government" in the "new Indian economy". The Supreme Court while referring to the "equality principle" and "Preamble" of the Constitution thus summed up that for a "contractual employee", the appointment comes to an end at the "end of the contract" and for a "daily wage" employee, the job would end when it is discontinued.

Hence, while examining rights of workers in cases of "dismissal" of an employee or "termination of service" of a worker, "merger of two or more industrial units" and "regularization of employees" in various "organizations", the stay back approach of the judiciary is apparently visible.

In number of other countries, the "labour force" is protected against the ill consequences of "globalization" by the judiciary. For instance, the "domestic Spanish law" is interpreted by the judiciary in the light of

[88] AIR.2006 SC1806.

"internationally recognized labour standards".[89] "Spanish law" does not provide "social security" of "health care", or "pension benefits" for "migrant workers". It adheres to the "international standards" and interpreted the "ILO Conventions" for "undocumented workers" on the "idea of equality" implying these "social security" rights because they are provided to other segments of the Spanish workers also.

Therefore, from the above analysis also, it is evident that "Indian judiciary" has done a lot in "service jurisprudence". It has interpreted "labour rights" in the light of "International Conventions" in the "globalised era" and gave a "clean chit" to the "Legislature" in the name of "policy matters". It failed to foresee the "adverse consequence" of the "legislative measures" on the "rights of the workmen" while doing so. In this context, the only solution is to strengthen the "legislative measures" for the "social security" of workers.

2.2 Current Position of "Social Security" in India in the Light of "Legislative Measures"

India, as a "welfare State", undertakes to extend "Social Security" and "Social Assistance" benefits to its "citizens". The "social security legislations" in India derive their strength from the "Directive Principles of the State Policy" enshrined in "Indian Constitution".

"Social Security" is a "concept" and a "system". It is an "embracing approach" focused to protect the individual from "uncertainties in income". It is an aid to "overcome the contingencies" such as "retirement", "resignation", "retrenchment", "death", "disablement" to the individual members of the Society who need protection by the "State as an agent of the society". "Social Security" must be "preserved", "supported" and "developed" as it is an "instrument for social transformation" and "progress".

The "social security schemes" covers very small segment workers having a direct regular "employer-employee relationship" within an

[89] Benjamin Aaron and Katherine V.W. Stone, *Comparative Labour Law- Bridging the Past and the Future* 28 (Comp. Lab.L& Pol'y . 377 at 387 2006-07)

"organization". Out of an estimated work force of about 397 million, only 28 million have the benefit of "formal social security protection".[90]

At present, the "Social Security Laws in India" can be broadly categorized presented as, the "contributory" and the "non-contributory measures". The "contributory laws" finance the "social security programmes" by contributions on the part of both "employee" and "employers" and in some cases enhance it with "contributions/grants from the Government".

Major "contributory schemes" under the "Employees' Provident Funds and Miscellaneous Provisions Act, 1948" are "Employees State Insurance Act, 1948" and "Provident Fund, Pension and Deposit Linked Insurance Schemes". The main "non-contributory laws" comprise of the "Employees' Compensation Act, 1923", the "Maternity Benefit Act, 1961" and the "Payment of Gratuity Act, 1972". A close examination of these enactments would help in understanding precisely their power and virtues.

I. "The Employees State Insurance Act, 1948"

The initiative of introducing a "Health Insurance Scheme" in India was taken in 1929 by the "Royal Commission of Labour" but was materialized in the year 1944. It was intended to provide "medical care" and the "sickness benefit" for workers below a certain "wage ceiling" of different industries such as in "textile", "engineering", "minerals" and "metals". The suggestions made by ILO experts were incorporated in to the "Workmen's State Insurance Bill, 1946" which was later passed by "legislative assembly" in April, 1948 as "Employees' State Insurance Act". This was the first major "social security legislation" that was adopted by the country after independence.

It is a comprehensive "social security scheme" drawn mainly to protect employees and their dependents, covered under it, against contingencies, such as "sickness", "maternity", and "death" or "disability" as a result of employment injuries.

The Scheme is based on the principle that the people who are exposed to risks of the same nature should come together to reduce the "physical pain"

[90] Government of India, "Report Of The Working Group On Social Security For The Tenth Five Year Plan (2002-2007)" (Planning Commission, 2001).

and “financial pain” arising out of such risks. It is termed the principle of “pooling of risks and resources”.

The scheme is applicable to the “factories” using “non seasonal power” that employ 10 or more persons and “non-power” using “factories” and “establishments” employing 20 or more persons. The “Central Government” must notify the “wage ceiling” of such “factories” or “establishments”.

The “ESI Act” at present is implemented district-wise and under the “Social Security Code”, 2020, it is made applicable to the entire country, subject to the “specified threshold” of 10 employees in an establishment.

The benefits to insured person or his/her dependants’ should be limited to the amount as may be prescribed by the “Central Government” under the Act. The benefits provided are[91]:-

- **“Medical Benefits”** in case the “sickness” is certified by a “duly appointed medical practitioner”;
- **“Maternity Benefits”** as “periodical payments” in case of “confinement”, “miscarriage”, “sickness arising out of pregnancy” or “premature birth” of child;
- **“Periodical Payments”** as **“disablement benefit”** to person suffering from “disablement” as a result of an “employment injury sustained as an employee”;
- **“Periodical Payments”** as **“Dependants’ Benefit**” as “compensation” to “dependants” of person died owing to an “employment injury sustained as an employee”;
- **“Funeral expenses”** to the “eldest surviving member” of the dead person’s family.

The “benefit” can be claimed “within three months of the death” or “within such extended period” as allowed by the “Corporation” or “any officer” or “authority authorized in this behalf”.

Further, “hospitals”, “dispensaries” and other “medical” and “surgical services” can be established by the “Corporation” for the “benefit of insured persons” with the approval of the “State Government.[92]

[91] The Employees State Insurance Act, 1948 [Act No. 34 of 1948], s.46.

As per the latest rules laid out by ESIC, 0.75% is deducted from the respective "gross salary" of the employee. The employee can withdraw it in "medical emergency" such as "disability", "maternity" and "unemployment".[93]

II. "The Employees' Provident Funds & Miscellaneous Provisions Act, 1952"

This is yet another welfare legislation enacted to secure a better future by constituting a Provident Fund for employees working in factories and other establishments. It is a statutory benefit for the employees availed by them post retirement or when they leave the job in the form of monitory assistance when they are in distress or unable to meet family and social obligations and to protect them in contingencies of "old age", "disablement", "early death of bread winner" and the like.

In case, where the employee is dead, his/her dependents will be entitled for these benefits. Under the "Employees' Provident Fund Scheme" (EPF Scheme) both employers and employees have to make their contributions towards the Fund. Interest earned on the amount is credited to the member's "Provident Fund Account" (PF account) and is available to the employee at the time of retirement or exit from employment as the case may be, provided certain conditions are fulfilled.

The Act is applicable to every "factory" or "industry" wherein 20 or more persons. It also applies to workers in such establishment which the "Central Government" specifies by "notification in the official Gazette", even when the number of employees is less than 20.

Further, any establishment can be covered voluntarily with mutual consent of the majority of employees working in it and the employers under the Act if it is not otherwise coverable under its provisions.[94]

In order to avail the benefits, it is necessary to enroll for "PF membership". Such enrollment is mandatory for:-

- "person employed in manual" or "any work of an establishment for wages";

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[92] *Id*., s. 59.

[93] ESI Contribution and Calculation, *available at:* ESI Contribution | How to Calculate ESI in 2021-2022 (hrone.cloud) (last visited on March 15, 2022).

[94] The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, s.14.

- "person employed through a contractor" or "engaged as an apprentice". Such a person should not be an "apprentice" under the "Apprentices Act", 1961.
- "person earning less than or equal to Rs. 15,000 per month under the standing orders" of an establishment".

The benefits cannot be availed by the following persons as they are exempted by the "central government by notification in the Official Gazette"[95]:-

- the employees who are enjoying other "provident fund benefits" equally favorable to the benefits provided under this Act;
- the employees who are enjoying benefits in the nature of "provident fund", "pension" or "gratuity" and which are either separately or jointly equally favorable to the benefits provided under this Act.

"Schemes" under "The Employees' Provident Funds & Miscellaneous Provisions Act" are:-

1. "The Employees Provident Fund Scheme, 1952"

This scheme is a "long-term retirement saving scheme" under which an "employee" and "employer" have to pay "certain percentage of equal contribution" in the "provident fund account". The employee can withdraw this lump sum amount on "retirement from service" or "after attaining the age of superannuation" or "due to permanent or total incapacity", "migration from India", "retrenchment" or "at the time of voluntary retirement". The objective of this scheme is to provide "social security" to the members of the scheme.

2. "The Employees Deposit Linked Insurance Scheme, 1976" (EDLI)

This scheme is an insurance cover provided by the EPFO (Employees' Provident Fund Organisation) for the private sector salaried employees. The registered nominee will of such employee will receive a lump-sum payment in the event of the death of the EPF member, during the period of the service. This scheme works in combination with EPF and "Employees' Pension Scheme" (EPS). Five key features of the "EDLI" scheme are the following[96]:-

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[95] *Id.*, s.17.

[96] "What is Employees' Deposit Linked Insurance Scheme?"*The Economic Time,* October 21, 2021, *available at: https://economictimes.indiatimes.com/wealth/invest/what-is-employees-deposit-linked-insurance-scheme-here-are-5-things-you-should-know/articleshow/87177162.cms (last visited on March 16, 2022).*

- "Assured Benefit" of "maximum Rs 7 lakh to the nominee or "legal heir of the EPF member if he dies during service".
- "Assured Benefit" of "minimum Rs 2.5 lakh in case the deceased member was in continuous employment for 12 months prior to his/ her death".[97]
- "Life insurance benefit" to the "EPFO" member is free of cost for the "provident fund" or "employee provident fund" account holders.
- "Minimal Contribution" of 0.5% of employee's monthly wages by the employer.
- No contribution by an employee up to a "wage ceiling" of Rs 15,000.
- The Benefit is credited directly to bank account of legal heir or nominee of the employee.

3. "The Employees Pension Scheme, 1995"

It was introduced in the year 1995 to act as a regular source of income after the employee retires. The main aim of this scheme is to ensure that the employees in the "organized sector" receive a pension once they attain the age of 58 years. The benefits can be availed by both the existing, as well as new EPF members. All employees who are eligible for the "Employees Provident Fund (EPF) scheme" will also be eligible for EPS. Each of the employee and employer contribute 12% of the employee's basic salary and "Dearness Allowance" (DA) towards EPF. The entire share of the employee contribution goes to the EPF, 8.33% of the employer's contribution goes towards EPS.

The main features of the EPS scheme are mentioned below[98]:-

- "Returns are guaranteed" as it is sponsored by the "Indian Government";
- A "Fixed amount" will be returned under the scheme;
- Compulsory for an employee to enroll under the Scheme whose basic salary plus DA of Rs.15,000 or less;
- The person who is enrolled under the scheme will be able to "withdraw it at the age of 50 years".
- A widower/ widow will receive the amount until death.

[97] Under EDLI scheme 1976.

[98] *Available at:* https://www.bankbazaar.com/saving-schemes/guide-to-understanding-the-employee-pension-scheme.html (last visited on February 11, 2021).

- On remarriage, the children will receive the enhanced pension amount till the age of 25 years.
- Individual will receive Rs.1, 000 minimum as the monthly pension.
- A "physically challenged child" will receive the "pension amount" till death.

III. "The Workmen's Compensation Act, 1923"[99]

The main objective of the Act is to provide compensation to the workmen by the employers for the injuries/accidents arising out of and in the course of employment. But the employer is not liable to compensate for an injury that does not last for more than 3 days[100] or do not result into total disablement or death or is a result of "willful neglect" of the employee as to his safety.

The Act mentions that it is the duty of the employer to look into the welfare of his employees and to ensure them a sustainable life even after they have suffered a employment related accident. Prior to 2020, the calculated compensation was Rs. 8000 but now it is increased to Rs. 15000 as per the Ministry of Labour and Employment[101].

IV. "The Maternity Benefit Act, 1961"

It regulates "employment of women" in certain "establishments" and provides them "maternity" and various other benefits. It protects the employment of women during the time of her "pregnancy" and entitles her a "full paid absence from work" in order to take care for her child. A female under "The Maternity Benefit Act, 1961" Act is entitled to a "26 weeks maternity leave".[102]

The Act provides for a "compulsory crèche facility" in every establishment having 50 or more employees.[103] Moreover, she must be allowed "four visits a day" to the crèche created either separately or along with other facilities in the establishment.

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[99] By an Amendment in 2009, This Act is now called the Employee's Compensation (Amendment) Act, 2017.
[100] The Employees' Compensation Act, 1923, s.3.
[101] Employee's Compensation: Modi govt has raised wage limit to Rs 15,000 for calculation, *available at:* https://www.financialexpress.com/money/modi-govt-raises-wage-limit-from-rs-8000-to-rs-15000-for-calculating-compensation/1815381/ (last visited on January 2, 2022).
[102] The period was 12 weeks before the Amendment in 2017.
[103] The Maternity Benefits (Amendment) Act, 2017, s. 11A.

V. "The Payment of Gratuity Act, 1972"

It makes certain "industries" to pay a 15 days' wages as "one-time gratuity" to retired employees for "every year of employee service", or "partial year over six months". The act is applicable to all "factories", "mines", "oilfields", "plantations", "ports" and "railway companies". In applies to the "shops" or "establishments" having 10 or more employees "on any day of the preceding 12 months". The employer is still liable to pay "gratuities" if the employees are reduced below 10. "Gratuity" is paid to an employee on the "termination of his employment" after "continuous service for not less than five years"; or on his-[104]

(i) "Superannuation";

(ii) "Retirement" or "Resignation";

(iii) "Death" or "Disablement" due to accident or disease.

The completion of five years of continuous service is not necessary where the" termination of employment" occurs due to "employee's death" or "disablement". An "eligible employee" may apply in written for payment of his "gratuity" to the employer.

On receiving the application the employer shall arrange the payment of "gratuity" within "30 days from the date on which it becomes payable" to such an employee.[105] The Act also imposes penalty in the form of fine i.e Rs 10,000 but which may extend to Rs. 20,000 and imprisonment of 1year on the "employer" who fails to pay the gratuity to the eligible "employee".[106]

VI. "The Factories Act", 1948

This Act is a beneficial legislation that aims to consolidate and amend the law regulating labour in factories relating to health, safety welfare, annual leave and certain special provisions for female employees. "Chapter III" of "Factories Act", 1948, makes provisions on "health" of the workers in a "factory" regarding[107]:-

- **Neatness** –Every floor must be cleaned once in a week and "accumulation of dust" must be prevented in routine. Moreover, all "inside

[104] The Payment of Gratuity Act, 1972 [NO. 39 OF 1972], s.4.
[105] *Id.*, s. 7.
[106] *Id.*, s. 9.
[107] The Factories Act, 1948, ss. 11to 20.

walls", "partitions", and "ceiling" must be repainted or varnished once in every five years.

- **Removal of Wastes & Effluents** – There must be adequate facility for "waste disposal" and of "effluents" that resulted from the "manufacturing process" in the "factory". It is the responsibility of every occupier of a "factory" to make such "effective arrangements".
- **Ventilations & Temperature** –the Act provides for adequate ventilation in the work area and proper temperature to be maintained inside it.
- **Dust & Fumes**- Act provides that the fumes of "internal combustion engines" must be thrown outside the factory and must not be inhaled by anyone as they can have deadly effect.
- **Artificial Humidification** –it provides that in factories where the humidity in the air is increased by artificial process, the state government may prescribe rules for securing sufficient ventilation.
- **Overcrowding**- The Act provides that there should be at least 14.2 cubic meter space for every worker and Roof shall be 5 mts (14ft.) above the floor as overcrowding may affect the health of the workers.
- **Lighting** – The Act provides that shall be adequate and suitable lighting, "natural" or "artificial", or both, in every part of the "factory". Moreover, it provides for the use of all "glazed windows" and "skylights" in every "factory".
- **Drinking Water** – The Act provides for effective arrangement of a clean drinking water which shall be at least six meters away from any "washing place", "urinal", "spittoon", "open drain" or any source of "pollution" or "infection".
- **Latrines & Urinals** – The Act provides that every establishment shall have adequately lighted and ventilated latrines and urinals. There must be adequate setting that they must be kept in a clean and sanitized condition.
- **Spittoons** –the Act provides for clean and convenient spittoons.

In addition to the above provisions, the Act also provides for various welfare provisions. It provides for first aid boxes and arrangement of an Ambulance to

be kept in every factory where there are more than 500 employees.[108] As there are numerous kinds of jobs in a factory. Some of them may require long standing working hours.

While considering that human power to stand has limits, the Act provides that the factory should provide suitable sitting arrangements for the workers to take some rest when they are free[109]. As women's participation in different sectors is increasing, the Act has laid down that in a "factory" having more than 30 female employees, there should be an arrangement of a well ventilated special room for the worker's kids who are below the age of 6 years.[110]

Hence, there is a close relationship between safety measures and the efficiency of workers as Human failures occurred due to "carelessness", "ignorance", "inadequate skill" and "improper supervision" also contributes to "accidents" and decreased "working efficiency".

VII. "The Industrial Disputes Act", 1947

Chapter V A of the Act provides provisions of "layoff" and "retrenchment". It deals with those industrial establishments in which at least 50 workmen are employed for a continuous period of at least one year. In case if an "employee" is "laid-off" then it becomes the obligation of the "employer" to pay him compensation at the rate of 50% of the basic salary plus D.A for the days "laid off" subject to the maximum of 45 days. The "employer" can retrench such employees after paying "retrenchment compensation" if the "layoff" goes beyond 45 days.

The Act also provides that the employee can be retrenched by the employer only after serving upon him a notice of 1 month stating the reasons of "retrenchment". In case of closure of a factory, notice of 60 days must be served upon the "employee" before closure. If the closure is due to unavoidable circumstances on the part of the "employer" the "employee" becomes entitled to the compensation subject to a maximum of 3 month's salary as in the case of "retrenchment".[111]

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[108] *Id.*, s.45.
[109] *Id.*,s. 44.
[110] *Id.*,s. 48
[111] The Industrial Disputes Act, 1947, s.25FFA.

Provisions of "CHAPTER VB" of the Act extend to an industrial establishment, not seasonal in character, in which not less than one hundred workmen were employed. It provided that no workman can be "laid off" by the "employer" without previous permission from the "appropriate government". In case of "retrenchment" the "employer" is to serve 3months notice with reasons before an employee is retrenched.[112]

2.3 "The Social Security Code", 2020

"Labour" is the "subject" of "Concurrent List" of "Constitution of India". The "Parliament" and "State Legislatures" can both make laws for regulating it. The existing legislation is "complex with archaic provisions" and "inconsistent definitions" by the second "National Commission for Women". To ensure "uniformity in labour laws", the commission suggested the "amalgamation" and "consolidation" of central labour laws into wider groups such as: -

- "Industrial Relations";
- "Wages";
- "Social Security";
- "Occupational Safety"; "Welfare Provisions" and "Working Conditions".

"Code of Social Security", 2020 defines "social security" is the measure of protection for employees including the "unorganized workers"[113], "gig workers"[114] and "platform workers".[115] The objective is to ensure "health care" and "income security" in times of "sickness", "unemployment", "invalidity", "maternity" or the "loss of the only breadwinner" because of "death". There are various schemes framed and the rights conferred on such persons under the "Social Security Code", 2020.

"Code on Social Security", 2020 consolidates the law relating to "social security" to extend it to all the employees working either in the "organized

[112] *Id.*, s.25 M.

[113] "The Code on Social Security", s.2 (86) defines "an unorganized worker as a home-based worker, self-employed worker or a wage worker in the Unorganized Sector."

[114] *Id*., s.2 (35), "a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship is a gig worker."

[115] *Id.*, s. 2(61) "platform worker" is defined "as a work arrangement outside of a traditional employer employee relationship in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems."

sector" or "unorganized sector". This Code "subsumed" and "replaced" the following enactments:-

- "Employees Compensation Act, 1923"
- "Employees Provident Fund &Miscellaneous Provisions Act, 1952"
- "Maternity Benefits Act,1961"
- "Payment of Gratuity Act,1972"
- "Cine Workers Welfare Fund Act, 1981"
- "Building and Other Workers Welfare Cess Act, 1996"
- "Unorganized Workers' Social Security Act, 2008"

The Code provides some vital provisions and benefits with respect to "gig workers", "platform workers" and has also introduced alterations in the following labour legislations:-

2.3.1 "Benefits" to "Gig Workers" and "Platform Workers"

The "Central Government" and "State Government" can notify schemes for **"Gig Workers" and "Platform Workers"** related to "life" and "disability cover", "health" ,"maternity", "provident fund", "employment injury benefit", "housing" etc.[116]It also mandates that the "central government", "state government", and "Aggregators" should "collectively contribute" in the "funding of the notified schemes".[117]

Records of "Gig Workers" and "Platform Workers" must be maintained as prescribed by the "central government" and "state governments" and every such worker must "register by applying through his Aadhar number", by fulfilling the following conditions:-

(i) "he has completed sixteen (16) years of age or any other prescribed age"; and

(ii) "Has submitted self-declaration containing information prescribed by the Central Government".

2.3.2 Alterations in the "Employees' Provident Fund"[118]

The Code has modified the applicability of the "Employees' Provident Fund" Scheme. From now onwards it applies:-

[116] *Id*., s.109.
[117] *Id*, s.2 (2) defines an "aggregator as a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider".
[118]*Ibid*.

- To every “establishment” in which twenty (20) or more employees are employed.
- “The Central Government may, establish a provident fund where the contributions paid by the employer to the fund shall be ten per cent (10%) of the wages for the time being payable to each of the employees (whether employed by him directly or by or through a contactor)”.
- “The employee's contribution shall be equal to the contribution payable by the employer in respect of him. The Central Government, may, by notification, increase the contribution percentages to twelve percent (12%) for both employers and employees of certain establishments”.
- “If any person being an employer, fails to pay any contribution under the SS Code or rules, regulations or schemes made thereunder, he shall be punishable with:
- (i) imprisonment for a term which may extend to three (3) years, but which shall not be less than one (1) year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of Rupees One Lakh (Rs. 1,00,000/-); or
- (ii) which shall not be less than two (2) months but may be extended to six (6) months, in any other case and shall also be liable to a fine of Rupees Fifty Thousand (Rs. 5,000/-).”

2.3.3 “Gratuity”[119]

Different criteria of eligibility for “gratuity” of “permanent employees” or “fixed term employees” is fixed under the Code as follows:-

- “Every shop or establishment in which ten (10) or more employees are employed, or were employed, on any day of the preceding twelve (12) months shall pay the “Gratuity” to eligible employees”.
- “Every “employee” who has rendered continuous service for not less than five (5) years shall be entitled “Gratuity” on his “termination from the “employment”, “superannuation”; “retirement” , “resignation”, “on his death” or “disablement due to accident” or “disease”; on “termination of his contract period” under “fixed term employment”.

[119] *Ibid.*

- "Where the "termination" of the employment of any "employee" is due to "death" or "disablement" or "expiration of fixed term employment", a continuous service of five (5) years is not necessary".
- "Employer" shall pay "gratuity" to an "employee at the rate of fifteen (15) days' wages for every completed year of service or part thereof in excess of six (6) months".
- "Amount of "gratuity" payable to an "employee" shall not be in excess of amount notified by the Central Government".
- " Person who fails to pay any amount of "gratuity" to an "employee" shall be punished with an imprisonment for a term of one (1) year or with fine upto Rupees Rs. 50,000/-, or with both".

2.3.4 The "Employees State Insurance"

Important provisions with regard to the "Employees State Insurance" under the code are the following:-

- "The "Social Security Code" allows "voluntary registration" under the "Employee State Insurance" with the "mutual consent of the employer and majority of the employees".
- Further, "the Government has the power to extend the provisions of the Employee State Insurance Scheme" to any hazardous occupation" irrespective of the number of working employees".
- "Social Security Code" covers within its ambit the "Gig Workers", "unorganized Sectors" under "Employee State Insurance Scheme".

2.3.5 The "Maternity Benefit"[120]

The provisions relating to "Maternity Benefits" under the "Social Security Code" are mentioned below:-

- Every employee working in any "shop or establishment in which ten (10) or more employees are employed, or were employed, on any day of the preceding twelve (12) months" is entitled to "Maternity benefits".
- The **"Social Security Code"** provides that "during the six (6) weeks immediately following the day of her "delivery", "miscarriage" or "medical

[120] *Ibid.*

termination of pregnancy", no "employer", man or woman can knowingly employ a woman/work in any establishment".

- Further," a woman can claim "maternity benefit" from the "employer" under whom she has continuously worked for a period of not less than eighty (80) days in the twelve (12) months immediately preceding the date of her expected delivery".
- "A woman shall be entitled to "maternity benefit" for the twenty-six weeks (26) of which not more than eight (8) weeks shall precede the expected date of her delivery".
- "A woman having two (2) or more surviving children is entitled to "maternity benefit" only for twelve (12) weeks of which not more than six (6) weeks shall precede the date of her expected delivery".
- "Person who "dismisses", "discharges", "reduces in rank" or otherwise penalizes a woman "employee" or fails to provide any "maternity benefit" to which a woman in contravention of the provisions of "maternity benefits" shall be punishable upto six (6) months of imprisonment or with fine upto Rupees Fifty Thousand (Rs. 50,000/-), or with both".

The Social Security Code", 2020 is not a mere consolidation of previous legislations. It has "subsumed" various existing labour laws in India and included the "unorganized sector", "fixed term employees" and "gig workers", "platform workers" etc., in addition to "contract employees".

Another highlight of the Code is the "uniformity in determining wages" for the purpose of "social security" benefits.

2.3.6 Provisions on Penalties

The "Social Security Code", 2020 changes the penalties for certain offences:-

- The "punishment for obstructing an inspector from fulfilling his duty is reduced from one year to six months".
- "If a person unlawfully deducts the employer's contribution he shall now have to pay only fine of Rs 50,000. Earlier the penalty for this was an imprisonment of one year or fine of Rs 50,000".

2.4 The "Code on Occupational Safety, Health and Working Conditions, 2020"

The "Occupational Safety, Health and Working Conditions Code", 2020 is one comprehensive act that will not only expand the "social security" net for workers but will also "consolidate" the bulk of "labor legislation" in India. It will also streamline "labor compliance" for "benefit of workers". The Act apply on "factories with 20 or more workers" or "in which the manufacturing process is carried" with the help and "assistance of power or 40 or more workers".

The central focus of the Code is on "health measures" and "safety measures". The main aim is the "welfare of workers" employed in various sectors like "industry", "trade", "business", "manufacturing", "factory", "motor transport undertaking", "building and other construction work", "newspaper establishments", "audio-video production", "plantation", "mine & dock-work", "service sectors" and to the "contract labour". Such workers may be given the employment by "contractor in the offices" where "Central Government" and "State Government" is the "principal employer".

The "Occupational Safety, Health and Working Conditions Code", 2020 has various schedules which include the names of "industries" involved in "hazardous process" and activity. It also contains the list of matters where adequate standards are to be followed with respect to "health" as well as "safety".

The schedules also mention the "list of certain diseases" which are to be brought in the notice of the concerned authority as they are "communicable" in nature and "can spread and affect large number of persons".[121]

2.4.1 New "Labour Code" and the "Corresponding Laws"

The "**Code on Occupational Safety, Health and Working Conditions", 2020 will** subsume the below mentioned legislations for the "welfare of labour class":-

[121] Monika Taparia, "The Occupational Safety, Health and Working Conditions Code" *available at:* https://www.lawrbit.com/article/the-occupational-safety-health-and-working-conditions-code-2019/ (last visited on March 21, 2020).

"Code on Occupational Safety, Health and Working Conditions", 2020	"Factories Act,1948"
	"Mines Act, 1952"
	"Dock Workers Act, 1986"
	"Contact Labour Act, 1970"
	"Inter- State Migrant Worker's Act, 1979"
	"Plantation Labours Act,1951"
	"Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979"
	"Beedi and Cigar Workers (Conditions of Employment) Act, 1966"
	"Working Journalist(Fixation of rates of Wages) Act, 1958"
	"Cine Workers and Cinema Theatre Workers Act, 1981"
	"Motor Transport Workers Act, 1961"
	"Sale Promotion Employees (Condition of Service) Act, 1976"

2.4.2 Main provisions in the "Code on Occupational Safety, Health and Working Conditions", 2020 for Female Workers

The key highlights of this Code in which changes are introduced for the benefit of female workers at their work place or in relation to their employment are[122]:-

[122] *Ibid.*

- The limit of female workers must be enhanced to 50 female workers from 30 "for the purpose of creating Creche facility for children of less than 6 years of age" in an "establishment".
- The establishment should appoint "welfare officers" if the number of workers in it is 500 or more according to the provisions under The Factories Act, 1948. The limit is reduced from 500 employees to 250 employees after the implementation of this Code".
- The establishment which employs 100 workers has the responsibility to provide "canteen facility". This limit is increased to 250 employees at present.
- The Code introduced the provision of late work hours beyond 7 pm till 6 am for the employment of female employees in an establishment with their "consent".
- The Code also provides for "safety", "holiday", "working hours" of female workers.
- The Code also lay down that "the workers are not required to work for more than 6 days in a week. They are entitled to a day off during the period of 20 days of work and a one day off every week".

2.5 Social Security Provisions in "Unorganized Sector"

"Unorganized workers" consist of those working in the unorganized enterprises or households, excluding regular workers with social security benefits, and the workers in the formal sector without any employment/ social security benefits provided by the employers".[123]

In India, they are most often presented as a complex majority of the working population who is usually identified through statistics of poverty. They are the exclude classes who have not been able to continue to fulfill their common interests as a result of ignorance and illiteracy. They are the people who are generally paid less and do not get "social security". "Indian government" has made various laws to provide protection of these workers.

2.5.1 The "Unorganized Sector Workers' Social Security Act", 2008

[123] Social Security for Unorganized Workers in India 8, *available at: https://www.actionaidindia.org/wp-content/uploads/2019/05/Social-Security.pdf (last visited on March 12, 2021).*

This Act was implemented with the objective of ensuring social security to the "unorganized workers" in times of contingencies. "The importance of the Act was realized when in *National Domestic Workers welfare Trust v. State of Jharkhand & others*"[124], the court highlighted that the "Current labour laws" such as "Industrial Disputes Act", "Maternity Benefits Act", The "Minimum Wages Act" do not give "social security" of "unorganized workers".

Various benefits proposed under the Act are "life" and "disability cover" , "health" and "maternity benefits", "old age protection" generally and "any other benefit" as determined by "Central Government".

Act also envisages that the "state government has the authority to formulate suitable welfare schemes" including "provident fund", "employment injury benefit", "housing", "educational schemes" for children, "skill upgradation" of workers, "funeral assistance" and "old age homes".[125] The "Central Government" may wholly fund such facilities/ benefits or it will be shared by "Central" and "State Government" along with contribution from "employees" also.

"Social security" is defined in the Act and is used interchangeably with "welfare".[126] Moreover definition of "unorganized workers" is narrow and excludes "forest workers", "domestic workers" and "anganwadi workers". The Act has laid down various schemes in its "First Schedule" but they are not mentioned anywhere in the Act[127].

2.6 Conclusion

There are many laws on social security in India but most of them provide provisions only for the benefits of organized workers. Most of them have mentioned the limitation on the number of workers employed in them in order to avail the benefits. Another point for consideration is the clauses for barring.

[124] W.P. (PIL) No. 2810 of 2012.
[125] The "Unorganised Workers' Social Security Act", 2008 ACT NO. 33 OF 2008, s.3.
[126] T.S. Sankaran, "The Unorganised Sector Workers' Social Security Act, 2008-2008- A Critique", *available at:* http://lawyerscollective.org/magazine/dec2008-jan2009/feature5 (last visited on May 17, 2020).
[127] *Available at:* https://legislative.gov.in/sites/default/files/A2008-33.pdf (last visited o March 20, 2022).

For instance, as the “Employees State Insurance Act” and “Plantation Act” provide certain “medical benefits”; the “maternity benefit” is provided under “Employees State Insurance Act” and various maternity Acts of “Central government” and “State government”. The legislations are though multiple in number but the crux is that these legislations lack implementation and proper coverage.

The “Social Security Code”, 2020 is another important step in the “uniform application” of various labour provisions and benefits on the workers of both the “organized sectors” and the “unorganized sectors”. It has enhanced the coverage of “labour benefits” and introduced the provision of maximum benefits under minimum governance.

Further, the “**Code on Occupational Safety, Health and Working Conditions”, 2020 has** replaced and simplified “13 laws” regulating “health”, “safety” and working conditions of workers. So it can be said that the present “labour legislations” aims at the “simplification” and “universal application” of their provisions in relation to the “labour

CHAPTER-3

GROWTH AND DEVELOPMENT OF SOCIAL SECURITY LAWS

3.1 Introduction

"Social Security" developed gradually with the passage of time. In ancient societies, mankind struggled against "insecurity to protect himself" from the "peculiarities of nature". He wandered for the "basic necessities of day to day life". In the later times, group or "community living" was adopted "to provide adequate social measures" for those people who need them.

With growth of "industrialization", there was a "break in the family setup" that led to the destruction of the "traditional joint family system" resulting into an "institutionalized" and "state-cum society" regulated "social security arrangement".

"Social Security" keeps on growing and elaborating as there is no uniform definition of it till date. "Social security" is dynamic concept to eradicate "poverty", "unemployment" and "diseases". Hence, an attempt has been made in this chapter to discuss the definitions along with the origin and development of "social security" in different stages.

3.1.1 Definitions of "Social Security"

"Definition by Sir William Beveridge"

"The security of an income to take place of the earnings when they are interrupted by unemployment by sickness or accident to provide for retirement through age, to provide against the loss of support by the death of another person and meet exceptional expenditure, such as those connected with birth, death and marriage."[128]

"Definition by International Labour Organization":

"Social security is the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security,

[128] Dr. N. H. Gupta, *Social Security for Labour in India* 32 (Deep & Deep Publications, New Delhi, 1986).

particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner."[129]

"Definition by National Commission on Labour"

"Social security envisages that the members of the community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose primary resources can seldom be adequate to meet them. The concept of social security is based on ideals of human dignity and social justice. The under lying idea behind social security measures is that a citizen who has contributed or is likely to contribute to his country's welfare should be given protection against certain hazards or as consequence of it."[130]

"Definition by V.V Giri"

"Social security, as currently understood, is one of the dynamic concepts of the modern age which is influencing social as well as economic policy. It is the security that the state furnishes against the risks which an individual of small means cannot, today, stand up to by himself or even on private combination with his fellow countrymen."[131]

"Definition by Fried Lander"

"Social Security" is "a programme of protection provided by the society against these contingencies of modern life- sickness, unemployment, old age, dependency, industrial accidents and invalidism against which the individual cannot be expected to protect him and his family by his own ability or foresight."[132]

3.2 Quest for Security: An Initiation

From the historic times, "the insecurity that arises from various incidents" and "the human struggle to combat it" is well known**.** Life is **a** journey of risks and the entire tale of "human civilization" discloses that a continuous and a never ending war against "insecurity" is still going on. Labour existed since the

[129] Facts on Social Security, *available at:* https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067588.pdf (last visited on December 8, 2021)
[130] M.K Srivatsava, *Agricultural Labour and the Law* 151 (Deep & Deep Publications, New Delhi, 1993).
[131] V.V. Giri, *Labour Problems in Indian Industry* 269 (Asia Publishing House, Bombay, 1972).
[132] Deepak Bhatnagar, *Labour Welfare and Social Security Legislation in India* 46-47 (Deep & Deep Publications, New Delhi, 1984).

beginning of human history and man was not entirely free from "insecurity".[133]

A man in an effort to ensure his "physical survival" had to save himself from plunges of "hunger". Apart from various "physical dangers" like life endangerment from "wild animals", "elemental forces" of "floods", "famines" and "drought", man's existence was also under the threat of numerous diseases.

But by nature, man was continuously striving to overcome these threats to his "physical security" by seeking "protection through fights" and sometimes by trying to establish control over the countless sources of "insecurity" through "human ingenuity". First probable effort by man to protect himself against the aggressive moves of "carnivorous animals" and to overcome insecurity was lifting a wooden stick.[134]

3.3 Mode of Attaining "Security"

3.3.1 "Tribal Society"

The society which exists in the "early period of human history" was known as a "tribal society". During those times, the sense of division of labour beyond undergoing a simple sexual act and age differentiation is by all means non-existent.[135] The concept of individual private property rights was not recognized.

All the members of the group had to work collectively for the interest of the group. Every person belonging to the group together shared the "menace and benevolence" of "labour". "Children", "Weaker Sections" and "Aged Classes" of community were provided "care" and "shelter" according to "custom", "knowledge" or "superstitions" of the tribe.

3.3.2 "Agrarian Life"

The livelihood during that time was **"**agriculture" even though "pottery making", the "weaving of hair, wool or cotton" among "agricultural groups" but development of "agriculture" was secondary. The population got

[133] Dr.Hamilpurkar (J.L.), *Social Problems and Welfare in India: Bonded Labour System in India* 201(Ashish Publishing House, New Delhi, 1992).
[134] Dr. Veer Singh, *Industrial Employment Injuries* 11 (Deep and Deep Publications, New Delhi, 1986).
[135] Vidya Bhushan & B.R Scahdeva, *An Introduction to Society 72 (*Kitab Mahal, Allahabad,1990).

multiplied as a result of "cultivation" of soil and it progressed with "villages", "towns", "cities", "provinces" and "nations".[136]The occupations were later "diversified" and "specialized" and gave to rise to many forms of "tensions" and "contingencies".

In order to combat them, the trades were organized into "guilds".[137] "Family", "charitable institutions", "religious institutions", "community assistance" provided "securities" and "relieved distress", against "social and economic contingencies".

Later during the period of "industrial revolution", a new manufacturing class emerged which exploited the workers to extreme heights as it followed the commercial "doctrine of Laissez-Faire".

At last, "social justice" gave birth to a "welfare state", who actively promoted and rendered "social justice" through "social security" legislations to protect male and female workers of "formal organizations" and "informal organizations".

3.4 Origin of "Social Security"

"Historical scanning" of "social security" reveals that during "pre industrial society" "social security" does not provide recognition to labour. The system that prevailed during that stage refects the plight of the labour class with deprivation of legal rights. Mankind's experience of varied "evolutionary changes" from ancient times till today has been "extensive" and "dynamic".[138]

3.4.1 "Progress from Nomadic Period to the Modern Factory System"

In initial times, men adopted "hunting" as well as "fishing" to meet his hunger and thirst. He fulfilled his hunger through "wild animals", "birds" and "fruits" and satisfied his thirst from the "rivers". "Caves" were the shelter for man and the tress provided him clothing.

Thus the basic needs of man that pertain only to "food", "clothing" and "shelter" were adequately met by the nature. The "labour problems" were

[136] R.J Mayers, *Social Security* 4(Mccahan Foundation, Pennsylvania, 1975).
[137] A.I Ogus & E.M Barendt, *The Law of Social Security* 2 (Buttersworth, London, 1988).
[138] S.D Punekar and S.B Deodhar, *Labour Welfare, Trade Unionism and Industrial Relations* 5 (Himalaya Publishing House, Bombay, 2011).

nonexistent due to absence of any kind of "social", "political" or "economic systems".

3.4.2 "Pastoral Stage"- There was a "certain amount of economic activity" in this stage. It witnessed that "hunting tribes" depend for food on "killing" and "capturing" animals learned the art of "taming" and "breeding" them.

With this, they entered in the second great era of "economic progress", known as the "pastoral stage". Man started moving on to fresh pastures ad fields along with his cattle and goats. Men continue to live with his "persisted nomadic" and "migratory nature" in this stage. He began to live "chiefly upon his flocks" and the "leaves" the flocks were surviving upon whatever they get. The concept of "private property ownership" was not known in this stage.[139]

3.4.3 "Agricultural Stage"- "Agriculture" was adopted as a means of support for keeping and chasing the flocks. Man no longer wanders for food now and has a variety to feed himself and his family. This increasing "permanency of settlement" resulted in the "private ownership" of land.

"Successful cultivation of the soil" required detailed "personal care", "attention" and some sort of "division of the land". "Sale of land" resulted in "permanent private ownership". The period witnessed the establishment of "villages", "towns" and "cities".

The development of "slavery as an institution" was perhaps the most important consequence of the changes in the agricultural stage. "Serfs" and their families were given "protection", "food" and "shelter" by the barons. This division later resulted in the emergence of "class struggle".[140]

3.4.4 "Handicrafts Stage"- The labour issues in the world began in this stage. The "artisians" started depending upon traders who gave them loan. In the merchants, they found a market for their products as they were unable to sell their finished products in their own areas.

The traders became a class of entrepreneurs and the system of exchange of commodities gradually developed into commercial centres. They adopted an efficient communication system in order to develop their trade. They gain

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[139] Richard T. Ely and George Ray Wicker, *Elementary Principles of Economics (*The Macmillan Company, New York London, 2007).

[140]Satyaranjan Padhee**, "**Concept, Origin and Development of Social Security" 39, *available at:* https://www.academia.edu/31142258/CHAPTER_2_CONCEPT_ORIGIN_AND_DEVELOPMENT_OF_SOCIAL_SECURITY (last visited on February 28, 2022).

more importance than feudal lords. Moreover, the "craft guilds" while exercising strict control over "artisians" ensure "quality" and quantity of "manufactured goods". Hence there was "division of labour" in this period due to "accumulation of wealth".[141]

3.4.5 "Workshop Stage"- The "workshop stage" soon overtook the "handicrafts stage" because a need was felt to manufacture goods on a large scale. The general market was dominated by the small workshop manufacturers who used standardized tools. The "employer-employee relationship" became "cordial", "sympathetic" and "personal" although the "elementary problems of labour" viz. "wages", "hours of work", "recruitment" and "employment" have emerged by this time.[142]

3.4.6 "Industrial Revolution"

Patently, factory system" which was largely responsible for the rise of cities also created "industrial civilization". A large number of workers "migrate" to cities "in search of employment" in the "factories" for "survival" and "livelihood" as "production of goods" was shifted from small "workshops" and "cottage industries" to "large factories" located in big "towns" and "cities".

The labour of the workers was treated as the prime cost of production in such a manner as new materials were treated in the past and are treated at present.[143] The world markets were flooded with cheap goods by the "Industrial capitalists" as they speedify the methods of production. The workers became mere "exchanges" and this led to the growth of "Trade" and "Commerce" in the society. This further resulted in the "concentration of wealth" in the hands of the manufacturing class as there was no legal restriction on "trade", "production", "exchange of wealth" and "use of property". Consequently, the manufacturing class whose commercial doctrine was "laissez-faire" turned to "labour exploitation" and "victimization".

The process of "industrialization" overcrowded the problems relating to "safety", "hygiene" and "health" but also the fear of "insecurity" in the event of "sickness", "old age", "maternity", "unemployment" threatened the

[141] *Id*. at 40
[142] *Ibid.*
[143] Charles D Drake, *Labour law* 4 (Sweet and Maxwell Limited, London, 1973).

industrial workers about interruption of daily wages. This was the result of the "laissez faire" policy of the state and so the workers had to make arrangements for their better living and overcoming "economic insecurity".

Since there was no relief while meeting the life threatening contingencies and life has become more complicated as a result of industrial and scientific advancements, the concept of "social security" developed with time.

The end of "laissez-faire philosophy" and the emergence of the concept of "welfare state" yield new principles of "social welfare" along with "common good". Late 19th century recognized "industrial jurisprudence" with "social justice" and every country of the world felt the need to establish a "social security" network for the "protection of its workers" against "work related risks". It was also realized that every state must actively participate for developing a "human society" and for ensuring "dignity" to man for "freedom from want" and "desire".

The non interference doctrine of "Grigson" and "GibbsSmith" lay that the "state should not interfere with the natural working of the nation's economy". The "economic forces" working for "economic welfare" died by the 20th Century.[144]

Thus the modern society being a "welfare state" has assumed the responsibility of providing "social security" measures to protect industrial workers against "sickness", "invalidity", "old age", "unemployment" etc.

3.5 "Social Security" Measures in Ancient India

History reveals that the Laissez Faire Policy during its peak gave birth to "labour exploitation" and "victimization" in the society. In the absence of unbiased justice at the hands of employers with sufficient resources, the position turned bad to worse. The workers found themselves in great difficulty when affected by "sickness", "accident", "maternity", "old age" or "unemployment".

Due to emergence of "Industrial Jurisprudence", the "Laissez Faire" vanished by the 20th century. The emerged branch of "Industrial Jurisprudence" put restraint upon the employers to hire and fire the employees at hire wish

[144] Mahesh Chander, *Industrial Jurisprudence 18* (N.M Tripathi Pvt. Ltd., Bombay, 1973).

thereby giving rise to the concept of social justice. This new concept aim at the "elimination of income inequality" and "providing a better standard of living" to the working class. The idea was to "substitute income" whenever the need arises. Thus social justice leads to "social security" as the ideology of State is to "eliminate economic fear and hardship" which is the fundamental objective of a "Welfare State".[145]

The basic structure of each nation's polity and legal system, and the overall "structure of governance", "civil and political rights" and "social and economic rights" in each society were controlled by the State. States are duty bound to the "human rights" of their "citizens" and exercise a degree of control over other institutions and structures on which "human rights" impose limitations. Moreover, states than any other entity in society have a greater power of enforcement against the violators of rights.

Like other developing countries of the world, India too has witnessed a long process of industrialization. It is now one of the top 10 industrial nations of the world with 12.8 million registered factory workers[146]. In her ancient period, from socio- economic point of view India was a dynamic as well as a prosperous country with lot of energy and liveliness. She has widely contributed towards the culture and civilization of mankind.

Wherein Industry had its pride in the development of Indian Culture, the "Egyptian mummies" were found wrapped in "magnificient" and "exquisite" quality of "Muslins".[147]

The fact that even in those days the "social fabric" and the "Codes" were so evolved and formulated as to provide "social security" to everyone is evident from "Kautilya's Arthshastra" and "Manusmriti".

The present "labour law" has its background in these literatures. "Manu" framed rules and laws for the ruler as well as the society and "Kautilya's Arthshastra" is the most remarkable and comprehensive work for the "socio-economic" welfare of everyone living in the world.

[145] Mahesh Chandra, *Industrial Jurisprudence 18(*N.M Tripathi Pvt. Ltd., Bombay, 1976*).*
[146] Tanushree Basuroy, "Number of Workers Across India FY 2012-2019", *Economy & Politics* (2022).
[147] S.N Johri, *Industrial Jurisprudence* 14-15 (Suvidha Law House, Bhopal, 2000).

3.6 Historical Development and Conceptual Dimensions of "Social Security"

The various developments of "social security" are closely linked to the "economic changes" in the society. History not only helps one to understand the things as they were in the past but also enables one to understand the present. "Social security" schemes in India are not of recent origin but were in existence from time "immemorial". Earlier "social security" was ensured to a person through individual effort but later organized methods were developed to meet the contingencies. Hence, to identify the loopholes and laggings in "social security" system, an attempt has been made to study its "origin" and "development".[148]The study of historical development and the conceptual dimensions of "social security" measures may be studied and categorized in the following periods as:-

A. The "Hindu Period":-The protection system in the ancient India was non-formal and failed to witness the class struggles between the "employer-employee" and the "oppressor" and the "oppressed". This period witnessed a system of regulation with respect to "wages", the "manner of payment", "fixation of emolument" and availability of payment to the workers.

"Kautilya's Arthshastra" is a significant instance of "the development of the philosophy of social security in ancient India" and gave large importance to female workers. "Female workers" during this period were mainly recommended in occupations like "grinding", "husking" etc. and mentioned number of "pension schemes" viz. "educational pension", "poor relief" for the needy and the deprived.

"Kautilya" states that "*State itself should provide support to poor, pregnant women, to their new born off spring, to orphans, to the aged, the infirm, the affected and the helpless"*[149]. The "non-formal system" can be divided as-

i) "State Assistance": The King was regarded as the father of its population in this period whose utmost duty was to take care of the citizens and work for their welfare. It was also the obligation upon the King to provide "pensions" and "maintenance allowances" to the public, "financial assistance"

[148] M.K Srivastava, *Agriculture Labour and the Law* 151(Deep & Deep Publications, New Delhi, 1993).
[149] Dr. V.G Goswami, *Labour and Industrial Law* 3 (Central Law Agency, Allahabad, 2003).

to the destitute for the services provided by them.

ii) "Joint Family System": The family structure was "patriarchal" under this system. Spirit of "discipline", "sacrifice", "obedience", "reverence" and **"**unselfishness" were the distinctive features which provided "an ideal system of social insurance" and "social security to all the members of the family".

It is because of the system's fascinating feature that nobody suffered from "want", "disease" or "idleness". Members had "reciprocal moral and legal obligations" towards each and every member of the family. "Assurance of proper and hygienic living" was provided to those who were "aged", "orphans", "widows" and "disabled" members. Thus "joint family" was the first "line of defense against any calamity that threatens a member against risks of life". An expansion of "industrialization" has led to the "gradual extinction of the joint family" system and replaced it by "nuclear family" comprising of "husband", "wife" and their "progeny".

iii) "Community Assistance"- "Community life" was "organised in democratic fashion at local level" before the "Mughals" and "British" came to India. In ancient India, the villagers enjoyed a "considerable measure of autonomy" and "managed their own affairs" through the "traditional institutions" like "Panachayats". The "collective responsibility" of local "fiscal", "judicial", "administrative" powers and the" people of community together" was to make "voluntary offerings to mitigate the distress of their people" by giving "money", "food" and "clothing".

iv) "Guild System"- "Ancient Literatures" revealed that "labour was organized in the institution of guilds" and effectively protected the "workers" and "artisans". These "guilds" who constitute the forerunners of "trade unions" today were basically the "voluntary unions of the class-wise or profession-wise workers" and "artisans" engaged in various occupations on the modern principle of "mutual insurance". The main purposes of these guilds were "collective security of life", "property" and "freedom from want and "misery".[150]For achieving this goal, they created a "common fund" of all members "for extending help and protection to workers against common

[150] A.C Aggarwal, *Industrial Accidents and Workmens' Compensation Law* 18 (Scientific Publishers, 1997).

risks".

v) The "Labour Regulations"- The people of the society is ancient India worked together on the principles of "brotherhood", "equality" and "freedom" so that period has not witnessed the "class-struggle" among the "employer-employee"; "oppressor-oppressed". All supported one another ad there was no one to exploit. Harmonious "industrial relations" in the form of adequate "wages", "good behavior", "participation in pleasure and pain of laborers" are the basic reasons for "economic success and happiness" among working class. It is pertinent here to examine and discuss the "labour policy" concerning the under mentioned:-

a. **"Wages"-** The wages were bargained among "employer" and the "employee". The reason for "labour unrest" is "delayed payment of wages" which must be paid "daily", "fortnightly", "monthly", "quarterly", or "half-yearly" either In the middle of the work" or "after the completion **of** the work" as per the "agreement" and according to the fixed time and work or according to both.

b. **"Labour Efficiency"-** In ancient time, it was well recognised that an "efficient labour force is a powerful instrument of economic upliftment" and the "life-blood of a nation"-by lying down "rules and regulations" in the forms of "four Ashramas and Varnas". "When a seed is sown, it grows, ripes and is harvested for making the bread was considered as a well planned scheme of life". Similarly, "distribution of work according to the ability", "aptitude" and "capacity" of each individual was also the way to a well planned and systematic way of life.

B. The "Muslim period":- Indian industry rapidly declined due to frequent-warfare during the "Mughal" period. The consequent decline of Hindu System with respect to **"**Social Protection" was "the outcome of their conquests and caused chaotic conditions. However, some "enlightened emperors" started giving financial helps called "Diwan – e- Khairat" to the poor for their daughter's marriage**.** There was no "systematic planned assistance" or "social security" except some "occasional charities" or "gifts" during this period.

C. The "British period":- There was a considerable decline in the Indian goods and their growth was hardly encouraged after the British came as a

"local industry". During the British period India was treated as a "colonial market for the sale and purchase of British goods". British showed interest in the "export of new materials" from "colonial markets to "factories" that existed "in their native places in England". They "discouraged development of industries in India to import the materials in the vast Indian Market".

The movement of "social security" in India had been extremely slow in the period before the outbreak of World War II. It was so steady that till now no attempt has been made to trace its course and study the nature of its progress. But later, the period of the World War II witnessed a rapid progress of the social security movement. It is no wonder that what has been accomplished recently, especially since 1943, far exceeds the measure of realisation during the first forty-two years of the present century.

It is only by looking back from the present heights that the growth of the "social security" movement in the early period submits itself to a connected historical treatment. A perusal of its progress in the earlier stages is highly valuable, if only because it will make possible a correct appraisal of its swift growth during the last three years, as also of its future possibilities.

The recent achievement, though still far behind the ideal position, is very gratifying when it is compared to the indifferent landscape of the earlier decades. But in the general atmosphere of considerable discontent that prevails in India, a gulf between the actual and the ideal is liable to be unfavorably interpreted. Hence, it becomes necessary to put the recent progress of the movement in proper -perspective with regard to the past as well as the future.

3.7 Growth of "Social Security Movement in India"

We may study the growth of the "social security movement in India" in the following four periods: -

3.7.1 The "Pre-1918 Period" ("Pre Constitution Era") – "Period of Inactivity":-

In the initial times, people lived a more secured or protected life. The "joint family system", "guilds", "caste", "Community Panchayats" and "religious institutions" provided protection to individuals from various contingencies.

The "social set up in India" was totally changed by the "development of a modern state to protect the people from evils.

"Philosophy of welfarism" resulted in "legislative schemes designed to channel all economic activity for the collective good".[151] Originally, "labour law was the part of "private law" but now "it is an integeral part of public law".

"Indian industrial legislation" originated during the period from "the middle of 19th Century to the end of First World War". "Industrial Law" established its roots in India "through a slow and steady process". The first law introduced in India relating to labour was the "Apprentices Act"[152] to enable the children learn various "trades", "crafts" and "to seek employment for gaining a livelihood" when they grow up.

The "western countries" have influenced India "by the introduction of the Factory system". The "Cotton and Jute mills" established during 1850s lay the stone of "factory system" in India.[153] The first "cotton textile factory was set up in early 1854 at Bombay".[154] The "western nations" gradually became more "civilized" and established various "seasonal industries" viz. "cotton ginning", "cotton and jute pressing" and "rice milling".[155] The condition of workers in these mills was "deplorable because of long working hours without any safety and "security".

"High Ambitions" of the "Artisians" drove them from villages to the cities to improve their living conditions. Where on one hand life in villages had its roots in "mutual cooperation" among the "community members", life in cities on the other hand was truly based on "commercial and business relations" among the members. As a result soon the "joint family system" lost its validity to provide security against "socio economic contingencies".

Consequently, the "independent producers" and "self employed workers" began to disappear that ultimately led to the growth of two separate classes

[151] Prof. Harry Calvert, *Social Security Law 38*, (Sweet & Maxwell, London, 1978).
[152] S.R.Samanth, *Industrial Jurisprudence* 54, (M/s.N.M.Tripathi Pvt.Ltd., Bombay, 2010).
[153] Mr Anderson and Lord George Hamilto, "Factory system (India) Report of the Commission" 837, (HC Deb. 10 April 1877 Vol. 233. *Available at:* https://api.parliament.uk/historic-hansard/commons/1877/apr/10/factory-system-india-report-of-the, (last visited on September 22, 2021).
[154] G.P Sinha & P.R.N Sinha, *Industrial Relation and Labour Legislation* 14 (Oxford and I.B.H Publishing Company 1971).
[155] G.K Sharma, *Labour Movement in India* 14(Sterling Publishers, New Delhi, 1971).

that is of "employers" and the "employees". This emerged new class affected the "culture" and the "customs" of society and so the need to protect the workmen against various hazards of life such as "injury", "sickness", "maternity", "old age" was felt essential.

After the advent of "industrialization", there was hardly any law of the in India that governed penal, commercial and labour matters. The "First Law Commission" in its "Lex Loci Report" (1840) recommended that English Law be declared as "Law of Land (Lex Loci) for India". It was for the reason that "there is probably no country in the world which contains so many people, who, if there is no law of the place, have no law whatever.[156]

(I) "Indian Fatal Accident Act, 1855"

Passing of the "Fatal Accidents Act", 1855 was the significant features of that period. Act provides "compensation to legal heirs of the employees" that dies as a result of some "actionable wrong".[157] It was passed to provide "monetary assistance to the families" that has lost their bread winners "by the neglect or default on the part of his employer." But this measure was not of much avail due to the "ignorance on the part of workmen" and the "complicated legal procedure involved in establishing claim." The "main drawback" of Act was "Minimum rate of compensation to some selected legal heirs" and "a restricted application". Moreover the provisions of the Act were not adequate enough as it does not cover certain "dependents", "brothers", "sisters" for claiming compensation.

(II) "First Factories Act, 1881"

From the period 1860 to 1875, India had witnessed the development of jute and cotton industries, "coal mines" and "rail road" constructions. But the condition of Indian labour was poor as they were very much exploited by the employees. By 1881, "factory system" clearly emerged in India, but workers did not organize themselves simultaneously with the industrialization. The safety and working conditions of these workers became the prime concerns for many members of the "House of Lords" and they argued for legislation.[158]

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[156] M.P Jain, *Outlines of Indian Legal History* 479 (Wadhwa & Company, Nagpur, 1999).

[157] "Compensation was given only if it is proved in the Court of law that the accident was not due to obvious neglect of workers."

[158] *Supra* note 9 at 6.

This was due to the non availability of protection through legislations concerning "safely", "welfare", "holidays", "Leave" etc. for workers. Thus in 1881, "Indian Factories Act"[159] was passed to provide regulation of the labour in factories due to continued protest against low wages and cruel condition of employment. The "Factories Act", later was amended on many occasions from time to time.

It is evident that, all these early legislations were enacted in connection with specified classes of industries and did not extend to the entire working class. The majority of the measures adopted were related to "railways", "shipping", "factories", and "mines". The progress of both industries and industrial laws was haphazard, inadequate and not up to the mark. The attitude of government towards the workers legitimate rights was that of "opposition" and "non-interference".[160]

It was sincerely believed that any interference in "employer employee relationship" would result detrimental to the interests of both the parties. This might be the reason for "industrial enactments" passed during this period happened to be limited. These were also scattered, limited in scope with respect to their coverage, and of minor importance and conservative in nature.

3.7.1.1 "First World War (1914-1918)"

Till the beginning of the "First World War" there was no "class-consciousness" among the workers in spite of their "despair" under the "prevailing ills of the factory system". Workers were dissatisfied with the industrial system that prevailed as a whole. Due to the industrial expansion, the climax of "World War-I" led the Indian working class to go through the vexatious process. By the "World War **I",** the production began to increase and so the prices also went up. This had resulted in "poverty", "malnutrition" and "hardships" for the working class. This was due to the low wage and the poor conditions of working class which remain unchanged and the "deprived" labour class suffered due to "starvation".

They raised voice through number of "strike committees" formed during that period for the redress of their grievances. The general awareness about the economic conditions brought awakening among labour class and they form

[159] "It was re-enacted in 1911."
[160] "Laissez faire was the ruling doctrine of the day".

"labour unions". Then the sense of "solidarity" and "union consciousness" also started growing up among working class.

In 1918, the "Madras Labour Union" was formed which had become the forerunner of a modern labour movement in India. It spread rapidly to other centres and several others industries within a period of 3 years.[161] But prior to 1919 there was no proper legislation for the protection of workers against social and economic contingencies. A.W. Agarwal rightly calls this period as, "the period of inactivity" in "social insurance" movement in India[162].

3.7.1.2 The "Period of Development (1919-1945)"

During and in the later "First World War" period, there had been tremendous change in the attitude of state and society towards the labour class. ILO was established in 1919 which aimed at welfare of workers globally. India is a member since its inception. ILO has adopted many "Conventions" and "Recommendations" casting different types of liability on "industry", "Government" and "labour".[163]

The foundation to "social security" measures for workers was laid with the establishment of I.L.O. by adopting the principle to secure universal peace based on "social justice". The powerful .In 1920, the powerful "All Trade Union Congress" was established to send a trade union representation at I.L.O. In the post-war period, the influence of 1.L.O favored the growth of trade union movement in India, which led to the enactment in the field of social security namely "Workmen's Compensation Act", **1923.**

(I) "Employee's Compensation Act, 1923"

Up to 1923, Indian workers had the common law protection against "employment injury" which could not prove to be effective, as proof of the employers fault remained the basis of liability even though "Employers Liability Acts" was abolished and failed on ground of "relative poverty and ignorance of the industrial workers". So most of the "industrial accidents" were not touched and workman could hardly get damages for their loss.

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[161] G.K Sharma, *Labour Movement in India70* (Sterling Publishers (P) Ltd., 1971).
[162] A.N Agarwal, *The Insurance System in India* 182 *(*Dikshit Press, Allahabad, 1944*).*
[163] "Among them India ratified only 3 conventions relating to workmen's compensation, on occupational diseases and equality of treatment in accident compensation."

Under the "Montague-Chelmsford Reforms" in 1919, the central legislature was given definite legislative authority to enact industrial laws. Using that power, in 1923, India passed a major enactment called "Workmen's Compensation Act", 1923, with an object to "eliminate hardship caused to workmen injured", through providing "prompt payment of benefits" regardless of fault from their side and with minimum legal formalities. It imposed obligation upon employers to pay compensation to workers "for accidents arising out of and in the course of employment" and for "death" and "disablement".[164]

The Employee's compensation is based on an entirely new philosophy. That philosophy was based not on fault or negligence of the employer but on employer and employee relation. This relationship constitutes a complete departure from common law liability.

But this Act proved a failure in providing security against other contingencies of life, like "sickness", "old age", "maternity" etc. Generally, the injured workmen had to make their own arrangements for medical treatment which ultimately led to an unsatisfactory state of affair in the society.

The then Government was later forced to take interest in legislative protection to labour. Due to the subsequent industrial unrest and the international pressures exerted through 1.L.O, the "Provident Fund Act", 1925, the "Trade Union Act", 1926, was passed which recognised the legality of unions and conferred immunities from certain civil and criminal liabilities.

(II) "Royal Commission on Labour-1929"

"J.H Whitley" was appointed as the chairman of "Royal Commission on Labour" in 1929. The Commission made recommendations to frame "scheme on health insurance to industrial workers on contributory basis" and provisions on "old age" and "payment of gratuity". After making a "detailed and systematic study" of "labour problems", the Commission in the year 1931 submitted report to the "Government of India".

The report gave "recommendations on the existing labour conditions" and "suggested measures for improvements". It further "recognized the necessity" of making provisions for the "old age persons" and "establish stable trade

[164] "The Act was amended 7 times during this period."

unions", "appointing Labour Welfare Officers" for improvement in "health", "hygiene", "standard of living of the "employers and the employees". The recommendations laid the foundation stone for the "improvement of industrial law".

The "Government of India Act", 1935 put forward the subjects on which "Federal Legislature" has the authority to pass industrial laws. Industrial legislation expanded the scope of its "applicability", "promptness", "magnitude" and had also undergone a great change in its nature.

These legislations covered within their ambit major "cluster of industrial workers and their numerous rights". These enactments are very important with far reaching consequences.

This reflects "a change in the attitude of government" from being tolerant towards encouraging the worker's "dreams" and "aspirations". During the "period of 1919-1942", there was a great progress "in modifying old laws"[165] and "enacting new ones".[166] Some new enactments were passed for specifically addressing certain "industrial establishments"[167] that intend not merely to "regulate employment in the industries" but attempted to give "better conditions of employment" like "shorter hours of work", "weekly holidays", "safety of premises", "payment for overtime", "rest period", "paid holidays to working class".

In such a set-up of limited industrial progress, it is difficult for the "social security" movement to develop and thrive. The period preceding 1918 is therefore conspicuous by the complete absence of any "social security "movement in India.[168]

3.7.2 The "Inter-War Period" (1918-1939): "Period of Agitation"

[165] "Indian Merchant Shipping Act, 1923"; "Assam Labour and Emigration Act, 1893"; "Indian Mines Act, 1901"; "Factories Act, 1911" improved up in their scope and object. "Employers and Workmen (Disputes) Act, 1860" and "Indian Fatal Accidents Act, 1855" were reenacted as "Workmen's compensation Act" and "Indian Trade Disputes Act".

[166] "Tea Districts Emigrant Labour Act, 1932"; "Indian Mines Act, 1923 and "Indian Factories Act, 1934."

[167] "Mines Maternity Benefit Act, 1941"; "Indian Motor Vehicles Act, 1939"; "Indian Dock Labourer's Act, 1934."

[168] A. N. Agarwala, "The Social Security Movement in India", *The Economic Journal of* Oxford University Press 568-582 (1946).

This period witnessed notable “industrialization”, resulting in “appreciable increase in the number of factory workers” in India. The labour problems received “public attention”. The “international standards” set by the “International Labour Organization” too made India realize the shortcomings in her system of labour regulation and protection. Efforts were made to remove them as far as practicable by organization among workers as they began to make a demand for the upliftment of their conditions.

Several “official” and “non-official” bodies thought of “social insurance” as a measure to provide against social contingencies. The first social contingency against which provision was made during this period was "employment injuries”. During this survey period, compensation could be claimed under the “Fatal Accidents Act” of 1855 by the heirs of the workers dying as a result of industrial accidents.

But in the case of “fatal accidents”, “factory-owners” could be held responsible for compensation only if the accidents were caused by their own “personal negligence”. Varied reasons like the “ignorance” and “illiteracy” on the part of workers, their “poverty”, and the fear of “unemployment” arising out of their taking an action against their employers, further curtailed the benefits of this Act.

Efforts made in this period “to improve labour matters” proved “futile” and it was only in the aftermath of “World War I”, the question of workmen's compensation was seriously taken up when a wave of “industrial strikes” overtook the country. As a “stop-gap” measure a “Workmen's Compensation Act” was passed by the “Indian Legislative Assembly”. The notion of regarding this Act as “the first social insurance measure” to be introduced in the country was, however, incorrect.

This Act places the liability of compensating the worker in respect of “industrial accidents” and “diseases” on the “employer” alone. It also does not involve an element of “commercial insurance”, much less of “social insurance”. There seems to be no valid reason in putting the obligation to bear the cost of compensation entirely upon the employer alone the obligation to bear the cost of compensation in its entirety when in many cases he could not have prevented the occurrence of the accident. So long as this feature

continues, the propensity of the employers to evade the "employment injuries" liability is bound to persist.

The "second contingency" recognized and against which provision was made during this period was maternity. The "Presidency of Bombay" was the first to pass a "Maternity Benefit Act", in 1929; and the "Central Province" adopted the measure in 1930. The "Royal Commission on Labour", observed that the time has come to introduce legislation throughout India making "maternity benefit scheme compulsory" in respect of women "permanently employed in industrial establishments" on "full-time processes."

They approved this "idea of applying the social insurance principle to maternity", but also opined that in the absence of a "sickness insurance" scheme the operation of a "maternity benefit" insurance scheme would be disproportionately costly, and therefore impracticable.

The third measure that was adopted during this period was "Chapter VIII" of the "Motor Vehicles Act" of 1939[169]. The provisions for the compensation of the members of the public dying or receiving "bodily injury" by the use of motor vehicles in a public place was made . It also provided for the enforcement of its provisions concerning "third-party" liability insurance (Chapter VIII) according to which, all the "motor-owners" must take "third-party risk insurance policies" from "private insurers as a condition precedent" to the use of their vehicles in a public place. This legislative measure is a step ahead towards the path of social insurance, as it is not confined to industrial workers alone, but covers the population as a whole, which is significant.

Moreover, it does not cover an "industrial risk", but a "non-industrial" accident risk, and is therefore a beginning in an entirely new direction. However, the coverage "industrial" and "non-industrial" accidents, through the device of social insurance is an essential ingredient of a complete system of "social security" and this measure falls short of the social security status. In addition to these, efforts were also made to frame and introduce a "health insurance" scheme for the "industrial workers" during the period.

[169] "Came into force on July 1, 1939."

While none of the three schemes discussed above reaches the "level of social insurance", they certainly-did prepare the ground for the "application of this principle in the near future".

The spadework done during this period served to help further growth in this line during the period of "World War II". This effort had achieved in the domain of "social security" in India what the initial four decades of the present century entirely failed to do.

3.7.3 The "Second World War" Period (1939-1945): "Period of Rapid Plan-Making"

At this stage the "social security" movement received great "inspiration" and "encouragement" from the work being done in some foreign countries in this connection.

The period of war witnessed rapid and "revolutionary changes" in every aspect, and it was "psychologically" possible for India "to take a path-breaking step" to "social security" as it found support from all directions.

The "substantial growth" of the "social security movement in India" therefore commenced from the year 1943, when "Professor B. P. Adarkar" was appointed to frame a scheme of "health insurance" for the industrial workers of India.

(I) The "Tripartite Labour Conference"

The "First Conference of Labour Ministers" in January 1940 in New Delhi made the Indian Government to consider the question of insurance in relation to "health". It reached to the conclusion that the idea of a "sickness benefit" fund (is) appropriate. The further action may be considered after ascertaining for how long employers and labour will compulsorily contribute to the fund by the Government of India. This resolution, though rather indifferent, enabled the issue to be handled "de novo".

The "Second Labour Ministers Conference" met again in January 1941. By this time the Provincial Governments realized the need for the scheme, and workers were also anxious to have the scheme in operation as early as possible. The workers and employers were prepared to contribute. Consequently, the Conference came to the conclusion that a preliminary

actuarial examination limited to a few specified industries should be undertaken.

In the light of such an enquiry “a scheme should be framed” involving “contributions from the masters and employees” and in no case from the Government and no effort was made to avail “health insurance” scheme for “industrial workers”. The “Second Labour Ministers' Conference” has evidently handled the matter from the wrong end.

This view was placed before the “Third Labour Ministers' Conference in 1942”. It decided that State should guarantee an “interest-free loan” to the Fund to meet any “budgetary deficit” that might arise.

It was agreed that firstly a “draft sickness insurance scheme should be prepared” and later “at the first instance” be applied with respect to the cotton and jute workers.

It was further proposed to give the work of framing a scheme to an expert in this field. In accordance with this decision, Professor “B. P. Adarkar” was appointed to frame a “scheme of health insurance for the industrial workers”.

(II) “Report of Professor B.R. Adardkar”

Professor B. P. Adarkar scheme, is the first complete scheme on “social insurance”. The “Adarkar Commission” report submitted on 15th August 1944 opened door for a “comprehensive contributory scheme of social insurance”. It was the “opening chapter” of the “history of social insurance” in India and covered “industries” **viz.,** the “Textile”, “Engineering”, “Minerals” ,“Metals”.

“Perennial Factories” would be covered under the scheme except those “located in the sparse areas” where “medical facilities could not be provided”. The workers were classified under three heads under the scheme namely, ""Permanent", “Temporary” and "Casual” depending upon the “length of service”.

The “permanent” as well as “temporary employees” were eligible to “cash and medical benefits” whereas the “casual employees” were eligible to get “medical benefit” only. He stressed a “uniform scheme of maternity insurance” all over India and suggested that “Workmen's Compensation Act” should be replaced by the “scheme of insurance” against “industrial disability” that covers “industrial accidents” and “diseases”.

During the course of his Report, Professor "Adarkar" also exhaustively and critically examined the working of the "Indian Workmen's Compensation Act" and "Maternity Benefit Acts", which are indeed borderline cases, and made a strong case for merging them in a unified system of "health", "maternity" and "employment injuries insurance".

The Report also emphasized on the need to adopt other schemes like:-

(i) "Unemployment insurance";

(ii) "Old Age Pension";

(iii) "Regulation of Wages", "Rigorous Enforcement of Factory Laws", "Health Education" And "Improvement in Environment Hygiene".[170]

(III) "Labour Investigation Committee"

The **"**Labour Investigation Committee" well known as "Rege committee" was appointed to investigate the above report on: -

- "Risks that results in insecurity";
- "Need of labour to fight against such risks";
- "Methods that are the most suitable for overcoming such risks";
- "Housing" and "factory conditions".[171]

A "multi-directional attack" was launched by the Government "on the problems pertaining to the social security".

(IV) "Alterations by International Labour Organisation Experts"

This Report was submitted for examination by two I.L.O. experts- "Messrs. M. Stack" and "R. Rao" after wholly endorsing the recommendations of Professor "Adarkar. They also expressed their agreement with Professor "Adarkar in respect to the "provision of an integrated system of health", "maternity" and "employment injuries insurance scheme". It is a remarkable achievement as compared to the background of the "social security" movement in India up to 1942.

(V) "Health Survey And Development (Bhore) Committee"

Another remarkable event of the period under survey is the appointment of the Health Survey and Development (Bhore) Committee with a view to make a "comprehensive" and "exhaustive" survey of health conditions in India and

[170] Government of India, "Employment State Insurance Scheme Review Committee" 19 (1966).
[171] Government of India, "Report of Labour Investigation Committee"1(Government of India, 1946).

recommending a scheme that should be adopted for ensuring satisfactory health to the people of the country. "Good health" has now come to be regarded as an "essential element of good living".

It is universally desired that this should be guaranteed by the State to every "citizen", rich or poor. This Committee has also completed its comprehensive survey, the first of its kind in India, and its Report has now been submitted to the Government. Its Report is of great value, and has brought to the fore the leading problems concerning the maintenance of 'national health".

3.7.4 The "Post-War Period" (1945): "Period of Action"

From the preceding section, it is, however, clear that the "social security" movement in India entered into a new phase during the period of the "World War II", wherein India not only began to think in terms of "social security", but also prepared certain plans to overcome some social risks. "Industrial Jurisprudence" was in an undeveloped form before independence. "Industrial Legislation" occurred only "after independence" although "its birth may be traced back to the industrial revolution". India has yet to make a complete scheme of "social security" and "preliminary step" is the "Labour Investigation Committee".

The "progress of a nation" to a great extent depends "upon the development and growth of industry". So the "National Government" after independence "paid much attention" to the "improvement of the conditions of "labour" and "industry" as it is was realized that workers are the backbone of the country. Though on 15th August 1947, India became independent but the transfer of power took place in 1946. The "Interim Government" made a "Five Year Programme" for the "welfare of the labour" class with the following "salient features":-

a. "Organization of health insurance scheme applicable to factory workers";

b. "Revision of the Workmen's Compensation Act";

c. **"A** Central Law for Maternity Benefit"; and

d. "Extension of the right to leave with allowances" during periods of "sickness" within specific limits to other classes of workers.[172]

[172] Government of India, "Report of National Commission on Labour" 163 (1969).

The country experienced an effective take off stage of 'industrialization" as a result of series of "industrial laws to regulate labour management relations", "to provide welfare measures", "retirement benefits", "protection against industrial injuries" etc. since independence. [173]

3.7.4.1 "Independent India" and "Planned Social Security"

The "socio-economic" conditions of the poor and working class in India were highly depressing and bad. India became a "Sovereign Democratic Republic" and framed its constitution on "26th January, 1950".The birth of "industrial jurisprudence" in our country may be ascribed to the "Constitution of India" which made more articulate and clear the industrial relations philosophy of the "Republic of India" by affording broad and clear guidelines for the development of our "Industrial Jurisprudence".

This has thus taken India one step forward in her quest for "industrial harmony" by restoring to the labourers "social justice" and "social security" for the achievements of "socio-economic" objectives.

"Labour legislation" is one of the most "dynamic" instruments for achieving "socio-economic" progress guaranteed by our Constitution. The right of workers including "social security" is included in Constitution as a "fundamental right" but the nature of the right and the difficulty in its enforceability made its position in the subordinate category of "non justifiable" right.

Matters relating to "Social Security" are listed in the "Directive Principles of State Policy" and the "subjects in the Concurrent List" which had helped a lot "for providing facilities to workmen" and "making effective provisions of public assistance".[174]

Soon after the "commencement of the Constitution", "Five Year Plans" were introduced r "to ensure social justice" and "better standard of life to the people in India".

3.7.4.2 "Social Security" and the "Five Year Plans"

"Five Year Plans" supported by the "Directive Principles" lay emphasis on the

[173] Madhvan Pillai, *Labour and Industrial Laws* 4, (Allahabad Law Agency, Alahabad, 1994).
[174] The Constitution of India, art.41.

need of "social security schemes" for achieving the desired result. The detail of the "Five Year Plans" is discussed below:-

A. "First Five Year Plan (1951-56)"

The "First Five Year Plan" deals with the relationship between "labour" and "industry". It pursued with a generous approach to provide the "basic necessities" of "adequate food", "clothing", and "shelter" to the working class. This plan proceeded towards "establishing a tripartite body for determining norms and standards", "standardization of wages with principles of social policy", "profit sharing", "permanent wage boards" for the working class so that they can remain "healthy". The plan also envisages provision for improved health conditions to enhance the work efficiency of employees.

"Social Security" measures like "assistance in disablement", "old age", "sickness" are discussed in this plan. It also stressed the role played by the labour in the social and economic progress and recognized certain rights and duties belonging to them. The rights of the employees revolve around various factors like broader "provision for social security", "improved educational opportunities" and "enhanced recreational and cultural facilities".

Further this plan aim to provide conditions of work for safeguarding the worker's "health". Such improved state of work will also provide protection against "occupational hazards". It also covers other work related risks like "right to strike" and "lock out" and "a just settlement of claims". It secures the "right to organize" and "to resort to legal action" in order "to protect their rights and interests for improved and peaceful industrial relations".[175]

The Commission also accepted and encouraged "amicable settlement" of issues by adopting "conciliation" and "arbitration" as a dispute resolution mechanism. It emphasized that it is "the duty of state to provide machinery" for "harmonious resolution of matters".

Above all, the plan recommended the "implementation of minimum wage legislations in an effective manner" and "the improvement in the working conditions of labour". In order to fulfill this "welfare" purpose, it stressed upon the implementation of legislation i.e "the Factories Act, 1948", the "Mines Act,1952", the "Plantation Act 1951", "Shops and Establishment Act"

[175] "Government of India "First Five Year Plan" (Planning Commission 1951-56)."

etc.

II. "Second Five Year Plan (1956-61)"

This plan gave importance to the implementation of the "social security" measures. It provided "employment opportunities for the existing urban and rural population". Secondly, it provided "natural increase in the labour force" and thirdly "by providing increased work opportunities" to those who are "underemployed in agriculture" and "household activities".[176]

The Second Plan acknowledged the fact that a check is required against "indiscipline", "stoppage of production" and "indifferent quality of work" in view of the goal of progressively speeding up production. The Plan also greatly stressed on "negotiations based on mutual understandings" between "employer and his employee".

It also highlighted that priority must be attached on one hand, to the development of large "joint stock" enterprises for solving the unemployment problem and on the other, to the "village" and "small scale industries".[177] It also appreciated "voluntary arbitration" in improving "employer-employee" relations.

III. "Third Five Year Plan (1961-66)"

It stressed upon the need "to effectively implement statuary welfare provisions". It emphasizes "states responsibility to provide facilities and co-operative arrangements" for "settling disputes by declaring the labour policy". It envisioned that the object is "to secure not only peace" but "higher levels of industrial efficiency" and "rising standard of life of working class."[178]

It proposed the improvement in the work conditions would result in greater productive efficiency of the workers. The "First National Commission on Labour" was also set up under this Plan and was regarded as the first step in "Independent India" that paved way for a thorough study to find out the categories and causes of various "labour problems" and the measures to solve them.

The plan has specifically mentioned that the "Employees State Insurance" Scheme covers about 30 lakhs of industrial workers.

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[176] "Government of India "Second Five Year Plan"22 (Planning Commission 1956-61)."
[177] *Id*. at 50.
[178] "Government of India "Third Five Year Plan" (Planning Commission 1961-66)."

IV. "Fourth Five Year Plan (1969-74)"

It analysed the "Employee's State Insurance Schemes" and "provides for their expansion" so as to provide "hospitalization to the insured workers and their families". It has recommended covering "shops and commercial establishments in selected centres" and "all centres having an industrial concentration of 500 or more industrial workers".

The plan also envisaged and placed stress to rural development and small scale industries for creating fresh "employment opportunities" and "improvement in wages" of already employed workers in different sectors.[179]

V. "Fifth Five Year Plan (1974-79)"

It emphasized the increase in activities of the "Employees State Insurance" scheme. The plan suggested the need of a "systematic programme for re-education of employees" working at all levels. It also placed great stress "on creating an industrial democracy" in which a worker will realize that he is "a part and parcel" of the "industrial framework".

VI. "Sixth Five Year Plan (1980-85)"

"Sixth Five Year Plan" admitted that now it is the right time when the main concern of the labour policy is "to protect the interests" of huge masses who cannot safeguard their interests. The "State Government" has the "responsibility to ensure" that "security" is provided by watching that the workers are provided "sufficient safety measures".

The plan spoke about industrial policy and recommended that effective measures should be adopted to ensure wellbeing at work place. The plan empathetically stressed that the State must protect the worker's "right to organize" and "right to struggle" for achieving their workplace prosperity in order to safeguard "economic" and "social" welfare by all legal means. Simultaneously, it must ensure the steady growth of "investment" and "production" at a satisfactory rate.

"Collective bargaining" was accepted as the method of "dispute settlement". There were many other proposals under this plan for the protection of rights and to avoid strike. The service of notice, consultation and arbitration were the

[179] "Government of India "Fourth Five Year Plan" (Planning Commission 1969-74)."

measures adopted in order to build a good industrial relationship.[180]

The Plan further discussed "Social Security" of workers under various other enactments viz., the "Employees State Insurance Act", 1948; the "Employees Provident Fund and Miscellaneous Provisions Act", 1948; the "Payment of Gratuity Act", 1947 and the "Family Pension" Scheme.

The plan also recommended the application of the "Equal Remuneration Act" to all sorts of employment, particularly for women laborers, for eradicating discrimination against women.

The plan also stressed the proper enforcement of existing provisions on "crèches" or "child care units" within establishments in order to cover children of working mothers. The plan admitted that there was no shortcut to eliminate of "child labour" in an economy where "poverty" and "unemployment" force families to divert their children from education to supplement their family income.

The only way to raise the income of the families is through "employment" and minimizing "poverty". The plan further stressed on the role of "Central Government" to promote safeguards at "docks" and "mines". It also recommended for "National Committee on child labour" to suggest "welfare measures" for the benefit of employed children.

VII. "Seventh Five Year Plan (1985-90)"

"Seventh Five Year Plan" recognized that "the labour has entered the production process" from the demand side as well as a supplier. The Plan states that "industrial sickness" created the problem of "rehabilitation" of large number of workers in the "organized sector".

The "thrust area" of this Plan was "improvement in capacity utilization", "efficiency and productivity" ,"constant attention on the working conditions", "welfare of workers" and "the production mechanism".[181] This plan found that "wage factor" depend on "related elements" like "allowances", "bonus", "social security" and "fringe benefits" so it is suggested "to train and upgrade skills of the workers" and "to educate them". In respect of "women workers

[180] "Government of India, "Fifth Five Year Plan" 172 (Planning Commission, Chapter-2, 1978-1983)."

[181] "Government of India," Seventh Five Year Plan" 1-9 (Planning Commission, Chapter 'Employment-Power, Plans and Labour Policy', 1985-90)."

and their rights", the plan made provisions "for requisite facilities to bring them into the mainstream of economic growth".

VIII. "Eighth Five Year Plan (1993-99)"

"Eighth Five Year Plan" aims at treating "employment generation" and "economic growth" as complementary rather than conflicting processes. In the context of "economic reforms", the plan mentions that "improvement in the quality of labour", "productive skills", and "working conditions" and provision of "welfare" and "social security" measures, especially of those working in the "unorganized sector" are critical elements.

The plan also discussed the strategy for "quantitative" and "qualitative" enhancement of employment opportunities and pointed out that "capital" and "labour policies" are not always employment friendly.

The plan found that certain "labour laws" and "labour market" rigidities renders wage mechanism ineffective and has introduced a degree of inflexibility in labour use thus "discouraging employment expansion particularly in the large scale industries."[182]

IX. The "Ninth Five Year Plan (1997-2002)"

During the "Ninth Plan period", there was a shift from "long protected non-competitive" economy to an increasingly competitive market".[183] The results of these reforms were truly encouraging and were highly appreciated. To generate "adequate productive employment" and "eradication of poverty", the main priority and central focus was given to the "agricultural sector" during this plan.

It was observed in this document that a positive response was received from the "Indian economy" to the modified "policy direction". The change was welcomed particularly, for the "vulnerable sections of society" with respect to ensuring food and nutritional security to them.

Moreover, it's the primary objective was to provide the "basic minimum services of safe drinking water"; "primary health care facilities" and "universal primary education" to the "helpless class of the society".[184]

[182] "Government of India, "Eighth Five Year Plan" 116 (Planning Commission, Chapter 6, 1992-97)."
[183] "Government of India, "Nineth Five Year Plan" (Planning Commission, 1997-2002)."
[184] N.Jetli, *India: Economic Reforms and Labour Policy* 16 (New Century Publications, New Delhi, 2004).

X. "Tenth Five Year Plan (2002-2007)"

"Tenth Five Year Plan" remarked that productivity of "labour" is the essential requirement for the "harmony of the enterprises" and the "well being of the employees and their dependants". It stated that for "improving the production facilities at work place" and the "remuneration of workers" the measures "to promote safety at the workplace" and "minimizing occupational hazards" is very important.

Further "labour laws" that regulate "payment of wages" and "social security" to workers will consequently minimize "occupational hazards" and will facilitate "reasonable return" on "labour".

The effective productivity of "labour class" to a great extent is influenced by the value that the society placed on "dignity of labour". So, in order to achieve efficiency on the part of "labour class" "prohibition on bonded labour and child labour" and "monitoring the conditions of migrant workers" is needed.

The planning process further is the "pillar support" for the attainment of "economic and social objectives in harmony with demand" through "skill development and vocational training."

As approved by the "National Development Council" (NDC), in comparison to the "Ninth Five Year Plan" period, this Plan envisaged higher "annual growth" of 8% which is greater than 5.5% achieved during the last period. The plan specifically put stress on the formation of a working group and ensuring "social security" to them. So, to attain "economic and social order in labour sector through a set of strategies", it discusses the "present system of social security in India".[185]

It advocated the necessity "to reframe the existing law and programmes on social security" in order to reach to the entire "labour force" that is not shielded by the "social security laws". This is needed because the "public sector" that provides "comprehensive social security shelter to its employees is shrinking in size". So "employment security" is the best healer for those not covered by "social security" laws.

It suggested that the "economic policy" particularly, the "labour policy must

[185] "Government of India, " Report of the Working Group on Social Security for the Tenth Five Year Plan" para-3.5.1(Planning Commission, October, 2001,2002- 2007)."

facilitate opening of new employment opportunities" specifically, "in agriculture" and related sectors" such as in "horticulture", "animal husbandry", "poultry" etc. The "labour class" must focus at the "non agricultural" sectors of economy where maximum "labour" finds work.

XI. "Eleventh Five Year Plan (2007-2012)"

It observed that for the "unorganized section not protected under the Plantations Workers Act" and "involved in agricultural activities" such as "forestry", "livestock", and "fishing", there is no formal "social security".

It also states that though the Government has enacted laws for "regulating the minimum conditions of work" and "a measure of social security" for "agricultural wage workers" ,"marginal workers" and "small farmers" in both "organized sector" and "informal" or "unorganized" workers but that there are no regulations regarding conditions of work for them.

The plan also felt the need of "Social Security Advisory Boards" and "dispute resolution mechanisms to monitor the implementation of the regulations" and "to ensure that each worker is provided with what is due to him or her".

The plan observed efforts for providing "health insurance for the rural poor" failed in the past. So to provide "accessible", "affordable", "accountable", "quality health services to households in rural areas", "the government has launched National Rural Health Mission".[186]

This "plan" noted and examined that a majority of the states do not address "core concerns" as "healthcare" and "maternity". The plan also pointed out that "there are very few schemes addressed specifically for the unorganized workers" as majority of the workers in that sector come from the "socially backward communities".

It also pointed that the "absence of a viable and comprehensive social security arrangement" has a wider "ramification for the working class", "their economy" and the "society". The plan pinpointed out that workers without "institutionalized social security cover" at times "manifest themselves in crimes and other illegal activities".[187] Therefore, it becomes necessary to ensure "living wage", distinct from the concept of "minimum wage", which

[186] "Government of India, "The Eleventh Five Year Plan"152 (Planning Commission, 2007- 2012)."
[187] *Id*. at 152.

can guarantee the workers "a decent and healthy life style".

"Eleventh Five Year Plan" treats "social security" as a measure that covers "housing", "safe drinking water", "sanitation", "health", "educational" and "cultural facilities for the society at large". During this Period, the "Unorganized Workers' Social Security Act, 2008" was passed that provides for "welfare schemes formulated by Government" on matters relating to "life" and "disability cover", "health and maternity benefits" and "old age protections" for the workers of the "unorganized sector".

XII. "Twelfth Five Year Plan (2012-2017)"

"Plan" focused its attention towards "the women in the unorganized sector" and "pays special attention to the needs of women workers". It stated as follows: "Women in the unorganized sector require social security addressing issues of leave, wages, work conditions, pension, housing, child care, health benefits, maternity benefits, safety and occupational health, and a complaints committee for sexual harassment". The "promotion of enterprises of home based workers", "self employed workers" and "small producers" is an essential element of "twelfth plan with particular relevance for women".[188]

Strategy of the plan is "to identify small scale workers" and "support their enterprises by setting up common facility centers". The job of such centers is "to ensure all important services including technology", "skill training", "entrepreneurship training", "market information", "access to institutionalized credit", "power" and "other infrastructure and related facilities".[189]

It proposed that "medical insurance policies must be modified" in order to recognize needs of women headed and single women households with uniform coverage norms. The plan suggested that women farmers/ entrepreneurs must be refinanced loan to extend their involvement in economic activities. "Plan" also pointed out that one of the major hindrances in "women's effective participation" in the workforce is "lack of skills". The "Twelfth Plan" encourages "skill development of women" from "traditional skills" to emerging "latest skills" that help them break the "gender stereotypes".

Aim of the "twelfth plan" is to ensure "provision of financial services to

[188] "Government of India, "The Twelfth Five Year Plan"169 (Planning Commission, 2012-2017)."
[189] *Id.* at 167.

migrant women" and "to protect migrant domestic workers from exploitation by placement agencies". The plan suggested that a system of "registration" such as ration cards, "monitoring" and "accountability" of placement agencies for "domestic workers" may be introduced.

Further "Migrant Resource Centres" or "Assistance Centres" must be set up in major destination areas to provide information "counseling" for migrants including "training" and "placement" to ensure better integration in urban labour markets and to prevent "marginalization" of "migrant labour", especially women migrants at their new destination.[190]

D. The "Modern period"

The basic idea "supporting social security measures" is that "there is a duty on the society to protect the working class" that contributes to the "welfare of the society against numerous hazards".[191] It protects not just the "workman", but also his "entire family" in case of "financial security" and "health care".

The "social security" is provided by both "institutional" and "non-institutional agencies". The "non-institutional" agencies existed from "time immemorial" and are regarded as the "back bones of the present day social security programmes". India is a good example of having "non-institutional form of social security measures" in the world.

The "needy and unfortunate" are seen protected in "joint family set up" and the "caste system". The hardship due to "unemployment", "economic difficulties", "old age", "widowhood" etc. was addressed by "joint family system in the country" and had a "religious backing" also. An "additional help from individual and institutions" was provided to them through the "guilds", "communities", "Panchayats", "orphanages", "widow homes" and "charity centers" existing at that time. This indicates that "India had its own social security system" comprising of:-[192]

a. "Village economy" that is "self sufficient";

b. "Caste system";

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[190] *Id.* at 175.

[191] Aniruddha Vithal Babar and Garima Dhaka, "Woman And Social Security: From Needs-Based Charity To Rights-Based Social Justice", *International Journal of Development Research* 9132 (August, 2016). (ISSN: 2230-9926).

[192] Mamuria and Doshi, *Labour Problems and Social Welfare in India* 339, (Kitab Mahal Pvt. Ltd., Allahabad, 1966).

c. "Joint family system";

d. "Charitable organizations".

The roots of "Indian society" were shaken with the "development of liberalism" and "individualism" that was "fostered by the western influence". The society, its "culture" and "custom" were affected to a great extent by the "foreign impact" and a new "class based society" emerged gradually.

Emergence of "Industrial Jurisprudence", created "a new class with its rural background". This new class "without social and material resources" urgently necessitated "systematic help from various social security agencies".

"Social Security" principles turned to a "social responsibility" that largely "depends on the resources and needs of the country". The "social security" enactments that we find today in India are "an amalgamation of the ideals and principles" emerged over the years.

With "industrialization", "Laissez Faire" vanished by the 20th century. The emerged branch of "Industrial Jurisprudence" put restraint upon the employers to "hire and fire" the employees at their wish thereby giving rise to the concept of social justice. This new concept aim at the "elimination of income inequality" and providing a "reasonable standard of living" to the working class.

The idea was to substitute income whenever the need arises. Thus "social justice" leads to "social security" as the ideology of State is to eliminate economic fear and hardship which is the fundamental objective of a "Welfare State".[193]

Economic changes throughout the globe have led to growing "inequality", "insecurity" and loss of "workplace rights" for workers.[194] The "increased participation of women in the labour market" has not seen "a reduction in their household caretaking duties". In fact, women are now taking care of "children as well as elderly relatives" while "earning an income" – a "triple burden".[195]

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[193] Mahesh Chandra, *Industrial Jurisprudence 18(*N.M Tripathi Pvt. Ltd., Bombay, 1976).

[194] United Nations Research Institute for Social Development, *Combating Poverty and Inequality: Structural change, Social Policy and Politics 111-119 (*UNIRSD Publication,2010). (ISBN 978-92-9085-076-2).

[195] Shahra Razvi and Shireen Hassim(eds), *Gender and Social Policy in a Global Context: Uncovering the Gendered Structure of 'the Social'* 7 (Palgrave Macmillan, 2006).

The "Constitution of India" provides an outreaching frame work for regulation of conditions of work" as well as "protection and promotion of livelihood" and "right to life" to its "citizens". The ultimate aim of "social security" is "to ensure the means of livelihood" and therefore, the "right to security" is also "inherent in the right to life".

After independence, there was an absolute change "in the approach to labour legislations". Accordingly, the following legislative measures were adopted by the "Government of India" by way of "social security schemes" to provide "safety to the industrial labourers in contingencies":-

I. The "Employees' Compensation Act, 1923"

Payment of compensation by "employers" to "employees" for "accidents", "arising out of employment" and occurred "in the course of employment" is the objective of the Act. The "obligation to pay compensation" is imposed upon employers for an injury that results in the "death" or "total or partial disablement" of the worker "for a period exceeding 3 days". Compensation is given if employee contracts certain "occupational diseases" during the course of the occupation. The main aim of the Act is to ensure that the workmen have a "sustainable life" even after suffering an employment related injury.[196]

H. The "Maternity Benefit Act, 1961"

The object of this Act is to govern and check the employment of women in certain establishments for a certain period before child birth and after delivery. The provisions of the Act apply to every establishment being a "factory", "mine" or "plantation". The provisions also apply to "establishments" belonging to government and every "shop" or "establishment" which employ or has employed ten or more persons on any day of the preceding twelve months. However, the Act will not be applicable to a "factory" or "establishment" covered under the "Employee's State Insurance Act"1948.[197]

III. The "Employee's State Insurance Act, 1948"

[196] The Workmen's Compensation Act, 1923, *available at:* https://hrylabour.gov.in/staticdocs/labourActpdfdocs/Workmen_Compensation_Act.pdf (last visited on September 22, 2021).

[197] The Maternity Benefit Act, 1961, *available at:* https://wb.gov.in/acts/act_labour_maternity_act.pdf (last visited on September 25, 2021).

The Act circumscribes certain "health related eventualities" that the workers are generally exposed to while serving in a "factory" or "establishment". They are as follows:-

i. "Sickness"
ii. "Maternity"
iii. "temporary or permanent disablement"
iv. "Occupational disease" or "death due to employment injury"
v. "Disablement Benefit"
vi. "Dependents Benefit"
vii. "Funeral Grant"

The provision "Social security" is incorporated to "counterbalance" or "negate" the "physical or financial distress" faced by an employer in contingencies. It aims at "upholding human dignity" in times of crises "through protection from deprivation", "destitution" and "social degradation" to retain a "socially useful" and "productive manpower".[198]

IV. "Payment of Gratuity Act, 1972"

This Act provide for a scheme for the payment of "gratuity" to employees engaged in "factories", "mines", "oilfields", "plantations", "ports", "railway companies", "shops" or other "establishments" and for matters connected therewith or incidental thereto. The "gratuity" shall be payable to an employee on the termination of his "employment" after his five years of continuous service[199] as per the provisions of this Act:-

- "Superannuation";
- "Retirement" or "Resignation";
- "Death" or "Disablement Due to Accident" or "Sickness"

(V) The "Unorganized Workers' Social Security Act, 2008"

The "Unorganized Workers' Social Security Act" was passed in 2008 to provide for the social security and welfare of "unorganized workers" and for

[198] The Employees' State Insurance Act, 1948, *available at:* https://vikaspedia.in/social-welfare/social-security/employees2019-state-insurance-scheme (last visited on October10, 2021).

[199] The Payment of Gratuity Act, 1972, *available at:* https://www.indiacode.nic.in/handle/123456789/1703?sam_handle=123456789/1362 (last visited on December 2, 2021).

other matters connected therewith or incidental thereto.[200] Apart from these legislations there are legislations to regulate the conditions of work which are as follows:-

- "Payment of Wages Act, 1936";
- "Factories Act, 1948";
- "Minimum Wages Act, 1948";
- "Plantation Labour Act, 1951";
- "Contract Labour (Regulation and Abolition) Act", 1970 ;
- "Bonded Labour (Abolition) Act", 1976;
- "Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act", 1979;
- "Child Labour (Prohibition and Regulation) Act", 1986;
- "Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act", 1996;
- "Beedi and Cigar (Conditions of Employment) Act", 1996.

It is observed that during the post independence period, there is a noteworthy development in the social security measures and their implementation. After carefully examining the "five year plans", it is apparent that the state has proceeded to translate the objectives stated in "Directive Principles" of State Policy into "statutes" to safeguard the interests of workers against "workplace contingencies" such as "sickness", "accident", "disease", "old age" and "unemployment".

The particular focus of the "Sixth Five Year Plan" is on the effective implementation of different legislative enactments regarding "labour" and special programmes for "agricultural labourers", "artisans", "hand loom weavers", "leather workers" etc. It has placed more consideration towards the problems of "bonded labour", "child labour", "women labour", "contract labour", "construction labour" and "inter-state migrant labour". The "eight five year plan" also pin pointed t hat the enforcement of "labour laws" especially laws relating to the "unorganized labour" should become effective in their

[200] The Unorganized Workers' Social Security Act, 2008, *available at:* https://prsindia.org/files/bills_acts/acts_parliament/2008/the-unorganised-workers-social-security-act,-2008.pdf (last visited on December 2, 2021).

implementation.

3.8 Conclusion

The “labour jurisprudence” addressed the fact that “social security” is not an alien concept in India. It existed from “time immemorial” as a part of “family” or “religious institution”, of “custom” and “culture”. India got influenced by the development of “industrial jurisprudence” in various corners of the world and consequently adopted the modern approach to “social security”.

The growth of “social security” took place in India in different stages i.e. as a “preliminary period” followed by a period of “sensible planning”. Before independence, the enactments/laws relating to “social security” were made for a specific category of workers only but later, the makers of the Indian Constitution consciously gave significance to the provisions relating to “social security” of “labour”.

They inculcated them under the “Fundamental Rights” and the “Directive Principles of State Policy” in the Constitution of India. Subsequently, “social security” to workers was a major concern of all the policies of the “State government” as well as the “Central government” in the governance of the country. The “Five Year Plans” have also contributed to the development of many important “labour welfare policies” with respect to “organized labour” and “unorganized labour” as well as “agricultural” and “nonagricultural” work force.

CHAPTER-4

MATERNITY BENEFIT AS A HUMAN RIGHT AND ROLE OF ILO

4.1 Introduction

Women related issues have always been an essential element of social reform movement in modern India. Some of the points that had attracted the main focus were abolition of “sati”, “widow remarriage”, “women’s education”, “property” and “political rights” of women.

The special needs of women workers especially in organized industry, and women’s spontaneous role in the freedom struggle too received some attention as the earlier movements and their leaders had, by and large, accepted the existing pattern of gender relations, along with the “division of labour”.

They considered the authority between “men and women” as natural. The contemporary women’s movement supported women’s “rights to equality”, “participation” and “role in decision making”. It seeks to make every woman aware of the fact her own relations with other members of her family or in the work place are not just personal or private matter.

It aims to make women realize to a significant extent that her relations with others are political relations determined by the gender based hierarchy prevailing in the society. To invoke the realization of her worth among women, the needed instrument for this is empowerment and not welfare.

Extensive research has led to the analysis of women’s “unequal status”, lack of basic “human rights” and subjection to a wide variety of “atrocities” and “abuses”. This led to a greater awareness and more systematic research on women issues. This qualitative shift in outlook and emerging discipline of women studies that the he most basic struggle of women revolves around trying to get and satisfy the most basic needs of life such as “food”, “water”, “fuel”, “fodder” and “shelter” for themselves and their families.

For men, poor and even more poor, struggle is generally confined to the work place does not take the same implications as for women. For men, while home

and leisure offer a contrast; on the other hand, for almost every woman, the struggle seems to occupy and affect her entire life.

For women, there is no clear division in their "work" and "leisure", her personal intimate relations are also work relations and authority relations where she found herself in ties of care and co-operation as well as of "contradictions" and "hostility", of "emotions" as well as "subordination".

This web of emotions and responsibilities shaped struggle into a complicated phenomenon in women's lives, in which not only "survival", but their "dignity" was also at stake. She could not escape a life of "degradation" and "humiliation" without struggle. Struggle does not make it any easier, in fact, often results in repeated defeats and failures.

Collective struggles are one aspect of the struggles to remember that women's political action has taken place outside the public sphere. To understand this, the need is to expand our definitions beyond the narrow terms of conventional wisdom[201].

4.1.1 General Problems and Struggles of Women

Women, especially, Women workers have struggled on various issues consistently since ages. Some of the most serious issues faced by women at workplace have been security of employment, living wage, regulation of hours of work, basic facilities and allowances, maternity, health care, discriminatory treatment etc.

Textile workers were one of the first in India to take up some of these issues. They were the first ones to raise voice against these bads. They struggled for reducing the inhuman, long working hours and for the introduction of "Dearness Allowance". In the 1930s, they fought against discriminatory treatment regarding employment of women too.

Besides, women workers have tussled on other issues too. In Nipani (Maharashtra), "beedi workers" wrestled the employers who were trying to dismiss the female workers on the basis of their age.

As most women had no proof of their age, the management then declared them unfit for work. Employers retrench them without paying any compensation.

[201] Fernendez Kelly Maria Patricia, *Introduction in Leacock, Eleanor and Safa Helen and contributors Women's Work* 3 (Bergin and Garvey Publishers Inc., Massachusetts, USA, 1986).

The "Chikodi Taluka Kamgar Union", registered in 1980, with a membership of around 2,000 women tobacco workers put forward that no retrenchment would be allowed without paying compensation to the workers for the span of years/time of their service. Women would continue to work at the same position, in the absence of such provision [202].

Another important effort was that of the "Chattisgarh Mines Sangharsh Samiti" (CMSS) aimed specifically at the issue of "Voluntary Retirement" of women.[203] The "Voluntary Retirement Scheme, in 1976", proposed that "a worker below 57 years could voluntarily retire at any age after nominating a male relative for her job and position".

In tribal areas, "buying of women's job" was the consequences of the scheme. The non-tribal men belonging to middle class families began to have fake marriages with tribal women in the greed of acquiring their job.

The members of the "Chattisgarh Mines Sangharsh Samiti" and the women's wing of the "Chikodi Taluka Kamgar Union", the "Mahila Mukti Morcha", linked "voluntary retirement" with the "larger issue of blatant discrimination" against women workers and its effects on them.

4.1.2 Various Challenges for Working Women

"Pregnancy" is a phase in life in which the couples and their families experience mixed feelings of "joy", "excitement" and "worry". However, prosperous and exciting the pregnancy is, for working women, the concerns prevail. As, India has already changed to a nuclear family approach; it is challenging to have assistance and support from home.

From a long time, the workplace situation is heavily pitied against women workers and in the favor of their employers. Gradually, over the years, from the beginning of the century the proportion of women participation in different formal and informal organizations has increased. In occupations or professions like "teaching", "banking" and other "service sector", the employment of women has increased but along with that the number of problems at home and

[202] Illina Sen, *A Space within the Struggle: Women's Participation* (Kali for Women, New Delhi, 1990).

[203] Illina Sen, Workers' *Struggle in Chattisgarh, a Space within the Struggle* 194-212 (Kali f or Women, New Delhi, 1990).

workplace for them have also considerably increased. Few of the issues faced by working women are discussed as under:-

- **"Men-Women Discrimination"-** The accepted notion, that a man should earn enough to satisfy the needs of his wife and children, while women should stay at home taking care of her family and kids. She is often treated as a 24 hours unpaid worker always indulged in "cooking", "cleaning", "feeding" her husband and her children.

The accepted "attitude of the society" is that a man alone must "earn enough to feed his family" and "provide a decent standard of living" to the members. This has resulted to management's preference for male workers and their "discrimination against women in recruitment" and "considering the jobs as a man's preserve". Women opt for low paid jobs under the pressure of their families.

- **"Mental Intimidation"-** It is an age old notion that, in comparison, women are incapable and not efficient like men. This is another aspect of discrimination in which females were regarded physically weaker than men so they were regarded unfit for jobs like engineering where they may be required to do heavy manual work. As a result, women were termed "unskilled".

Women are "deprived of promotions" and "growth opportunities" at their work place. Further, as a consequence of this "clinging behavior towards women", there are numerous jobs in which women get replaced by men by the employer. The "male dominated society" always wanted to see women dependant on them.

- **"Workload Stress"-** Family and work are two important parts of a female's life. A female is often asked to balance work and home whereas the situation is quite flexible for men. The situation gets more crucial for women as men are often more prepared to work overtime for long hours and working double shifts. But women have to deal with "home care responsibilities" and "family issues" as well as "job stress" daily.[204] This ends in turning women as a victim of increased workload and stress.

[204] Azadeh Barati, Rooh Ollah Arab, et.al., "Challenges and Problems Faced By Women Workers in India" *Human Resource Management 83-85* (Chronicle of the Neville Wadia Institute of Management and Research,Pune). *available at:* http://www.nevillewadia.com/images/Cronicle2015/Azadeh-Barati15.pdf (last visited on March 3, 2022).

- **"Lack of Personal Safety"-** An important reason for highly increased discrimination is the restriction put by the family on the night work opportunities for women. There are some families that do not allow females to work after six o'clock and experience anxiety every day about a woman's safety while traveling. A working woman is badly affected because she is under the close watch of her family and the society.

There is also a note worthy evidence that women face threats to their personal security in the "robbery", "intimidation", "sexual harassment" and "sexual coercion". The men at immediate supervisory position or the employers seek for an opportunity to exploit their subordinate women. This day "almost all working women" are "exposed to sexual harassment" at their "work places". It is shockingly found that the "saviors of law" are ready to "outrage their modesty" when they want to file complaints.[205].

- **"Inadequate Maternity Leave"-** The **"**Maternity leave" is another alarming issue that troubles a working mother. The "maternity leaves" are either not provided at all by many organizations or insufficiently provided by some organizations. This adversely affects the health of female workers, their performance at work and also detrimental to their personal lives.

4.2 Maternity: "Women's Right To Health", "Social Security" And "Its Realization as Human Right"

The "right to health" of a person is clearly linked to many other rights. The right to health of a person requires the fulfillment of many other "interconnected rights" viz. "adequate food", "proper education", "clean environment, housing", "favorable working conditions", "maternity", "post delivery health care", etc. Unless all these factors are considered it is not possible "to ensure the right to health" of a person, especially to a working female.

The denial of rights adversely affects "a person's ability to gain the highest attainable levels of health". The "health status" conversably "determines the enjoyment of other rights of a person". If we look into a broader aspect, a

[205] *Ibid.*

person who is “unhealthy” may fail to fully and actively participate in “economic”, “social” or “political” activities in the society.

In this context, therefore, the state and all its institutions must understand that “women’s right to all the determinants be fulfilled” in order to ensure her “right to health”. A Woman's right to health doesn’t only mean and include the right to “healthcare” but also other various aspects.

These aspects along with others include women's “right to survival”, “right to nondiscrimination”, “right to reproduction”, “right to maternity” and “post delivery care”. All these factors are required to be studied as to analyze that how they affects women's right to health.

Pregnancy is not limited only to the period of 9 months when a woman carries her fetus in a womb and experiences “mood swings”, “sleepless nights”, “crams”, “body aches” etc. It is actually the initial period of her journey called motherhood. Even after delivering her baby, a female undergoes various issues like postpartum stress, mood swings, lactation problems etc.

Paid Maternity leave benefits is a right of a female who has yet to start the inexperienced new chapter of bearing and raising a newborn. “Pregnancy” and “childbirth” are significant in the “lives of women” and “represent a time of intense vulnerability”. “Safe Motherhood” usually implies and demands “physical safety”.

“Motherhood is specific to women” and encompasses “respect for women’s basic human rights”, including “respect for women’s dignity”, “feelings” and choices during “maternity care”.

Women’s childbearing experiences remain with them throughout their lives lifetime and they often share them with other women create a climate of confidence or doubt among other females regarding childbearing.[206]

Right to “Maternity Benefits” of women is a basic “human right”. Human rights are the “inherent rights” of every human being, without discrimination

[206] Respectful Maternity Care: The Universal Right of Childbearing Women, *available at:* https://www.who.int/woman_child_accountability/ierg/reports/2012_01S_Respectful_Maternity_Care_Charter_The_Universal_Rights_of_Childbearing_Women.pdf (last visited on March 3, 2022).

on the basis of "age", "nationality", "place of residence", "sex", "national" or "ethnic origin", "color", "religion", "language" or any other status.[207]

"Universal human rights are fundamental entitlements" often "expressed and guaranteed by legal instruments", such as "international treaties" and recognized by societies and governments. They are given in "International Declarations" and "International Conventions" on Human Rights.

4.2.1 Main Elements of a "Rights- Based Approach" towards "Social Security"

Features of a "rights- based approach" to "social security" are discussed below[208]:-

- **"Comprehensiveness":** "Social Security System" aims to provide "wide coverage against all contingencies of life" that threatens the "income-earning ability of persons". It covers all devastating circumstances of an individual's life including "unemployment", 'ill-health', "disability", "maternity", "old age", and "survivor's benefits".
- **"Universality":** All the persons who needs of any sort of "social security" should be in a position to avail its benefits in times of need.
- **"Adequacy" and "Appropriateness":** Every individual requires a clearly defined "minimum subsistence level" above "poverty line". Therefore, the "quantum and types of benefits" provided under the various "schemes should be appropriate and "sufficient." The benefits provided should also be "relevant to risk or contingency" faced by an individual. For e.g. "maternity benefits" to a person for a period "suited to the demands of pre delivery" and "post delivery care" of a female.
- "**Respect for Equality":** "Social security" programs should be just and fair towards one and all. They must not make "unfair discrimination against anyone" owing to "race", "sex", "gender", "sexual orientation", "religion",

[207] Respectful Maternity Care: The Universal Right of Women and Newborn, *available at*: https://www.healthynewbornnetwork.org/hnn-content/uploads/Respectful-Maternity-Care-Charter-2019.pdf (last visited on March 3, 2022).

[208] Social Security as A Human Right, *available at:* http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module11b.htm (last visited on March 5, 2022).

"political opinion", "national" or "social origin", "birth" or "socio economic status".

- "**Respect for Procedural Rights":** The "rules and procedures governing the eligibility" to avail "social security programs", as well as "the termination of benefits" of an individual, must be "reasonable and fair".

Any person aggrieved by "an adverse legal rule" or "administrative decision" should be able to have "access to speedy", "affordable" and "effective legal remedies for the determination of his/ her rights to the fullest".

The right to "social security" can be viewed from a broad spectrum. They must act as a guarantee to the "basic conditions for a good standard of living". It acts as a protection for the man kind against the conditions of life that are threatening and makes a person live a life in situations of "poverty" and "material insecurity".

It therefore, becomes crystal clear that such a secured standard of living can be availed through a "right to social security". Further, this security must be gained from "civil and political rights", such as "the right to life", "security of the person", "prohibition of torture' and "cruel or inhuman and degrading treatment" or "punishment" under the supervision of the "Human Rights Treaties".[209]

"Civil and Political Rights" to "incorporate a right to social security" have not yet interpreted by the "supervisory organs". However, this has arisen as a daring task before Human Rights "activists" and "scholars", to give a broader and more substantive interpretation of these rights.

4.3 Maternity and Related Human Rights Standards

Various selective "human rights" standards "relating to State's obligations" to ensure "the rights of women against direct and indirect discrimination" are related to "reproductive health", "pregnancy", "childbirth", and "maternity leave".

"Human rights mechanisms" have emphasized that "states must work" to ensure "women's right to equal wages", "merit-based promotions", "free from

[209] *Ibid.*

discrimination", "maternity leave", "social security", and "a "healthy and safe working environment".

The "Government of India" undertakes to "comply the obligations" under various "international human rights treaties", "covenants" and "declarations" to safeguard "sexual and reproductive rights" of females.

4.3.1 "Universal Declaration of Human Rights, 1948" (UDHR)

"Universal Declaration of Human Rights" is a "milestone document" in the history of "Human Rights".[210]The "framers of the Declaration" recognized that "gender equality" was essential.

"Article 2" express "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as […] sex."[211]

The "United Nations Universal Declaration of Human Rights of 1948" in its "**Article 22** asserts that social security" is an "inalienable human right".

"Article 25 (1)" of the Declaration states that "right to standard of living adequate for his health" and "the well-being of himself and that of his family" is the right of every human being including a woman. It also includes the "right to food", the "right to clothing", the "right to housing" and the "right to medical care".

Except for "**Article 25(2)"**, the "UDHR" does not provide "for the protection and well-being of women's right to health". It provides for the "same protection from the society to all the children born or not born out of the wedlock". It also talks about "special care" and "special assistance" to "motherhood" as well as "childhood".[212].

Word "motherhood" as mentioned under UDHR, reflects that the protection to the women's "right to health" with all required "assistance" must be given to a woman not only during the pregnancy and but also after the birth of the child.

4.3.2 "International Covenant on Economic Social and Cultural Rights" (ICESCR)

"ICESCR" is the only "United Nations Human Rights Treaty" that has not established a "Committee for monitoring the implementation" of its

[210] Universal Declaration of Human Rights, *available at:* https://www.un.org/en/about-us/universal-declaration-of-human-rights (last visited on March 3, 2022).
[211] Gordon Brown, The Evolving Understanding of Rights 55,(Open Book Publishers) *available at:* https://www.jstor.org/stable/j.ctt1bpmb7v.10 (last visited on September 4th, 2021).
[212] *Supra* note 8 at 6.

provisions. The "Covenant", in fact, "imposes duties of one individual upon other individuals" and "the society at large" for "promoting and protecting the rights and freedoms of all". The "ICESCR" enshrines "those rights which are indirectly linked to the right to health".

"**Article 3"** of this Covenant enshrines "protection of equality" of all women and men for "the enjoyment of social, economic and cultural rights".

"Right to social security" is most "explicitly articulated" in "**Article 9"** of the "**ICESCR".** It recognizes the "right of everyone to social security", including "social insurance." These are subject to a "series of legal provisions that ensure their implementation" and are "particularly complex". **"Art. 12**" establish that "all national who are signatories to this Covenant must recognize the right of every human being" to the enjoyment of the highest attainable standard of physical health and "mental health."

To attain these standards, "**Article 12(2)"** of this Covenant casts duty on the States parties for taking steps that must include necessary provision:-

a) To "Reduce Rate of Stillbirth" and "Infant Mortality";

b) "Healthy Development of the Child";

c) "Treatment and Control of Diseases"; And

d) "Access to Medical Care for All".[213]

States have the following "underlying obligation to protect and fulfill economic", "social" and "cultural rights":-[214]

- **"Obligation to *respect"*- "**States must not interfere" or "curtail the enjoyment of the human right to social security".
- "**Obligation to *protect"*-** *"*States must protect individuals and groups" against "human rights abuses".
- *"***Obligation to *fulfill"*-** "States must take a positive action to facilitate the enjoyment of social security".

4.3.3 The "International Covenant on Civil and Political Rights", 1966

This Covenant is an "international Human Rights Treaty" on "political and civil rights" and also "promotes and protects the rights and freedoms" of all

[213] Health and Human Rights, *available at:* https://www.who.int/hhr/Economic_social_cultural.pdf (last visited on March 3, 2022).
[214] *Available at:* https://socialprotection-humanrights.org/social-security-as-an-economic-social-and-cultural-right/ (last visited on August 22, 2021).

"human beings". It talks about an individual's duty towards other individuals and towards the society at large. The rights and freedoms are provided under the covenant to give recognition to the "inherent dignity", "equality" and "inalienable rights".

Covenant is applicable to every individual, man or woman, without discrimination of "race", "sex", "colour", "religion", "language", "political", "place of birth", or "other status". It permits an individual to "enjoy a vast range of human rights", including those relating to[215]:-

- "Freedom from Torture'" ,"Cruel, Inhuman or Degrading Treatment" or 'Punishment';
- "Right to a Fair Trial";
- "Freedom of Thought", "Freedom of Religion and Expression";
- "Right of Privacy", "Right of Home and Family Life";
- "Right to Equality" and "Non-Discrimination".

In "**Article 3"**, "Covenant" provides that "the State parties to this Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant." The "ICCPR" has no specific provision for safeguarding the "right to health" of human beings especially women.[216]

"Article 6(1)" of "ICCPR" provides that "right to life" is the "inborn right" of every person and he or she should not be arbitrarily deprived of that right. That right of a person must be protected by law. It however, also provides a restriction of death penalty to be carried on a pregnant woman.[217]Therefore, it can be said that "the right to health of women" is provided in "Article 6(1)" in this "Covenant".

4.3.4 The "Convention on the Elimination of All Forms of Discrimination against Women", (CEDAW) 1979

"Convention" among all "international human rights treaties", brings the "female proportion of humanity" into "the attention of human rights

[215] International Covenant on Civil and Political Rights (ICCPR), *available at:* https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-civil-and (last visited on March 4, 2022).
[216] *Available at:* https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf (last visited on March4, 2022).
[217] *Ibid.*

concerns". The "Convention" aims to "reaffirm faith" in "fundamental human rights", "in the dignity and worth of the human person" and "in the equal rights of men and women". Apart from "civil rights issues", the "Convention" also "devotes major attention" to a most "vital concern of women", namely their "procreation and reproductive rights".

In "**Article 5"**, the Convention advocates shared "responsibility for child-rearing by both sexes" and "a proper understanding of maternity" as a "social function". Accordingly, the provisions for "maternity protection" and "child-care" are incorporated into all areas of the "Convention". The general thrust of the Convention is to understand the concept of "human rights".[218] "Article 5" of the "ICCPR" talks about the "legal, political and "economic constraints" on "the advancement of women" and stated "that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women."

Therefore, in order "to eliminate practices", based on the "idea of the inferiority" or "superiority" or "stereotyped roles for men and women", States parties are "obliged to work towards the change of individual conduct".

"CEDAW" under "Article 11(1) (f)", "Article 11(2)", "Article 12" and "Article 14 (2)(b)" provides specific international legal provisions for promoting and protecting women's "human right".

"Article 11(1) (f)"

It states that "the States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment and protecting her work place rights, in particular, the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction."

"Article 11(2)"

This article aim at "preventing discrimination against women" on the basis of "marriage" or on "maternity" and "ensures effective working rights to women". It provides that "all the States parties" to "CEDAW" must take "appropriate measures" in respect of the following:-

[218] Convention on the Elimination of all forms of Discrimination against Women New York 18 December, 1979, *available at: https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx (*last visited on March 2, 2022).

(a) “Prohibition on dismissal” of women on the “grounds of pregnancy” or “maternity leave”;

(b) “Restriction on discrimination in dismissal of women” on the “basis of their marital status”;

(c) “Introduction of paid maternity leave”;

(d) “Allowing maternity leave without loss of former employment”, “seniority” or “social allowances”;

(c) “Encourage the development of a network of child-care facilities”;

(d) “Special protection to women from hazardous jobs during “pregnancy”.

This “Convention” requires the States parties to provide the healthcare facilities for child as well as the women during pregnancy so that the parents can fulfill “family obligations” with “work responsibilities”. The “Convention makes participation in public life” by promoting the abovementioned facilities or support services in establishment.

‘CEDAW’ has protected all “reproductive health rights” of the working women by preventing her from doing work which is harmful during “pregnancy”. It provides for “the maternity leave” and “protection against dismissal on the ground of marriage”, “pregnancy” etc.

“Article 12”

This Article of the “Convention” casts a duty upon the state parties “to make effective and suitable measures for “eradicating all forms of discrimination” against women in relation to “health care”. It obligates the State parties “to ensure access to health care services”, including “family planning to both men and women”.

The Convention laid duty upon the “States Parties” to ensure to women appropriate services in connection with “pregnancy”, “confinement” and the “post-natal” period. Women must be granted free services as well as “adequate nutrition” during “pregnancy” and “lactation”.

“Article 14(2) (b)”

By the provisions of this article, the Convention casts a duty on the “States Parties to take appropriate measures” for “eliminating discrimination against women” in rural areas. The Article obligates the “State Parties to ensure that

both men and women participate in rural development and are benefitted from it".

The Convention encourages and promotes "equality of men and women". The "Convention" aims that "State Parties must ensure that women have access to adequate health care facilities", including "information", "counseling" and "services in family planning".[219]

"International Human Rights" bodies have played a "critical role in checking human rights violations" in the context of "sexual and reproductive health" and "rights of women". These institutions have developed and "applied human rights standards in "pregnancy" and "lactation" in the past years.

4.4 "Establishment and Objectives of the International Labour Organization" (ILO)

"Destructive effects of First World War" led the "labour class" experience a life filled with painful cries. The situation was so hopeless that it had become difficult for a person to survive with bare minimum requirements of adequate food, shelter and clothing. This War played a crucial role in improving working and living conditions of the "Labour class" all over the world.

Many countries put effort at their own level for welfare of "labour" but no collective effort was made at the International level. The developed countries have realized that if they want to progress, it is pertinent for the whole world to come together and work with one another.

The objective was "universal peace" and to attain this ideal of "social justice", the International Labour Organization was established in the year 1919 as part of Treaty of Versailles that ended the World War I.

The establishment of "ILO" gave new definition to the subject of justice. This war paved a way to wipe out the tears of the working class for their improvement and removal of atrocities. "ILO" was an effort in the direction of coordinated International Action for regulating the conditions of "labour" under the laws of their respective countries throughout the world.

[219] Convention on the Elimination of All Forms of Discrimination against Women, *available at:* https://www.ohchr.org/documents/professionalinterest/cedaw.pdf *(*last visited on March 4, 2022).

The working of "ILO" for "social security" is outstanding. "ILO" is a "tripartite arrangement", comprised of spokespersons of the governments, the workers and the employers who are subjected to the problems of industrial workers and the ordinary living conditions at work.[220]

The "ILO" has been rigorously working in formulating to extend "social security" benefits to a greater number of people in varied and numerous contingencies.

4.4.1 Basic Principles of the Labour Policy of ILO

- Labour is not a "commodity".
- Freedom of expression and of association are essential for continuous progress.
- Poverty poses a threat to prosperity.
- Nations should work for common welfare enjoying equal status with those of government and join with them in discussions in a democratic way.

4.4.2 Composition of ILO

ILO accomplishes its work through three main bodies:

- **The International Labour Conference-** It acts as a legislative wing of the organization. It provides a forum for social and labour issues who first addresses the problems and then adopts international labour standards in the form of Recommendations and Conventions collectively called the "International Labour Code".
- **The Governing Body-** It acts as the non political executive wing of the organization. It is supported by committees of experts on important matters like vocational training, occupational health and safety, workers' education and special problems of women and children.
- **The Interational Labour Office-** It's headquarter is at Geneva and is responsible for day-to-day implementation of the administrative and other decisions of the Conference and the Governing Body.

4.4.3 ILO and "Social Security"

The ILO has done a commendable job in the field o Social Security. It has also established the International Social Security Association (ISSA). For the

[220] S.N Dhyani, *lnternational Labour Organisation and India* 20 (National Publishing House, New Delhi, 1977).

purpose of "improving the workplace environment of the workers" and "to ensure them social justice", the principle means of action in the "ILO" is the setting of "ideal standards for their universal application" in the form of "Conventions and Recommendations to improve the "living" and "working conditions of the labourers". The "Conventions and Recommendations were made with a view to establish "universal" and "long lasting" peace based on "social justice" and to create legally binding obligations on the countries that ratify them. They have been greatly adored by the working class all over the globe.

4.4.3.1 Various "ILO Conventions and "Recommendations"

The various "Conventions and recommendations of ILO" adopted so far on "social security" are classified under:

A. "General Instruments"

(a) The "Social Security (Minimum standards) Convention", 1952[221]

This Convention is chief among "ILO Social Security Conventions". It is the only "international instrument" based on "basic principles of social security". These principles results in "minimum standards" for all nine branches of "social security agreed and accepted worldwide". These branches are:

- "Medical Care";
- "Sickness Benefit";
- "Unemployment Benefit";
- "Old-age Benefit";
- "Employment injury Benefit";
- "Family Benefit";
- "Maternity Benefit";
- "Invalidity Benefit";
- "Survivors' Benefit".

All above mentioned branches are covered by The Convention with the objectives of "minimum benefit" to be secured to the persons protected by

[221] C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102*), available at:* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247 (last visited on March 5, 2022).

"social security schemes", "conditions for entitlement" and "period of entitlement to benefits".

"Member states must ratify only three of these branches" for the "step-by-step extension of social security by the ratifying countries". "Convention No. 102", "leaves certain flexibility to the member State to trace ways to achieve these objectives" that can be reached through:-

- "Universal Schemes";
- "Social Insurance Schemes";
- "Social Assistance Schemes".

"Convention No. 102" laid the following principles:

- "Guarantee of defined benefits";
- "Participation of employers and workers in the administration of the schemes";
- "General Responsibility of the State for the due provision of the benefits and the proper administration of the institutions";
- "Collective financing of the benefits" by "insurance contributions" or "taxation".

The aim of "Convention No. 102" is to "guarantee" and "strengthen" social dialogue between "Governments", "employers" and "workers". It laid that "social security schemes must be administered on tripartite basis".

Thus, "Convention No. 102" provides a tool in the hands of ratifying countries to extend the limits of "social security coverage by offering flexibility in its application" according to their "socio-economic" level.

(b) The "Equality of Treatment (Social Security) Convention", 1962

This "Convention" inscribes the "social security of migrant workers" throughout the globe. It provides that "a ratifying State must grant equality of treatment" to its "own nationals", including "refugees" and "the nationals of other ratifying States" (and their dependents) within its territory each of the nine branches accepted under the "Convention".

For the "maintenance of acquired rights" in the course of "acquisition under the legislation of the nationals of the States", "Convention No. 118" placed importance on the need of participate in the schemes.[222]

"Equal treatment" is guaranteed to all "state members" irrespective of their "residence", subject to the condition of "reciprocity". The "Ratifying States" are mandated to "make payment to the workers on the basis of invalidity", "old age", "survivor's employment and family benefits".

But the states can "prescribe minimum period of residence" to grant "maternity benefits", "unemployment survivor's benefits" and "old age benefits".

(c) "Convention on Maintenance of Social Security Rights, 1982"

"Convention" specifically addresses "the issue of the maintenance of social security rights of migrant workers" while focusing on "equality of treatment" and "exportability". The nine branches belonging to any of the types of scheme can determine the method for "awarding benefits" and costs involved o the basis of "invalidity", "old age", "survivor's benefits", "pensioner benefits" in "occupational diseases". The scheme may "consist of obligations imposed on employers by the legislation" whether "general and special", or "contributory and non-contributory".[223]

Promotion of a "flexible and broad form of coordination between national security schemes" for the "welfare of the person and his family" is the objective of this "Convention". It focuses, on such interrelation among the nations through the closure or termination of "bilateral" or "multilateral" "social security agreements" and "proposes a model for the same".

"Convention provides rules on maintaining social security rights" and "exporting benefits in the time of contingencies" by "establishing a system of the maintenance of acquired rights".

Apart from above mentioned "Conventions", there are other "Recommendations" covered under the "general category":-

[222] Equality of Treatment (Social Security) Convention, 1962 (No. 118), *available at:* https://socialprotection-humanrights.org/instru/equality-of-treatment-social-security-convention-no-118-1962/ (last visited on March 5, 2022).

[223] Maintenance of Social Security Rights Convention, 1982 (No. 157), *available at:* https://socialprotection-humanrights.org/instru/maintenance-of-social-security-rights-convention-no-157-1982/ (last visited on March 6, 2022).

(d) "Income Security Recommendation, 1944"

It establishes "income security is an essential element in social security" and "formulates general principles for the states to make income security schemes" on the idea of "Compulsory Social Insurance" supplemented by "Assistance measures" for "employed persons and their dependants".

It recommends the "Members of the Organization" to apply the following "general principles" to develop their "income security schemes" –

- "**Relieve want of income"** –"lost by reason of inability to work" (including old age); or
- **"Prevent destitution"-** "by restoring remunerative work lost by the death of a breadwinner";
- **"Overcome risks"** - "sickness", "maternity", "invalidity", "old age", "death" of the wage earner, "unemployment", "emergency expenses" and "employment injuries".

It provides that "the benefits are not for more than one time" for the above stated contingencies at the same time. "Maternity Benefit" should be paid for "the loss of earnings due to absence from work during prescribed periods before and after childbirth".

It provides following "maternity benefits":-[224]

- "**The right to leave her work"** – a woman should be allowed "to leave work if she produces a medical certificate stating that her confinement will probably take place within six weeks".
- **"The right to say NO"** – "a woman should not be permitted in any establishment during the six weeks following her confinement".
- **"The right to Maternity benefits"** – "every woman should be paid the maternity benefits during these periods of confinement".
- **'The right to Sickness benefits'-** "female employee should be paid sickness benefits" having regard to the "physical condition of the beneficiary" and "the exigencies of her work if she is absent from work for longer periods on medical grounds".

[224] R067 - Income Security Recommendation, 1944 (No. 67), *available at:* https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:::NO:12100:P12100_INSTRUMENT_ID:312405#:~:text=GUIDING%20PRINCIPLES-,GENERAL,2. (last visited on March 6, 2022).

(e) The "Social Security (Armed Forces) Recommendation", 1944

This recommendation is "relevant for all cases of armed conflict" and ensures "special grant" to persons who are "discharged from armed forces and assimilated services". It obligates member states to assure that the grant must be proportionate to the length of service on the discharge of a person from the job or services. The benefits that are provided to such persons must be treated under employment insurance schemes.

(f) The "Maintenance of Social Security Rights Recommendation", 1983

This recommendation puts forth the minimum guidelines provided by their legislation. It requires the contracting parties who have ratified the convention to work while following those directions. The recommendation contains model provision for "insurance schemes for the determination of benefits" such as "maternity", "old age", "invalidity" and "survivor's benefits".

Such benefits will be determined and paid according to the "completion of periods" in an occupation. It also talks about the "trilateral or multilateral agreements required to be "implemented" or "concluded" between the parties".[225]

B. "Medical Care and 'Sickness Benefits"

(a) The "Sickness Insurance (Industry) Convention", 1927

It was "adopted on 25th May 1927" and "ratified by 28 member countries". The convention provides for "sickness insurance for workers in industry and commerce" and various "domestic servants".[226]

The convention requires "the member countries to set up compulsory Sickness Insurance Schemes" for "manual workers" and "non-manual workers". The probationers employed by "industrial undertakings", "commercial undertaking", "out workers", "domestic servants" are also "covered by the Convention".

[225] R167 - Maintenance of Social Security Rights Recommendation, 1983 (No. 167), *available at:* http://www.jussemper.org/Resources/Labour%20Resources/ilosocialsecurit.html (last visited on March 7, 2022).

[226] C024 - Sickness Insurance (Industry) Convention, 1927 (No. 24), *available at:* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C024 (last visited on March 7, 2022).

However, the "Convention" allows "any person rendered incapable of work by reason of his abnormal bodily or mental health", must be provided "sickness benefits" payable in cash to an insured person. The convention further prescribes that the "cash benefits" can be withheld by the employer. After the "period of sickness", such insured person shall also be rendered the service of "doctor" or "medicine". The benefits are also provided to the dependants of the affected employees.

A competent public authority will look after the "administration" and "financial supervision" of the administrative machinery. The "sickness benefits" provisions of the Convention are though complementary but do not affect the "obligations relating to women" and "the maternity benefits" arising out of "Convention".

(b) The "Sickness Insurance (Agricultural) Convention, 1927"

The convention was revised in 1928. Its main focus is at the "manual workers" and "non-manual workers", engaged in the employment of agricultural undertakings. The provisions of the "Convention" are almost similar to that of "Sickness Insurance (Industrial) Convention", 1927 and provides for the following:-

- If the "insured person receives compensation from another source" in respect of the "same illness", he is entitled to "cash benefits" if he is "rendered incapable because of his bodily or mental health".[227]
- The insured person is entitled to free "medical treatment by a fully qualified doctor" and "supply of proper and sufficient medicines and appliances". This "supply may be withheld" he "refuse to comply with the doctor's orders or the instructions without valid reason" .[228]

(c) The "Medical Care and Sickness Benefits Convention", 1969

It has revised the "two earlier 1927 Conventions" on "sickness insurance" and "agricultural Conventions". The "ratifying states" have the responsibility "to secure the provision of medical care and sickness benefit" to the following:-[229]

[227] Sickness Insurance (Industry) Convention, 1927, art. 3.
[228] *Id*., art. 4.
[229] "Medical Care and Sickness Benefits Convention", 1969**,** art.2.

- "Casual employees";
- "Family members of the employee, living with him in his house";
- "Economically active persons";
- "Wife and children of employee";
- "National and non national residents".

It regulates the protection of workers "in the form of compensation" or "cash benefits up to 60% in respect of the earnings of the class of employees to which the beneficiary belongs". Every such person is entitled to "medical care" if he/she is absent from work because of loss of earning and requires the following:-[230]

- "Curative and 'Preventive nature of 'Medical Care";
- "Medical Supervision for the purpose of Rehabilitation";
- "Isolation for the purpose of Quarantine".

The "Medical care" must be provided to an employee in form of "hospitalization", "dental treatment", "pharmaceutical and surgical supplies". "Sickness benefit must be paid and reckoned periodically" with regard to the "employee's previous earnings" or "the wage of the male member of beneficiary's family". The benefit must be paid at rate sufficient to maintain the "decent levels of beneficiary's family's health".

C. "The Maternity Benefits"

(a) **The "Convention on Women", 1919**

This convention was "adopted by "ILO" in early 1919 itself during its first session to provide protection to the expecting women workers" who would like "to stay at home with appropriate health care". Women are conferred certain "maternity benefits" rights before delivery and after becoming a mother to protect them from harms of work place.

The above stated benefits are provided to a female person, irrespective of her "age" or "nationality", "marital status" and "legitimacy" of her child.[231] No "private or public industrial or commercial undertaking" or "any of its branches" will permit any women to work during 6 weeks following her

[230] *Id.*, art.8.
[231] "Convention on Women", 1919, art.2.

"confinement".[232] She is entitled to a leave "up to 6 weeks before her confinement" and "benefits that are sufficient for the complete and healthy maintenance of her own and her child" during the period of absence from work.[233]

It also prevents the service of "notice of dismissal" to a female "on her absence due to illness" during pregnancy" or "resulted out of such pregnancy" or "confinement".

The notice if served upon her will also be considered as "unlawful". The "convention No.103" concerning maternity protection was adopted after this Convention was revised in the year 1952.

(b) The "Maternity Protection Convention, 1952"

This Convention is applicable to women employed in "industrial undertakings" and in "non-industrial" and "agricultural occupations", including "domestic workers"[234] "without discrimination on grounds of age", "nationality", "race", "creed", "marital status" and "legitimacy" of a child.[235] It aims to secure the following to the women workers:-

- **"Maternity Leave"** to a female if she produces "a medical certificate stating the presumed date of her confinement".
- At least "twelve weeks of maternity leave" including the period of **"**Compulsory Leave after confinement".
- An **"Additional Leave"** before confinement "where illness is medically certified as arising out of pregnancy".
- A **"Pre-Natal Confinement"** and **"Post-Natal Care"** by "qualified midwives" or "medical practitioners".
- "**Freedom of Choice of Doctor** and **of Hospital''** where "hospitalization" is required.
- "**Freedom to Interrupt Her Work"** for "nursing her child at a time or times prescribed by national laws or regulations".[236]

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[232] *Id.*, art.3.
[233] *Ibid.*
[234] Maternity Protection Convention, 1952, *available at:* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C103 (last visited on March 7, 2022).
[235] "Maternity Protection Convention", 1952, art.2.
[236] *Id.*, art.5.

- "**Notice of Dismissal"** be considered unlawful where is woman is on "maternity leave".

(c) **The "Maternity Protection (Agricultural) Recommendation, 1921"**

This "Recommendation" suggests a woman to take sufficient leave "sufficient for the absolute and healthy maintenance of her health and that of an offspring". It also recommends possible improvements like "extension of maternity leave to a total of 14 weeks", "higher rate of cash benefits" and "more exclusive medical care". It suggests that restriction must be put on the pregnant women and young mothers to undertake employment of specified types of work that may prove to be dangerous to their health during the period of pregnancy.[237]

D. The "Invalidity, Old Age and Survivor's Benefit"

The various Conventions such as the "Old age Insurance (Industry) Convention", 1933, "Old Age (Insurance) Agricultural Convention", 1933, "Invalidity Insurance (Industry etc) Convention", 1933, "Invalidity Insurance (Agricultural) Convention", 1933 and the "Survivors Insurance (Industry etc.) Convention", 1929 revised by "Invalidity Old Age and Survivors Benefit Convention", 1967 are "not open for ratification".

(a) The "Invalidity Old Age and Survivor's Benefit Convention, 1967"

This convention was "adopted in its 51st session by ILO" and "reflects the trend to find all three long-term benefits" i.e. "invalidity", "old-age", "survivors benefits" in a "single national pension system". This convention "regrouped the three branches into one instrument" and "extended its coverage to all employees", including "apprentices". It also extends its benefits almost "75 per cent of the total economically active population", or "all "residents during the contingency".

This "Convention" specifically laid "general standards" for making "periodic payments" for "invalidity benefit" to "at least 50 per cent of the reference wage" and "encouraged the adoption of measures for rehabilitation services".

[237] **Withdrawn** instrument - By decision of the International Labour Conference at its 92nd Session (2004), *available at*: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R012 (last visited on March 7, 2022).

The amount of "periodic payments may be determined" by a "competent public authority in conformity with the prescribed rules".[238]

"Periodical Payments" paid to the "protected employees" in the form of the "invalidity benefit", "Old age benefits" and "survivor's benefits" are "calculated in accordance with the requirements of the Convention". The "invalidity benefit" is granted for the "whole period during which the contingency persist" or "until the old age benefit becomes payable to the employee". But where beneficiary is engaged in gainful activity, the benefits shall be suspended under prescribed conditions.

(b) "Recommendation Concerning Invalidity, Old Age and Survivor's Benefit, 1967"

This "recommendation" to the "Convention" relating to "Invalidity", "Old Age" and "Survivor's Benefit" calls for the "extension of protection of survivor's benefit" to the "casual employees", "invalid workers" and "dependant widower" and "to all economically active persons".

E. "Employment Injury Benefit"

(a) "Workmen's Compensation (Agriculture) Convention, 1921"

The aim of this Convention is to provide "compensation" in "occupational accidents" experienced by the "agricultural workers" in the course of their job.

(b) **"Workmen Compensation (Accidents) Convention, 1925"**

It has the goal of "providing damages", "medical, surgical and pharmaceutical aid" to workers injured in "industrial accidents". The aid will be provided in the form the supply and renewal of surgical appliances "at the cost of employer or insurance institution". The worker or his dependants becomes entitled to the "compensation", if he is "permanently incapacitated" or 'dead'. The damages will be paid as "periodical payments that may be converted with a lump sum in exceptional cases" and "may be increased if the worker needs the constant help of another person".

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[238] C128 - Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), *available at:* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0:::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C128,/Document (last visited on March 6, 2022).

The "ratifying states" are under "obligation to frame legislation" for the purpose of safeguarding "payment of compensation" in all circumstances or event of "insolvency" of the "employer" or "insurer".[239]

(c) "Workmen's Compensation (Occupational Disease) Convention, 1925"

This "Convention" specifies "diseases", their "nature", "causes", which are considered as "occupational diseases" because they are arisen out of the respective employments or are the consequence of "occupational hazards". It also mentions the substances which may cause occupational diseases in its schedule. The "Convention is binding on those Member States whose ratifications are registered with the International Labour Office". It also contemplates a workman who is "incapacitated by occupational diseases" shall be entitled to "compensation or their dependants" in case of "death from such diseases".

(d) "Convention on Equality of Treatment (Accident Compensation), 1925"

This "Convention" supports "equality of treatment". The member States have to accord, the same treatment to the foreign sufferer, or to his dependants as it gives to its national in respect of compensation where he has suffered "personal injury" due to "industrial accident" that occurred in its territory. The equality of treatment has to be provided by the "ratifying states" to all without any condition as to "residence".

(e)The "Employment Injury Benefits Convention, 1964"

This "Convention has 39 articles", "one schedule" and "one annexure". This provision of the Convention "regulates the compensation for injuries" resulting from "industrial accidents" and "occupational diseases".[240] The Convention lay "the criteria of eligibility for the member states" whose "economic and

[239] C017 - Workmen's Compensation (Accidents) Convention, 1925 (No. 17), *available at:* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C017 (last visited on February 2, 2021).

[240] C121 - Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), *available at:* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C121 (last visited on March 7, 2022).

medical facilities are insufficiently developed" to avail the "benefit of compensation".

"Convention" puts forward "standards in respect of contents", "duration", "rates" etc. of the benefits to be provided to "cover the contingency in case of employment injury" caused by "accidents" and "occupational diseases". The contingencies that occurred or resulted due to an employment injury shall include the following:-[241]

- "morbid condition";
- "incapacity for work resulting from such a condition";
- "suspension of earnings as defined by national legislation";
- "total loss of earning capacity" or "partial loss which is likely to become permanent";
- "Loss of support as a result death of the breadwinner".

This Convention requires member states to specify the "list of diseases" termed as "occupational diseases under prescribed conditions". It also prescribes "conditions under which an accident will be considered as an industrial accident".

It describes the "medical care" and "allied benefits" available to the wounded employee in gruesome conditions. Such benefits shall include "services of a medical practitioner", "facility of hospitals", "dental care", "pharmaceutical and other surgical supplies".

"Convention" provides facilities for "emergency treatment" of persons who are victim of a serious accident by the employer at the place of work and follow up treatments. The "Convention" prescribes "cash benefits" to be paid "periodically" or as a "lump sum" in respect of loss of earning capacity. The amount paid as compensation should be adequate for the proper utilization of the harmed workman.

In case of the workman's death, the "compensation shall be paid in periodical payments to the widow or a disabled and dependent widower". It also provides "funeral expenses" at a "prescribed rate not be less than the normal cost of a funeral for the dead".[242]

[241] C121 - Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), art.4.
[242] *Id.*, art.18.

F. "Unemployment Benefits"

(a) "Unemployment Provision Convention, 1934"

This "convention" has the objective of ensuring "benefits" or "allowances" to the "involuntary unemployed" persons or persons "habitually employed" for "wages" or "salary".[243]

The "Convention has 23 articles" and "provides unemployment benefits and the condition for eligibility to claim those benefits". It also specifies "the period for which the employee can get such employment benefit".

The rights of claimant to receive benefits under the Convention are subject to the following conditions:-[244]

- "he is capable of and available for work";
- "registered at a public employment exchange" or "at some other office approved by the competent authority";
- "he attends there regularly";
- "Fulfill all such requirements prescribed by national laws for the receipt of benefit or an allowance".

It also provides that the national law for the unemployment benefit must specify the age-limit for "young", "old" and "retiring" workers. *It prescribes following grounds of disqualifications of the claimant to receive unemployment benefits*:-

- "Refusal to accept any suitable employment";
- "Refusal to undergo training";
- "Loss of employment as a direct result of a stoppage of work due to trade dispute";
- "Voluntarily left without just cause"; or
- "Fraudulently tries to obtain benefit or allowance".

The convention lays down that the Allowances or benefits shall be paid to the claimant either in cash or in kind, subject to his needs and requirements.[245]

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[243] C044 - Unemployment Provision Convention, 1934 (No. 44), *available at:* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C044 (last visited on March 7, 2022).

[244] **"**Unemployment Provision Convention", 1934, art.4.

[245] *Id.*, art.13.

(b)The "Convention on Employment Promotion and Protection against Unemployment, 1988"

It is a comprehensive Convention that came into force in 1991 and consists of 39 articles.[246]

Part I of the Convention provides "**General Provisions**" for protection against unemployment and framing of employment policies.

Part II provides "**Promotion of Productive Employment**" and "**Freely Chosen Assistance**" for "disadvantaged persons having difficulties in finding currently known employment".

Part III provides "**Contingencies Covered**". It provides that "each member shall make effort to extend the protection in contingencies of loss of earning due to partial unemployment, suspension or reduction of earning due to temporary suspension of work" or full unemployment due to inability to obtain suitable employment.

Part IV provides for "**Protected Persons**". It covers "the prescribed classes of employees, constituting not less than 85 per cent of all employees, including public employees and apprentices".

In **Part V**, the Convention explains the "**Methods of Protection**." It provides that "each Member may determine the method or methods of protection by which it chooses to put into effect the provisions of the Convention, whether by a contributory or non-contributory system, or by a combination of such systems."

Part VI of the Convention specifically talks about the "**Benefits to be Provided**" It states various "forms of benefits", their "quantum", "qualifying period", "manner of calculation" and other conditions under which such benefits may be amended.

[246] C168 - Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), *available at*: https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:::NO:12100:P12100_INSTRUMENT_ID:312313 (last visited on September 6, 2021).

The Convention in its **Part VII** contains "**Special provisions for New Applicants for Employment**". *It talks about following categories of persons who can avail benefits under the Convention:-*

- "Young Persons who have completed their vocational training or their studies";
- "Divorced or Separated persons";
- "Released Prisoners";
- "Adults including disabled persons or previously employed persons";
- "Migrant workers";
- "Previously self – employed persons".

Part VII provides "**Legal, Administrative and Financial Guarantees.**" Such assurances include "peaceful settlement" of any "dispute" or "claim". It also prescribes for preferring an appeal to enable he claimant to obtain benefits.

Part VIII talks about the "**Efforts by Member States".** It states the effort for promoting additional employment options for the people by each "Member State". It further deals with provisions dealing with ratification of the Convention and its binding effects.

The "Conventions and Recommendations" that form "the ILO's standard framework on social security" are unique as they "set out minimum degree of protection for the development of benefit schemes" and "national social security systems" based on good practices from every part of the globe.

They are based "on the principle that there is no single model for social security" and each country must "independently develop the required protection". "To prevent social risks by providing numerous and adequate benefit levels, a new instrument was adopted in 2012, the Social Protection Floors Recommendation (No. 202)."[247]

Labour laws aim is to help the poor and downtrodden and to bridge the wide gap between existing social infrastructure and aspirations of the masses. The workers demand better conditions of work so as to improve their standard of

[247] R202 - Social Protection Floors Recommendation, 2012 (No. 202), *available at:* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524 (last visited on February 8, 2022).

living. ILO is the most appropriate entity which is efficiently working for protecting the "labour rights" since it's foundation.

The ILO is the finest forum for addressing "labour standards" and has passed many Conventions on social security. In the present times ILO is playing a major role for achieving the objectives of UNO to eradicate poverty, to maintain peace and to bring prosperity in the world.

4.5 Conclusion

"Social Security" is an old concept that existed in different forms in India. It becomes a global issue with "industrialization" and "urbanisation". It is not limited to the right of a particular "individual" or a "class" or a "community". It has now become an issue to safeguard "human value" and "interest more particularly the rights of the female working class".

"Social Security" is implicit in the "Indian Constitution". The framers have left no doubt that they are concerned about the "right of an individual to enjoy social security". So by introducing "Fundamental Rights" and "Directive Principles of State Policy", they have incorporated "social security as a valuable right" in the "Indian Constitution".

"Social Security" is recognised as a "human right" by various national law and international instruments. Every person is entitled to the realization of this basic "human right" by "national effort" and "international cooperation".[248] But it is to be scrutinized whether the "social security objectives are accomplished through the provision of various benefit legislations".

Such benefits are paid to an entitled and insured employee either "in cash or in kind". These benefits are "intended to ensure access to medical care and health services", as well as "income security throughout the whole life of an individual", particularly "in the event of illness", "unemployment", "employment injury", "maternity", "family responsibilities", "invalidity", "death resulting in loss of the family's breadwinner", as well as "during retirement and old age".

From the era of colonization till independence and even today, the "ILO" documents or publications support almost all the labour welfare legislations.

[248] "The Universal Declaration of Human Rights", art.22.

The “Commission on Social Security” headed by “Professor Adarkar” filed a Report on the basis of which the “Employees’ State Insurance Act, 1948” was passed to provide basic “social security benefits” such as “sickness benefit”, “disablement benefit”, “maternity benefit”, “dependant’s benefit” , “funeral expenses” to the employees.

“India” made all nine areas identified in the ILO Conventions as a part of its “social security” scheme. Thus it is evident that “maternity leave benefits to women for an adequate period” are a part of “India’s social welfare policy” but it must be checked that “informal organizations” and the “States parties ensure their implementation”. Thus an “exhaustive labour law” covering the entire working class is the “pressing priority”.

CHAPTER-5

ROLE OF JUDICIARY IN ENFORCING MATERNITY BENEFIT

5.1 Introduction

Since ages, "women have been associated" with the "home", "household" and "man with the outside world" as an "earner". It remains "unnoticed" and "overlooked that women support a large part of the world economy" by providing "24hours free of cost services at home" and "in community". This view has adversely affected the thought process among men who fallaciously believe that only they work.[249]

By and large, women hold the prime responsibility of "manual" work for one's own house. She works as a "cook", "sweeper", "care taker" and "domestic help for the household" but the "economic worth of their contribution is ignored" and "they are treated as unpaid family workers".

In the current society, "economic pressures" have forced families to have more than one earning hand. The society's attitude towards working women and "her participation in economic activity is contingent upon various biological, economic, social and cultural factors" that resulted in "gender inequality in family" as well as "in the economic and political system in the society".

"Women's attachment to her pregnancy and child" and "the insensitivity of employers and policymakers to deal with this issue" has intensified the "difficulties of women in the economic front in the society". Women consider "housework" and "childcare" as their "prime responsibility" even when they have "extremely demanding jobs" in the "outer world".

There are very few employers who think on the lines to provide a cooperative atmosphere to women at workplace in the form of "help with childcare" and "flexible work hours to accommodate children's needs", or "paid maternity leaves". Female workers "in corporate sector as well as in clerical jobs" have very tight schedule with a meager pay scale.

[249] Shashi Bala, "Implementation of Maternity Benefit Act" 099 *NLI Research Studies Series* 2-5 (V.V. Giri National Labour Institute, 2012).

Many “professional women in a well earning position” also face the problem of balancing the home and work fronts. “Career options” leading to “top-grade positions” demand “long uninterrupted work hours”. Married women who are also mothers cannot fulfill these job requirements without the help of their life partners or a female housemaid to look after their children and households.

As a result of this over demanding and non-cooperative duty schedules, many women who wish to have children drop the idea of starting their families for long years. Our present work arrangement forces women to choose between their “family” and their “career”.

Consequently, although women have taken a number of steps towards gender equity at work and their economic enhancement, but as long as they will continue to bind themselves with the age old ideologies of women being regarded as the homemaker only, they will keep on facing the problem of being ignored when it comes to their skill and caliber being recognized at work.

Earlier, maternity was regarded as a state of “disability” during which a woman is unable to undertake responsibility “during the few weeks’ immediately preceding and following child birth”. Employers feel hesitant to employ female workers as they feel that maternity would interfere in their efficiency in the normal course of work.

So, female workers opt for “leave without pay during this period in order to secure their job”. Some undertake heavy stress “to maintain their efficiency at work during the periods of pregnancy”, which result in “deterioration in health of both, the mother and her child”.

The concept of “maternity” emerged to enable women to bear and rear a child without undue prejudice to their health and loss of wages. “Maternity Protection is the keystone of women’s right and gender equality” according to “international human rights instruments”.

“Prevailing trends in Labour market” show that “participation of women is going to increase in future” so woman will require a friendly environment at the workplace. To ensure a decent work standard for women, it is necessary to understand the features of the existing and emerging situation of “labour

market" in India. This will further help to find that the "issues relating to women workers are adequately addressed by all relevant policies."

No doubt, "women participation in the labour market has increased during last few years" but "many social and family constraints compel them exit from work very early". In urban areas, "women confine themselves to household activities at their initial working age" because of "inadequate social and family support". The adoption of nuclear family system from joint family is also responsible for women's waiver from work.

It becomes very difficult "to handle the situation without the intervention of legislative policy and measures". The "Constitution of India and legislations passed in India in favor of women" have strived "to create a balance between the gross inequalities that exist in our society".

Main focus of the Chapter is "the Maternity Benefit Act", 1961 and its enforcement through one of the important organs of the government i.e. the Judiciary.

5.2 Maternity Benefits in India and other Countries: A Comparison

5.2.1 "Maternity benefits in India"

The "Maternity Benefits (Amendment) Act, 2017" was passed with the aim "to regulate women's employment in particular establishments during specific periods before and after childbirth", and "to offer maternity benefits and other advantages to them". The main objective was to bring in "rates", "qualifying conditions", "duration of maternity benefits" and "the payment of specific monetary benefits to female employees during this time". Working women gained many advantages under this Act. The Act do not apply to "factory or establishment" covered under "Employee's State Insurance Act" 1948.

Act extends to all "mines", "plantations", "shops", "establishments" and "factories" in "organized or "unorganized sector employing10 or more persons on any day of the preceding twelve months".

Any woman who has worked for more than 80 days in an establishment is entitled to the maternity benefit.

- "Maternity benefit can be availed by every women employed in an establishment in any capacity directly or through any agency".

- Every woman is entitled to "maternity leave of 26 weeks duration".
- No woman can avail "maternity benefit 8 weeks prior to the expected date of delivery".[250]
- A woman having "two or more children can avail the maternity benefit of 12 weeks". It cannot be availed "before 6 weeks from the date of the expected delivery".[251]
- An "adoptive mother of a baby under the age of three months will be entitled to 12 weeks of maternity leave under Maternity Benefit (Amendment) Act, 2017". The "commissioning mother who uses a surrogate to have a child can also avail the same benefits".[252]
- "Employers may consider a work from home option for nursing mothers after 26 weeks of maternity leave". This will be done after "considering her job profile" and "on mutually agreed terms between employer and the women employee".[253]
- Every establishment must provide the "medical bonus" of Rs. 2,500–3,500 to the eligible women employees".[254]
- All "organizations with 50 or more employees are required to provide a crèche facility". The "lactating female employee must be allowed four visits to the crèche to nurse and look after her child and to take rest".[255]
- The employer must inform every female employee about maternity benefits and company policy in written or electronically. [256]
- If an "employer fails to pay any amount of maternity benefit to a woman or if he discharges or dismisses her during or on account of her absence from work or her pregnancy, a punishment of minimum 3 months to one year imprisonment and with a fine between Rs. 2000/- to Rs. 6000/- will be imposed on him" [257].

[250] The Maternity Benefits (Amendment) Act, 2017 (NO. 6 OF 2017), s. 5(3).
[251] *Ibid.*
[252] *Id.*, "Section 3 (ba) defines commissioning mother as a biological mother who uses her egg to create an embryo implanted in any other women."
[253] *Id.*, s.5(5).
[254] *Id.*, s.8.
[255] *Id.*, s.11A.
[256] *Id.*, s. 11A(2).
[257] *Id.*, s.21.

5.2.1.1 "Comparison of the Old (Act of 1961)[258] and the New (Act of 2017)[259] Maternity Benefits, Act"

SECTION	OLD ACT,1961	NEW ACT, 2017
"Section 5(3)"	"Maximum period of leave is 12 weeks (6 weeks before delivery and 6 weeks after delivery)"	"Maximum period of leave is 26 weeks (8 weeks before delivery and 18 weeks after delivery)"
"Section 8"	"Maternity Bonus of Rs.3,500/-per maternity"	"There is no change"
"Section9 and 9(A)"	"Leave for miscarriage or medical termination of Pregnancy is 6 weeks. If woman undergoes tubectomy operation leave available is of 2 weeks"	"There is no change"
"Section 10"	"Additional 12 weeks leave is provided in case of illness that arise due to pregnancy"	"There is no change"
"Section 11"	"On return of employee after leave, the Employer should provide 2 breaks of prescribed duration for nursing the child until he/she attains the age of	"Under Section 11(A), a woman employee should be allowed/ permitted to visit the crèche 4 times a day".

[258] The Maternity Benefit Act, 1961 (No.53 of 1961).
[259] The Maternity Benefit (Amendment) Act, 2017 (No.6 of 2017).

	15 months"	
"Section 21"	"Penalties: imprisonment of minimum 3months that may extend to 1 year and fine of Rs. 2000/- to 5000/"	"There is no change"

Women played a crucial role in labour market with the advent of industrialization, so it becomes important for the government to ensure "social justice", both in the "organized" and "unorganized" sectors.[260] In order to provide an atmosphere of social and economic security for women at workplace, the provisions under the "Maternity Benefits (Amendment) Act", 2017 has been a landmark. The concept of "social justice" is manifested in the provisions of the Act.

5.2.2 "Maternity Leave in Sweden"

From the time, a woman gets pregnant the maternity policy in Sweden is quite flexible. Sweden is considered to be one such place that provides the most flexible atmosphere for the expecting mothers. It is the one of the friendlier place for families and women and the benefits range right from the time a woman gets pregnant. The government in Sweden offers a "paid maternity leave of up to 480 days". The agenda is to promote a progressive as well as a gender neutral work environment.

The country is not only favorable towards women health but here the fathers too are entitled to paternity benefits. Apart from these, the country also has the flexible attitude as it also lets women employed in stressful or demanding jobs to take time off during the early days.

It also offers women the option to shorten the work hours by 25%. The Swedish parental leave policy is most generous in the developed world. "Parents get 80% of their salary if they have been working legally in Sweden for at least 240 days and have "paid taxes" for the first 390 days".

[260] Manvendra Singh Jadon and Ankit Bhandari, "Analysis of the Maternity Benefits Amendment Act, 2017 and its Implications on the Modern Industrial Discourse"8 *Christ University Law Journal* 63(2019).

In the case, a female undergoes of "multiple deliveries", an additional 180 days are granted for each additional child. The expecting female mother can initiate to take parental benefit 60 days prior to the expected birth. As a rule, the same conditions apply for those couples who are adopting a child.[261] They receive the parental benefit from the date they got the child into their care. The parents also receive also receive temporary parental allowance in case they adopt. And if a couple adopts two or more children at the same time, they get an additional 180 days leave per child.

There is no doubt on the fact that Sweden has the better maternity policy than any other country and to look for a room for improvement in it would be highly foolish. In fact Sweden maternity policy would be a guide and an indicator for other countries to have truly gender- equal society.

5.2.3 "Maternity Leave in Norway"

Norway too has the flexible parental leave policy. The Norwegian government is considered to promote the need for maintaining a work-life balance. For availing "parental benefit" in the country, "a person must":-

- "Live in Norway";
- "Be a member of the National Insurance scheme";
- "Be a taxpayer in Norway and is considered a tax resident."

Depending on the nature of the job, fully paid "maternity breaks" of 49-50 weeks are offered to expecting moms. "**Adoptive and foster parents"** also enjoy "equal rights to maternity leave". They can avail it "from the date when the care of the child is officially transferred to them but this right does not apply when the age of the child/ children being adopted are over 15 years of age".

[261] Sweden Parental benefits and benefits related to childbirth, *available at:* https://ec.europa.eu/social/main.jsp?catId=1130&intPageId=4808&langId=en (last visited on January 23, 2022).

"**Same-sex parents"** also are provided with the same rights to "parental leave". They can share their "paternity leave" if they bear a child through a surrogate or the couple is the adoptive parents of the same child.[262]

In Norway, children are a priority and so the "parents can avail a combined 12 months' leave related to the birth of a child".

They can "extend the period of 48 weeks to a 58 weeks period if they accept a lower rate of payment". The span includes "the mother's right to leave for up to 12 weeks during the pregnancy and a reserved period of six weeks after the birth of the baby". *Moreover "both parents are entitled to the parental benefit" in the country comprising of:-*

- "A **Maternal Quota** of 15 weeks at 100% benefit or 19 weeks at 80% benefit. In such a case, the mother must take the first six weeks immediately following the birth, with the remaining nine can be availed immediately following this or saved for later paternal quota and a joint period that can be shared by the couple as desired".
- "A **Paternal Quota** which is the same i.e. 15 weeks at 100% or 19 weeks at 80%. Fathers can take the parental quota from seventh week after birth or choose to wait until a later date. The quota can be taken consecutively, divided up, or combined with partial work".
- "A **Joint Quota** consists of the weeks of parental benefit that a couple can share. It is 16 weeks at 100% or 18 weeks 80% which can be divided equally, or taken entirely by either the mother or father".

Fortunately, "in addition to the first 48 weeks leave, each of the parents is entitled to "one year" of leave for each birth which the couple can take after the first year if it is personally taking care of the child"[263].

5.2.4 "Maternity Leave in Canada"

In Canada, the Maternity benefits can be availed by a person who is absent from work due to "pregnancy" or "child birth". The person who is receiving "maternity benefits" is also entitled to "parental benefits" that are payable to the parents of a "new born" or of an "adopted child". Canada provides for "standard parental benefits" and "extended parental benefits".

[262] David Nikel, Parental Leave and Other Benefits in Norway, *available at:* https://www.lifeinnorway.net/parental-leave/ (last visited on January 24, 2022).
[263] Ibid.

Parents can share "Parental Benefits" from standard or extended benefits:-[264]

"Benefit"	"Maximum Weeks"	"Benefit Rate"
"Standard Benefits"	"Up to 40 weeks, but one parent cannot receive more than 35 weeks of standard benefits"	"55%"
"Extended Benefits"	"Up to 69 weeks, but it is restricted that one parent cannot receive more than 61 weeks of extended benefit"	"33%"

So, a "new mother can take the full 15 weeks of maternity benefit with an additional 35 weeks of standard parental benefits." If she chooses "extended parental benefits" then she would be entitled to 61 weeks plus 15 weeks of "maternity benefits". In such a case, she will qualify for total "76 weeks" of "maternity leave".

5.3 Judicial Activism in Enforcing Maternity Benefits and Related Rights to Women in India

In our country, Judiciary is known as an independent wing of the government. It has played a crucial in passing judgments beneficial to the "labor community". The Judges gave liberal interpretations to the provisions of the law by applying their discretionary powers to work for the "socio-economic"

[264] Angie Mohr**,** The U.S. vs. Canada: Maternity Leave Differences, *available at:* https://www.investopedia.com/financial-edge/0512/maternity-leave-basics-canada-vs.-the-u.s..aspx (last visited on February 12, 2021).

betterment of women. Judiciary has made a great contribution in maintaining an equilibrium between discrimination caused to and availing justice by the working women. Some of the landmark cases are briefly discussed below:-

A. "Supreme Court"

- *"Municipal Corporation of Delhi* v. *Respondent Female Workers (Muster Roll) & Anr."*[265] question before the Court was "Whether the female workers working on Muster Roll should be given any maternity benefit? If so, what directions are necessary in this regard?" The Maternity Leave was granted "to the regular female workers only" and "not to the female workers (muster roll) engaged by Municipal Corporation of Delhi". The Hon'ble Apex Court considered the provisions of Art.14, 15, 38, 42, 43 of the Constitution and held:

"A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honored and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled."

The conclusion drawn from this case is that all the workers are equal in the eyes of law and also the female workers, whether they are engaged on muster rolls or are regular employees. It entitled female workers to maternity benefits under the maternity benefits act, 1961. The court thus plays an active role in strengthening and enforcing the constitutional goal of " equal pay for equal work".

- *In "Hindustan Antibiotics Ltd.* v. *Workmen"*[266] the Court held that, "labour to which ever sector it may belong in a particular region and in a particular industry will be treated on equal basis."

"Article15 of the Constitution of India authorizes the State to make any special provision for women and children and directs that the State will not discriminate against any citizen on grounds only of "religion", "race", "caste", "sex", and "place of birth" or any of them".

[265] AIR 2000 SC 1274.
[266] (1967) ILLJ114SC.

The Constitution provides that "the State promote the welfare of the people by minimizing the inequalities in income and by eliminating inequalities in status", "facilities and opportunities", for "securing just and humane conditions of work", "maternity relief" and "living wage". State must provide to its "citizens such conditions of work that ensure a decent standard of life and full enjoyment of leisure and social and cultural opportunities…for all workers- agricultural, industrial or otherwise".[267]It was held that:

"The provisions of the Act are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, especially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the fetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery."

The Court stated that that "social justice" is an "integral part of industrial law for solving matters of industrial disputes". The court held that "social order and justice can be achieved only when workers are treated with dignity". The workers form the major half of the society. So they must be provided all facilities "irrespective of the nature of their duties, their occupation and the place of work".[268]

While focusing on relevance of the "Maternity Benefit Act, 1961" the court opined-

"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 realize 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 woman in a dignified manner so that she may overcome the state of motherhood honorably, peaceably, undeterred by the fear, of being victimized for forced absence during the pre or post-natal period."

[267] The Constiution of India, arts.15,42,43.
[268] *J. K. Cotton Spinning & Weaving Mills Co. Ltd*. v. *Badri Mali*, [1964]3SCR724.

➢ *In "Rattan Lal and Ors. v. State of Haryana and Ors.",*[269] the grievance of the "teachers appointed on ad hoc basis with regard to termination before the summer vacations and denial of salary and other privileges such as casual leave, medical leave, maternity leave etc. was addressed".

The Court held:

"These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad-hoc basis with miserable conditions of service. The government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of 'ad-hocism' followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer."

This judgment recognizes the right to survival of the females by casting a duty upon the State Government to work for it.

➢ In "*B. Shah* v. *Presiding Officer, Labour Court, Coimbatore and others."*[270] The issue for consideration of the Apex Court was "exclusion of Sundays being wage less holiday in calculating the maternity benefit period as per Section 5 of Maternity Benefit Act, 1961". The Court held:

"In interpreting provisions of beneficial pieces of legislation which is intended to achieve the object of doing social justice to woman workers employed in the plantations and which squarely fall within the purview of Article 42 of the Constitution, the beneficent rule of construction which would enable the woman 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."

Through this judgment the Judiciary has extended a helping hand to the women working in industries and enabled their social empowerment.

[269] 1985(3) SLR 548.
[270] (1977) 4 SCC 384.

➢ In *"AIR India* v. *Nargesh Meerza and Ors".*[271] The main issue involved was the retirement age of an air hostess of Air India. The points for consideration were that "air hostess" under "Air India" was retired from service "on attaining the age of 35 years or on her marriage if it took place within four years of the service and n her getting pregnant for the first time". The Court stated that the impugned provision is a clear cut example of work place arbitrariness. The Court held:

"In conformity with the provisions of Article 14 of the Constitution of India, an air hostess would continue to retire at the age of 45 years and the Managing Director would be bound to grant yearly extensions as a matter of course for a period of ten years if the Air Hostess is found to be medically fit. This will prevent the Managing Director from discriminating between one Air Hostess and another."

Secondly, on the issue of retirement on first pregnancy, the Hon'ble Court held:

"The provision 'or on first pregnancy whichever occurs earlier' is unconstitutional, void and violative of Article 14 of the Constitution and will, therefore, stand deleted. It will, however, be open to the Corporation to make suitable amendments."

The Court regards the second point "according to which the services of an Air Hostess would stand terminated on first pregnancy, to be the most unreasonable and arbitrary provision". The Hon'ble Court observed:

"The Regulation does not prohibit marriage after four years and if an Air Hostess after having fulfilled the first condition becomes pregnant, there is no reason why pregnancy should stand in the way of her continuing in service. The Corporations represented to us that pregnancy leads to a number of complications and to medical disabilities, like sickness due to air pressure, nausea in long flights etc which may stand in the efficient discharge of the duties by the Air Hostess. This, however, appears to be purely an artificial argument because once a married woman is allowed to continue in service then under the provisions of the Maternity Benefit Act, 1961 and the Maharashtra Maternity Rules, 1965 (these apply to both the Corporations as

[271] AIR 1981 SC 1829.

their Head Offices are at Bombay), she is entitled to certain benefits including maternity leave. In case however, the Corporations feel that pregnancy from the very beginning may come in the way of the discharge of the duties by some of the Air Hostess, they could be given maternity leave for a period of 14 to 16 months and in the meanwhile there could be no difficulty in the Management making arrangements on a temporary or ad hoc basis by employing additional Air Hostess. We are also unable to understand the argument of the Corporation that a woman after bearing children becomes weak in physique or in her constitution. There is neither any legal nor medical authority for this bald proposition. Having taken the Air Hostess in service and after having utilized her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor Air Hostess not to have any children and thus interfere with and divert the ordinary course of human nature. It seems to us that the termination of the services of an Air Hostess under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution."

"Gender Discrimination" obstructs the overall growth of women in the modern society. If we see the facts of this case, The Service Regulations also stipulated that Air Hostesses retire from service upon their first pregnancy. This provision is premised on the assumption that mothers are inefficient employees or that motherhood renders Air Hostesses undesirable. Air India's Service Regulations also set forth that the Air Hostesses' employment would be terminated if they married within four years of service. The Regulation is premised on the absurd idea that married women are unfit employees or that women are bound to quit their jobs post-marriage. Yet again, this reasoning is not backed by any evidence proving any co-relation between a woman's marital status and their professional performance.

- In "*Punjab National Bank by Chairman and Anr." v. "Astamija Dash and Astamija Dash v. Punjab National Bank and Anr."*[272] The petitioner was

[272] AIR 2008 SC 3182.

appointed on the post of "Management Trainee in the Punjab National Bank". For this job, she was asked to pass a confirmation test which she did not pass and was asked to appear again.

She conveyed that she was passing through a pregnancy period and was advised by her doctor not to travel for long hours and so she must be provided another chance to appear for the test on some future date. She then had two miscarriages and could not succeed in her test. Her services were terminated as she could not fulfill the terms of her employment of satisfactory completing her training and passing her confirmation test.

According to "Maternity Benefit Act 1961, a woman is not permitted to work in an establishment during the period of six weeks from immediately following the day of her delivery, miscarriage or medical termination of pregnancy."[273]

"Section 9 of the Maternity Benefit Act, 1961" also states that "in case of miscarriage or medical termination of pregnancy, a woman shall 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, or, as the case may be, her medical termination of pregnancy."

Even though the "question of application of the Maternity Benefits Act, 1961 was not raised, but the Regulations framed by the board of directors of the Bank failed to provide Maternity Leave and other benefits available to a woman employee in terms of the "Maternity Benefits Act", 1961".

It was stated before the Court that:

"The Executive Committee of the Bank had fixed the number of chances to be given to an employee in the confirmation test. If it is enforced against the writ petitioner having regard to her physical position, to appear in the second examination, the provisions thereof, keeping in mind the principle underlying the statutory provisions of Maternity Benefit Act, may not be held to be applicable. She was, thus, entitled to another opportunity to appear at the examination. The Executive Committee or for that matter the appellate authority cannot exercise the power of relaxation in a discriminatory manner."

The Court held:

[273] Maternity Benefit Act, 1961 (No. 53 of 1961), s.4.

"When conflict occurs between an executive order and a statutory Regulation, the latter will prevail - Whereas persons absolutely similarly situated, should be treated equally, equal treatment to the persons dissimilarly situated would also attract the wrath of Article 14."

- *In "Neera Mathur* v. *Life Insurance Corporation of India",*[274] The petitioner applied for job in the Life Insurance Corporation of India. She qualified the written test and interview and was declared medically fit by the doctor. She was given appointment letter and was put on "probation" for a period of six months after a short training and was asked to fill a questionnaire to provide information about her last menstrual cycles and past pregnancies. She applied for maternity leave but was discharged from the service during her period of probation on the reason that she has withheld her pregnancy.

The court passed the order:

"The facts of the case compel us to issue an interim mandamus directing the respondents to put the petitioner back to service and we accordingly issue a direction to the respondent to reinstate the petitioner within 15 days from the date of receipt of this order."

The Supreme Court in this case protects the right to life and of privacy of a female as guaranteed by Article 21 of the Indian Constitution.

- In "*Bharti Gupta (Mrs.)* v. *Rail India Technical and Economical Services Limited and Ors",*[275] the petitioner was a qualified Architect appointed on contract by the "RITES" for a period of six months which was renewed after expiry of the six months.

The issue for consideration before the Court "is the impugned order that she was no-longer in the rolls of the organization after that date her contractual engagement ceased". She is "claiming for reinstatement and consequential benefits confined to the release of maternity benefits."

The Court held:

"RITES is an establishment under Maternity Benefit Act, 1961". "Equally, it is an instrumentality of State (under Article 12 of the Constitution of India) and therefore bound by Part III of the Constitution. In view of the admitted facts

[274] AIR1992 SC 392. And 1991 SCR Supl. (2) 146.
[275] 23 (2005) DLT 138, 2005 (84) DRJ 53.

regarding petitioners continued employment and the circumstances that the petitioner went on leave with effect from 11.11.2000 after which she delivered the baby on 5.12.2000, the RITES could not have escaped its obligations to pay benefits under the Maternity Benefit Act 1961."

- In "*Dr. Subina Narang* v. *Union of India (UOI) and Ors. Central Administrative Tribnal".*[276] applicant worked as Senior Lecturer (Ophthalmology) on contract basis in respondent's College. She is the senior most Lecturer in her department, as per seniority list. The next promotion from the post of Senior Lecturer (Ophthalmology) is to the post of Reader (Ophthalmology), which is governed under the Government Medical College and Hospital, Chandigarh, Professor (Ophthalmology) reader (Ophthalmology) and Senior Lecturer (Ophthalmology).

The applicant was on maternity leave from 9.3.2005 to 25.9.2005. When she joined her duties, she came to know various posts, including post of Reader (Ophthalmology) are to be filed by the respondents by simultaneously adopting two methods of recruitment viz., promotion and deputation, Departmental candidates are to be considered along with outsiders and in case they are selected and appointed, such appointment is to be treated as a promotion.

The applicant who was on maternity leave and the respondent were the only aspiring candidates for the post from the department. But the circular was not circulated to both. It was the duty of the Respondents to duly inform the applicant.

This respected Court held that the applicant chose not to apply in time not out of choice but for the reasons beyond her control. Article 11 of 'CEDAW', cover aspects such as "maternity leave", "social security", prohibiting "dismissal" on grounds of "pregnancy" and "maternity leave".

The "Maternity Benefit Act", 1961 gives special protection to women during "pregnancy" in the form of "protection of health", the "right to free choice of profession" and promotion and condition of service etc. and States/parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure equality of rights to men and women.

[276] 2009(3) SLJ 263 (CAT).

Considering the above, the Hon'ble Supreme Court concluded that no adverse action put be taken against the woman employee while she was on maternity leave, prohibiting dismissal or varying condition of service to her disadvantage during or on account of such absence.

Thus, it was held, that when the applicant was on maternity leave the Respondent should have made sure that she has received the circular so that she could have applied for the post. There was no dispute that the applicant was eligible for selection.

B. High Court

- In "*Mrs. Savita Ahuja* v. *State of Haryana and others."*[277] Hon'ble Court observed "maternity leave is a privilege to all government servants appointed on regular basis". The petitioner should not be denied maternity leave merely because the appointment was ad hoc. The exclusion of an employee from being entitled to her maternity rights would be a violation of Articles 14, 15 and 16 of the Constitution and "will be unjust and discriminatory against female ad hoc employee on the ground of job status."

The decision of this judgment has protected the equality of status among women.

- In *"Ram Bahadur Thakur (P) Ltd* v. *Chief Inspector of Plantations",*[278]

A woman worker employed in a private limited company claimed maternity benefit under "Maternity Benefit Act, 1961". She was not paid any benefit because "she had actually worked for 157 days only apart from four half days during 12 months immediately preceding the date of the delivery". The employer took the stand that "she is not entitled to maternity benefit under Section 5(3) of Maternity Benefits Act, 1961" and filed a petition.

The question that attracts attention of the Court was "whether the four days during which she worked for half a day each can be counted as full days for computing the period of 160 days as contemplated in Section 5(2) of the Act, 1961." The relevant section reads as:

[277] 1988 (1) SLR 735.
[278] (1989)IILLJ 20 Ker.

"No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery."

Explanation:--"For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid-off during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account."

The counsel for the petitioner argued "that she has not actually worked for 160 days which is a condition precedent for claiming maternity benefit so she is not entitled to it".

"First explanation to Section 30(1)" lays that "any day on which the worker performed half or more than half a day's work should be counted as one day".[279]This view will help in computing 160 days under the Maternity Benefit Act. "The Maternity Benefit Act is a beneficial piece of legislation which is intended to achieve the object of doing social justice to women workers employed in factories, mines or plantations."

It was held that the woman worker had worked for 157 full days and for four half days. The Court also stated that "actual work for 160 days cannot be insisted as a condition precedent for claiming the maternity benefit".

The judgment worked as an inspiration for working female employees by providing social justice in the form of Maternity leave.

- In "*Mrs. Pramila Rawat* v. *District Judge, Lucknow, and another".*[280] the petitioner was appointed on ad hoc basis by the District Judge, Lucknow for three months or tilt regular selection is made whichever is earlier. She was asked immediately to join her duties on receipt of her appointment letter. She was denied maternity leave on ground of her job status and was compelled to perform her duties.

Later, she was also not allowed to resume work, even though no order for termination had been passed. Court held that the Maternity benefit had to be extended to every woman irrespective of the capacity in which she had been

[279] The Plantations Labour Act, 1951.
[280] 2000 (3) AWC 1938, 2000 (87) FLR 134.

employed by the government. The denial of maternity leave would be discriminatory in addition to putting in danger a woman's most satisfying desire of becoming a mother, only because she chose or was compelled to earn a livelihood by joining government service. The Court observed:

"Had the petitioner been appointed even temporarily but on regular basis, she would have been entitled to the privilege of grant of maternity leave as available to all other Government servants of the State of Haryana. The mere fact that the appointment was on ad hoc basis should not disentitle her to this privilege because such a disentitlement results in one and the only consequence that the services of the ad hoc female employee who is pregnant and has reached the stage of confinement are to be terminated. This would be highly unjust and virtually a discrimination against female ad hoc employees on the ground of sex which is violative of Articles 14, 15 and 16 of the Constitution".

- In *Simi Dutta* v. *State*[281], the Petitioner was selected and appointed as Lecturer (adhoc) in discipline of Computer Engineering on 31 -03 -1995. The petitioner has continued in this post from time to time. Petitioner applied for grant of maternity leave but her claim was rejected, that she is not entitled to maternity leave. She regarded the denial as illegal and ultra –vires.

She also alleged that once leave had been granted by the Government it would not have been cancelled by the Principal who is a subordinate. The Court rejected the contention "to make a distinction between female employees appointed on regular basis and on ad hoc basis".

- *In "RajBala* v. *State of Haryana and Ors".*[282]*the Court observed:*

"…there is hardly any distinction between an ad hoc employee and a contractual employee. Both are engaged for a definite term as may be specified in the letter of appointment. So far as they are performing the same duties and functions and are holding the same post, it will be very difficult to draw the fine line of distinction between these two classes."

- In "*Ms. Sonika Kohli And Anr.* v. *Union of India (UOI) and Ors*."[283] The point with regard to the admissibility of maternity leave to

[281] 2001(4) SCT 726.
[282] 2002(3) RSJ 43.
[283] 2004 (3) SLJ 54 CAT.

female teachers was raised. It was argued by the administration that "benefit of maternity leave with pay is available to permanent/regular female employees" and "the Administration is justified in making a distinction between the regular and part time, contractual or adhoc female teachers". The Court observed and stated:

"The claim for maternity leave is founded on grounds of fair play and social justice. Before the advent of the Constitution and for a sufficiently long time, thereafter it was customary or say traditional for women to stick to their homes but now they seek various jobs so as to attain economic independence by utilizing their talent, education, industry etc. Sometimes the jobs are taken up by them to overcome economic hardship. For a woman to become a mother is most natural phenomenon in her life. Whatever is needed to facilitate the birth of a child to a women who is in service, the employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a working women would face in performing her duties at work place while carrying a baby in the womb or while bearing a child after birth."

- *In "K. Chandrika* v. *Indian Red Cross Society*,"[284] The services of the petitioner as a lower division clerk at the Indian Red Cross were terminated as she went on maternity leave, on the ground of "absence of evidence to corroborate the fact that the petitioner had received the communication of termination". The Court ordered"

"The respondent is directed to reinstate the petitioner in service with continuity of service for the purpose of computation of service benefits within a period of four weeks from today."

- "*Parkasho Devi* v. *Uttar Haryana Bijli Vitran Nigam* Limited *and Ors.*"[285] The petitioner worked in "Uttar Haryana Bijli Vitran Nigam Limited" at Karnal. She applied for "maternity leave on account of miscarriage" but "her claim was declined because benefit of maternity leave is admissible up to two children and she had already availed it". The court explained:

"So far as reliance placed by learned Counsel for the petitioner upon the provisions of Section 9 of the Act to content that the petitioner is entitled to six weeks maternity leave because under this Section there is no restriction that

[284] 131(2006) DLT 585, 2007 (3) SLJ 479 Delhi.
[285] (2008) IIILLJ 488 P&H, (2008) 3 PLR 248.

the maternity leave benefit will be available up to two living children only is concerned, it may be stated that it is clearly stated in Section 2 of the Act that it applies, in the first instance, to every establishment being a factory, mine or plantation including any such establishment belonging to government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. It shall also apply to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months. As such, the provisions of the Act do not apply to the employees of the Nigam."

- In "*Durgesh Sharma* v. *State of Rajasthan and others"*.[286] the petitioner was appointed on temporary basis till regularly selected candidates are available on consolidated salary of Rs. 3500/- which was subsequently increased to Rs. 4500/-.

She contended that "State cannot discriminate on the basis of job status". So she challenged the "order of State Government stating that employees working on consolidated /fixed salary were not entitled to maternity leave".

The Court lay:

"Such benefits cannot be denied to the petitioner merely on the count of the mode of payment of wages. The petitioner is working with respondents on urgent temporary basis and her status remains unchanged irrespective of the mode of payment of salary." So the petitioner is entitled to maternity leave.

- In "*Dr. (Smt.) Hemlata Saraswat* v. *State of Rajasthan and Ors."*[287] Petitioner questioned the denial of maternity leave to her on the ground that she is working as Medical Officer on consolidated salary and there is no provision in the Rules for granting her maternity leave. The Court observed:

"…No distinction with regard to nature of appointment of female Government servant can be made by Government for grant of maternity leave U/r 103 of RSR since natural course has to take place at its own and nature of appointment is of no significance for purposes of maternity leave."

[286] RLW2008(2)Raj1304.
[287] RLW 2008 (2) Raj 1397.

In "*Dr. Vishakha Kapoor* v. *National Board Of Examination and another*"[288], the applicant was appointed as Assistant Controller of Examination and thereafter was re-designated as Deputy Controller of Examination Initially, she was appointed on probation for a period of two years to be expired on 8-10-2008 but later was appointed on regular basis as she was found medically fit in all respects.

The applicant availed maternity leave from 18.01.2011 to 16.07.2011 on being blessed with a second child and on 7.07.2011 applied for extension of Maternity Leave for a period of six months and requested for grant of Child Care Leave under Rule 43 (4) (b) of the Central Civil Services (Leave) Rules. The respondents rejected the leave application of the applicant for grant of leave and she was directed to resume the duties immediately. Ultimately, the respondents told the applicant that she has been discharged without being served any discharge order. The Hon'ble Court struck down the termination order and held:

"Section 12 of the Act,1961 makes it clear that where a woman absents herself from work in accordance with the provisions of the Act, it shall be unlawful for her employer to discharge or dismiss her on account of such absence. The second part of said Sub-section further stipulates that any notice of discharge or dismissal that would expire during such absence or which would vary to her disadvantage any of the conditions of her service shall be unlawful. A reading of the aforesaid Sections makes it clear that the Appellant was entitled to 12 weeks of leave including up to six weeks before delivery and the rest after birth of the child on 16.1.2008. This aspect was completely unnoticed and has been ignored while passing the termination order dated 8.2.2008. The entitlement to leave upto maximum period of 12 weeks is statutory and mandatory. The termination order ignores this and treats this period of 12 weeks as unauthorized leave and is, therefore, contrary to law. Secondly, the notice of discharge/dismissal could not have been issued during this period of statutory leave/absence. The Appellant was entitled to at least six weeks leave from the date of birth of her child on 16.1.2008. The notice of discharge/termination was issued on 8.2.2008 within this period of six weeks."

[288] MANU/DE/0971/2009.

➢ In "*Vandana Kandari* v. *University of Delhi*"[289] the Court extended the benefit of relaxation of attendance on the ground that the said respondent was on maternity leave and stated that withholding such relaxation in attendance will make motherhood a crime.

The Hon'ble court held that if any "Act of university or college" detains a female student merely on the ground that she was unable to attend classes being in the "advanced stage of pregnancy" "then such an act on the part of any of the university or college would not only be completely in negation of the conscience of the Constitution of India but also of the women rights and gender equality this nation has long been striving for." The Court further ordered:

"Bar Council of India, although not a party in the present writ petitions, is hereby suggested to make rules for women students claiming relaxation on ground of maternity relief so that they are not deprived of appearing in the LLB examinations due to pregnancy."

➢ In "*Priyanka Gujarkar Shrivastava v. Registrar General and Ors.*"[290] the Court held that all the leave rules applicable to regular employees by the State Government should also be applicable to all the employees working in the State of Madhya Pradesh whether casual employees, contractual or temporary employees.

➢ In *Dr. Mandeep Kaur* v. *Union of India*[291] The Petitioner was employed via contract as a medical officer at an "Ex- Servicemen Contributory Health Scheme" (ECHS) clinic set up by the state. Her request for maternity leave was rejected contending that the clause under which she can claim "maternity leave" is absent in her "contract of employment" with the clinic. The Court observed that:

"As per Section 2 of the Maternity Benefit Act, 1961, the benefits apply to every establishment in which ten or more persons are employed, among others. Further the ECHS clinic in question was squarely covered under Section 2 of the Maternity Benefit Act, 1961 and thus the petitioner's application for availing benefits under the Act could not be refused."

[289] 170 (2010) DLT 755, 2010 SCC Online Del 2341.
[290] WP No. 17004/2015, 2017 Lab IC 1646.
[291] (2015) 180 PLR 842.

➢ In "*T. Priyadharsini* v. *The Secretary to Government, Department of School Education, Government of Tamil Nadu"*[292] "two women government teachers who had delivered twins in their first pregnancy" approached High Court on the ground "that they are now denied maternity leave for their second pregnancy stating that they already had two surviving children".

Court stated: "Executive instructions cannot replace the substantive law. If the concern of the State Government is to afford protection to the women during / at or after delivery, then the rule cannot be based upon the number of children delivered in each delivery and it should be based on the delivery itself."

The Court further held: "Unless there is a law prohibiting / restricting the number of delivery in order to have indirect control over population, then the Government cannot decline maternity leave, fixing the number of children delivered in each delivery as the basis."

➢ In "*Seema Gupta* v. *Guru Nanak Institute Management"*[293], a writ petition was filed "against the order terminating the services of petitioner on grounds of unauthorized leave/absence within 2 months of extended maternity leave". Petitioner's request was "on account of her erratic and indifferent health condition as well as that of her infant child".

Court stated that:

"The CCS rule has to be understood as a larger social concern for extending special care to employees who are given maternity benefits. It promotes non-discriminatory practices, and forces employers to give reasonable accommodation to female employees."

Hon'ble Court further held:

"The impugned termination letter cannot be sustained; it is illegal, and is hereby quashed. The respondent is directed to reinstate the petitioner to her post; the petitioner shall also be entitled to full arrears of salary."

➢ In "*Smt. Richa Shukla* v. *State Of U.P.Thru.Addl.Chief*",[294] the petitioner applied the maternity leave but the same was rejected by placing reliance on Rule 153(1) of the "Financial Handbook" by contending that it contains a

[292] 2016 SCC OnLine Mad 30096.
[293] 2017 AD (DELHI) 485, 135(2006) DLT 404.
[294] Writ Petition No. 32394 (SS) of 2019.

restriction that the "second maternity leave" cannot be granted and would be admissible in case there is difference of less than two years between the end of the first maternity leave and grant of second maternity leave. The Court "placed reliance on Section 27 of Maternity Benefits Act, 1961 granted maternity leave" and observed:

" The 1961 Act does not contain any such stipulation accordingly it is apparent that the respondents have patently erred in placing reliance on Rule 153(1) of the Financial Handbook in rejecting the application of the petitioner for grant of maternity leave more particularly when Section 27 of 1961 Act provides that it is 1961 Act which would be applicable notwithstanding anything inconsistent contained in any other law or contract of service."

➢ In "*Anshu Rani* v. *State Of U P And 2 Others*"[295] petitioner was appointed was appointed on the post of Anudeshak on 20.07.2013 at Purwa Madhyamik Vidyalaya Gowali Noorpur, District Bijnor. She later conceived and was to deliver a child. Her In Doctor advised her to take complete bed rest. So she moved an application before the Block Education Officer as well as the District Basic Education Officer, Bijnor to grant her maternity leave from 1.10.2018 to 31.3.2019.

On the aforesaid application, she was granted maternity leave only for 90 days, with honorarium. She further made a request to grant her maternity leave for 180 days but her request was ignored / rejected by the District Basic Education Officer Bijnor without assigning any reason.

She contended that "as per the provisions of the maternity Benefits (Amendment) Act, 2017 passed in consonance of the provisions of Article 42 of the Constitution of India, the period of maternity leave has been enhanced to 26 weeks." She also made reference to the relevant "clause c of the recommendation of the VIth Central Pay Commission introducing Child Care Leave in respect of the Central Government employee" which reads as under:

"(c) Women employees having minor children may be granted Child Care Leave by an authority competent to grant leave, for a maximum period of two years (i.e. 730 days) during their entire service for taking care of up to two children whether for rearing or to look after any of their needs like

[295] *Available at:* https://indiankanoon.org/doc/157455271/ (last visited on April 12, 2021).

examination, sickness etc. Child Care Leave shall not be admissible if the child is eighteen years of age or older. During the period of such leave, the women employees shall be paid leave salary equal to pay drawn immediately before proceeding on leave. It may be availed of in more than one spell. Child Care Leave shall not be debited against the leave account. Child Care Leave may also be allowed for the third year as leave not due (without production of medical certificate.) It may be combined with leave of the kind due and admissible."

The Court stated:

"...it is not only the fundamental right of the lady to give birth to a child and also necessary for existence of mankind and without a lady, a child could not be born in the world. Even nature requires a child birth through a lady. When that is the position, the petitioner (a lady doctor in the instant case) cannot be denied the maternity leave and the period of maternity leave, which the petitioner availed, should not be kept apart or excluded from two years of service. Even in their two years of service, if maternity leave is sanctioned, the maternity leave period should be deemed to be the service period. Any rule or regulation which goes against the same is null and void,"

Hon'ble Court thus held:

"The petitioner is entitled for maternity leave for period of six months but wholly illegally leave was granted only for a period of three months."

In *"Tanuja Tolia* v. *State of Uttarakhand"*[296], Court reiterated that contractual women workers cannot be denied maternity leave or child care leave (CCL) by her employer on the basis of her job status of not being a regular employee. The Court upheld the rights of contractual workers with the government health service of getting a child care leave as any other government employee.

It was agreed that the "child care leave" is for the benefit and the needs of the child of a contractual employee with the government will be similar to that of any other employee. A denial of "CCL" to a government contractual worker would infact mean a denial of rights of a child.

The court observed: "Even a person employed on contractual basis is entitled for child care leave, but this is with a rider. A contractual employee, whose

[296] 2020 SCC Online Utt 337.

employment is only for one year, cannot be granted child care leave for 730 days. Such an employee can be granted paid child care leave for 31 days, on the same terms and principles as "earned leave", as is given to other employees in G.O."

In "*Saumya Tiwari* v. *State of U.P & 3 Others on 16 December, 2021"*[297] the Hon'ble Court directed that:

"The University shall create Regulations/Ordinances/appropriate legal instruments for grant of pre-natal and post-natal support and other maternity benefits to expectant mothers and new mothers who are pursuing various courses in the University. The maternity benefits shall also include additional chances to clear the exams in an enlarged time frame."

- In "*Renu Chaudhary* v. *State of U.P & 3 others on 24 December, 2021*"[298]the Hon'ble court has held*:*

"Maternity benefit is a social insurance and the Maternity Leave is given for maternal and child health and family support. On a perusal of different provisions of the Act, 1961 as well as the policy of the Central Government to grant Child Care Leave and the Government Orders issued by the State of U.P. adopting the same for its female employees, we do not find anything contained therein which may entitle only to women employees appointed on regular basis to the benefit of Maternity Leave or Child Care Leave and not those, who are engaged on casual basis or on muster roll on daily wage basis."

- In "*Preeti Singh* v. *State of UP and ors."*[299] petitioner's application for maternity leave was rejected on the ground that the same has been sought prior to completion of two years from the date on which the earlier maternity leave granted to the petitioner came to an end i.e. 28.12.2019.

The respondents have rejected the claim of the petitioner for grant of second maternity leave by placing reliance on Rule 153(1) of the Financial Handbook by contending that the same contains a restriction that the second maternity leave cannot be granted and would be admissible in case there is difference of

[297] *Available at:* https://indiankanoon.org/docfragment/182578645/?formInput=maternity%20benefit%20%20%20%20doctypes%3A%20judgments (last visited on April1, 2022).

[298] *Available at:* https://indiankanoon.org/docfragment/127360566/?formInput=maternity%20benefit%20%20%20%20%20doctypes%3A%20judgments (last visited on April1, 2022).

[299] *Available at:* https://indiankanoon.org/doc/54533167/ (last visited on March 31, 2022).

less than two years between the end of the first maternity leave and grant of second maternity leave. The Court Observed:

"The Maternity Benefit Act, 1961 Act does not contain any such stipulation accordingly it is apparent that the respondents have patently erred in placing reliance on Rule 153(1) of the Financial Handbook in rejecting the application of the petitioner for grant of maternity leave more particularly when Section 27 of 1961 Act provides that it is 1961 Act which would be applicable notwithstanding anything inconsistent contained in any other law or contract of service." The Court reiterated Allahabad High Court's earlier ruling in *Smt. Richa Shukla v. State of UP*.

- In "*Dr. Baba Saheb Ambedkar Hospital* v. *Dr. Krati Mehrotra on 11 March, 2022*"[300]*,the Hon'ble Court* decided that:

"The Resident doctors (SRs/JRs/SR (Adhoc) & JR (Adhoc)) shall be entitled for maternity leaves of 26 weeks and miscarriage leave of 06 weeks as per the provisions under the Maternity Benefit Act, 1961 and Maternity Benefit (Amendment) Act, 2017, in accordance with section 5(2) of the Maternity Benefit Act, 1961 subject to the condition that no leave shall be granted after the completion/expiry of tenure of the doctor concerned....."

5.3.1 Judiciary on "Maternity Rights" of a "Surrogate" and "Commissioning Mother"

An issue that has come up repeatedly before Indian courts is the right of "commissioning mothers to maternity leave". Surrogacy is connected to new age "technological developments and medical advancements." "Chapter 6 of the Social Security Code, 2020" does not conform to "traditional notions of motherhood and pregnancy". There seems to one glaring loophole as the "surrogate mother (child-bearing mother) receives no consideration" and "remunerated or aided by the commissioning parents."[301]

[300] *Available at:* https://indiankanoon.org/docfragment/103419203/?formInput=maternity%20benefit%20%20%20%20doctypes%3A%20judgments (last visited on April 1, 2022).

[301] Neharika Modgil, "Surrogate Mothers in Indian Maternity Benefit Law: A Blind Spot or a Blind Eye"4 *International Journal of Management & Humanities* 5346 (2021).

"Law Commission of India in its 228th Report in 2009 argued the ban on commercial surrogacy" because it leads to "commoditization of the child and breaks the mother-child bonding."[302] "Maternity Benefits Act, 1961" is deprived of provisions covering these "new age ideas". Various High Courts lay the foundation for the 2017 amendments through their decisions.

- "*Baby Manji Yamada* v. *Union of India and another"*[303] was **the first case wherein a decision linked to surrogacy was made by the Apex Court and it marked the importance of developing surrogacy regulation laws in India**.

In this case, Baby Manji Yamada took birth by a surrogate mother and her grandmother filed a petition claiming her custody. The "biological parents" chose a "surrogate mother" in Anand, Gujarat to have a baby. "Surrogacy Agreement was entered between the biological parents and the surrogate mother." Later, Custody of the child was claimed.

It is also pinpointed that the custody of the child was claimed in the circumstances when it was unclear into whose alleged illegal custody the child already was. The Court observed:

"Surrogacy is a well known method of reproduction whereby a woman agrees to become pregnant for the purpose of gestating and giving birth to a child she will not raise but hand over to a contracted party. She may be the child's genetic mother (the more traditional form for surrogacy) or she may be, as a gestational carrier, carry the pregnancy to delivery after having been implanted with an embryo. In some cases surrogacy is the only available option for parents who wish to have a child that is biologically related to them."

- In "*K. Kalaiselvi* v. *Chennai Port Trust"*[304], the question for consideration before the High Court was "Whether a woman employee working in the Chennai Port Trust is entitled to avail maternity leave even in case where she gets the child through arrangement by Surrogate parents?" The Court held:

"The respondent Chennai Port Trust is directed to grant leave to the petitioner in terms of Rule 3-A recognizing the child obtained surrogate procedure."

[302] Law Commission of India, "Need For Legislation To Regulate Assisted Reproductive Technology Clinics As Well As Rights And Obligations Of Parties To A Surrogacy", Report No. 228(2008).
[303] (2008) 13 SCC 518.
[304] (2013) 3 MLJ 493 (1).

➢ In "*Dr. Hema Vijay Menon* v. *State of Maharashtra*"[305] the Bombay High Court reiterated this position. The question before the Court was, "whether a mother is entitled to maternity leave if she begets the child through surrogacy." This judgment recognized "the right to motherhood and right of every child to full development under Article 21 of the Indian Constitution". The court stated:

"Maternity means the period during pregnancy and shortly after the child's birth. If Maternity means motherhood, it would not be proper to distinguish between a natural and biological mother and a mother who has begotten a child through surrogacy or has adopted a child from the date of his/ her birth. The object of maternity leave is to protect the dignity of motherhood by providing for full and healthy maintenance of the woman and her child. Maternity leave is intended to achieve the object of ensuring social justice to women. Motherhood and childhood both require special attention. Not only are the health issues of the mother and the child considered while providing for maternity leave but the leave is provided for creating a bond of affection between the two."

➢ In "*P. Geetha* v. *Kerala Livestock Development Board Limited*"[306], the petitioner was refused maternity leave. It was stated that "Staff Rules and Regulations do not permit any leave to the employees on maternity ground other than the maternity leave envisaged under 'normal circumstances'.**"**

The Court examined "Maternity Benefit Act, 1961" and stated "there cannot be any discrimination regarding the genetic mother in extending the statutory benefits to the extent they are applicable."

The Court declares:

"That there ought not to be any discrimination of a woman as far as the maternity benefits are concerned only on the ground that she has obtained the baby through surrogacy. It is further made clear that, keeping in view the dichotomy of maternity or motherhood, the petitioner is entitled to all the benefits an employee could have on post-delivery, sans the leave involving the health of the mother after the delivery. In other words, the child specific statutory benefits, if any, can, and ought to, are extended to the petitioner."

[305] 2015 SCC OnLine Bom 6127.
[306] 2015 SCC OnLine Ker 71.

➢ The Delhi High Court in "*Rama Pandey* v. *Union of India*"[307], on the other hand held that a "commissioning mother is entitled to maternity leave in the post-natal period and also in the pre-natal period". There are circumstances where the "surrogate may require the financial, emotional and physical support of the commissioning mother during her pregnancy". The Court stated: "maternity is established once a pregnancy is conceived, even if in a womb of the surrogate" and held:

"In a situation where both the commissioning mother and the surrogate mother are employees, who are otherwise eligible for leave (one on the ground that she is a commissioning mother and the other on the ground that she is the pregnant women), a suitable adjustment would be made by the competent authority."

➢ The Chhattisgarh High Court in "*Smt. Sadhna Agrawal* v. *State of Chhattisgarh*"[308] noted:

"….it is quite apparent that no distinction can be made by the State Government to a natural mother, a biological mother and a mother who has begotten child by surrogacy procedure, as right to life under Article 21 of the Constitution of India includes the right to motherhood and also the right to every child to full development. Therefore, the State Government is absolutely unjustified in refusing maternity leave to the petitioner who has begotten twin children by surrogacy procedure……. Admittedly, the petitioner has not undergone any prenatal phase which in fact, was undergone by the surrogate mother whose rights are not in issue/lis before this Court."

➢ In "*Sushma Devi* v. *State of Himachal Pradesh & Ors*".[309] Petitioner was blessed with a baby through surrogacy. She applied for maternity leave to the Principal, who in turn forwarded the same to "Deputy Director, Higher Education, Kullu", and seeking clarification as to whether the petitioner is entitled for maternity leave on surrogacy."

The respondents admitted that the petitioner had been blessed with a baby through surrogacy but denied maternity leave as per "Rule 43(1) of CCS (Leave) Rules, 1972 the "maternity leave is admissible on adoption" of a child

[307] 221 (2015) DLT 756.
[308] 2017 SCC OnLine Chh 19.
[309] *Available at:* https://indiankanoon.org/doc/129649749/ (last visited on April 2, 2022).

for 180 days", but there is no clarification in the said notification "regarding admissibility of maternity leave to a female Government employee on surrogacy". The Hon'ble court stated:

"Once, the respondents admit that the minor child is that of the petitioner, and then she is entitled to the leave akin to the persons, who are granted leave in terms of the rules (ibid). The purpose of the said rules is for proper bonding between the child and parents. Even, in the case of adoption, the adoptive mother does not give birth to the child, yet the necessity of bonding of the mother with the adopted child has been recognized by the Central Government."

5.4 Conclusion

The provision under the Maternity Benefits Act, 1961 aim at gender justice. The Indian Judiciary has further upholds "value of equity and affirmative action" in "enforcing maternity benefits of women workers of all organizations; private or government" irrespective of their "job status as an (contractual, ad-hoc, regular) employee."

It has also extended the benefit of Child Care Leave to women employees to carry out their motherhood duties without work place stress. Another valuable contribution of the Judiciary is to not discriminate between the biological and the commissioning mother of a child while providing maternity leave. The judiciary strongly supported the emotional and physical needs of a child that only a mother can fulfill by being with him whether the child is born out of her womb or the mother is his adoptive mother.

The Judiciary has done a lot to uphold the objective of the welfare legislation and is doing everything that is in its power to protect the health of a mother and her baby. The Apex Court and various High Courts of India have sternly laid down that the establishment/ employer cannot deny maternity benefits to a woman on the ground of her job status and defeat the objectives of the Maternity Benefits Act.

The judiciary has progressively recognized motherhood and asked the State to provide as much assistance as it can to a female who opt to undertake household and work responsibility simultaneously. But still when compared to

other countries, there is space for improvement in the “maternity policy” in India. The concept of “parental leave” and “share my responsibility” can be introduced as now a day’s couples are equally working “to improve the standard of their family and livelihood.

CHAPTER-6

ENFORCEMENT AND IMPLEMENTATION OF MATERNITY BENEFITS: AN EMPERICAL ANALYSIS

6.1 Introduction

Once in a lifetime, every married female during her pregnancy has to make a choice between her job continuity or to quit her work. This is a very difficult and a troublesome decision for a female who has spent numerous years on her study and grew with an ambition in life. Becoming a mother is also a God's invaluable asset to a female but when given a choice between work and child, every female puts her baby at the priority. Maternity benefits protect a woman from negative thoughts that if she will be able to get post natal care or sufficient time to nurture her baby.

This chapter addresses the important aspects related to the "Maternity leave" provisions: "the duration of maternity leave" and the "maternity benefits." It also checks the "Employer & employee's perspective" to "Maternity Benefits Act" in the "private organizations".

It also analyses the existing provisions for "maternity protection" and also takes into account into the matter of awareness of this beneficial law. It also summarizes the dissatisfaction among the female workers related to maternity benefits currently provided by their organization.

The analysis is based on deep study of the sample of 28 "private educational institutions". The Sample covered 90 such female employees from "private institutes" who have availed "maternity benefits". The female worker who has not yet availed "maternity leave", are aware of it.

10 respondents in the sample are from the government institutes who are either "judicial officers", "Deputy District Attorneys", "Chief Medical Officers" or "Assistant Professors" in "Government Universities" or "Government aided colleges".

It includes women, who at some point in time of their careers have felt that there should be a "proper maternity leave" provision to take care of their offspring but unable to get it because of poor "maternity leave policy" of their organization and it weak enforcement.

The fact is not doubtable that women are an “extensive part” of “labour in our economy” and “their number and participation is only increasing”. Impliedly, every working female at some point in time must be given a choice to choose between her work or baby/ family. Every female must have found herself in the clutches of family responsibilities with no support system at home and workplace levels. She would have then left with no option but to quit her job.

“Maternity Protection” is a very “delicate issue” and “affects a very large number of women who are employed in one or the other organization”. The data for the study is collected through questionnaire prepared for this purpose that includes questions on the “general information” of the respondents, their “job status”, “awareness” about “maternity law” and “organizational policy” on it.

In the course of this study, an attempt is made to analyze if the working female employees are happy with the present “maternity law” with respect to their “maternity leave” and “salary” or other benefits during that period. It is discovered that “pregnancy”, “childbirth” and its aftermaths are one of the reasons for a woman’s decision to shift from one establishment to another.

It is not difficult to understand that these women must have not received the kind of “protection”, “assistance” or benefit that they needed at the time of their pregnancy and after delivery the baby, therefore, they have chose to stay at home rather than to go to work leaving their newborns under the care someone else.

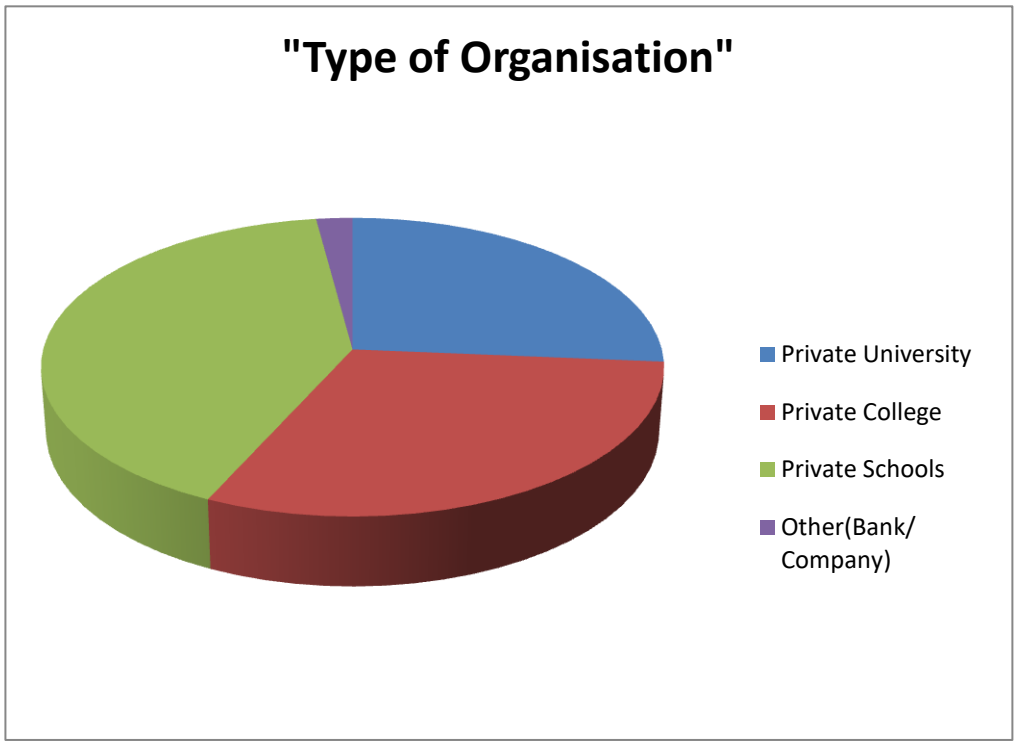
In countries where strong system of “maternity protection” is being implemented, it is observed that women’s attachment with their “employment”, their “loyalty”, and “dedication” towards their work and “organization” is stronger.

6.2 Background of the Sample Surveyed

The Universe of this Study is the private educational institutions in the State of Punjab. The personal observance created curiosity in the researcher to conduct study on this issue. The sample of 100 married female respondents from 28 different private institutions was selected throughout Punjab from various districts viz. “Hoshiarpur”, “Ludhiana”, “Bathinda”, “Fatehgarh Sahib”,

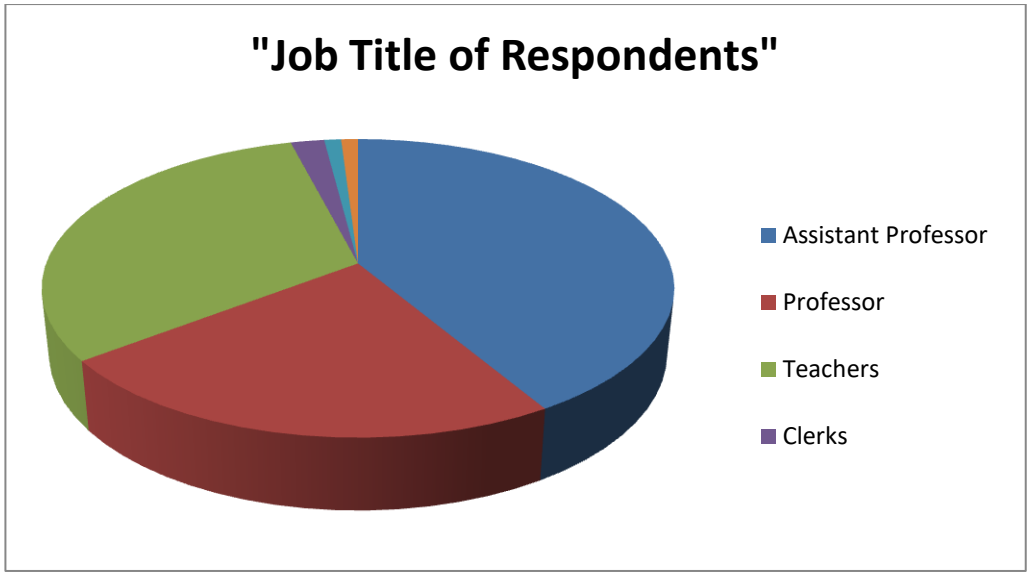
“Amloh”, “Kapurthala”, “Ropar”, “Faridkot”, “Saheed Bhagat Singh Nagar/ Nawanshahr” “Jalandhar”, “Amritsar” and “Mohali/ Sahibzada Ajit Singh Nagar”.

6.2.1 Type of organizations from where data is collected



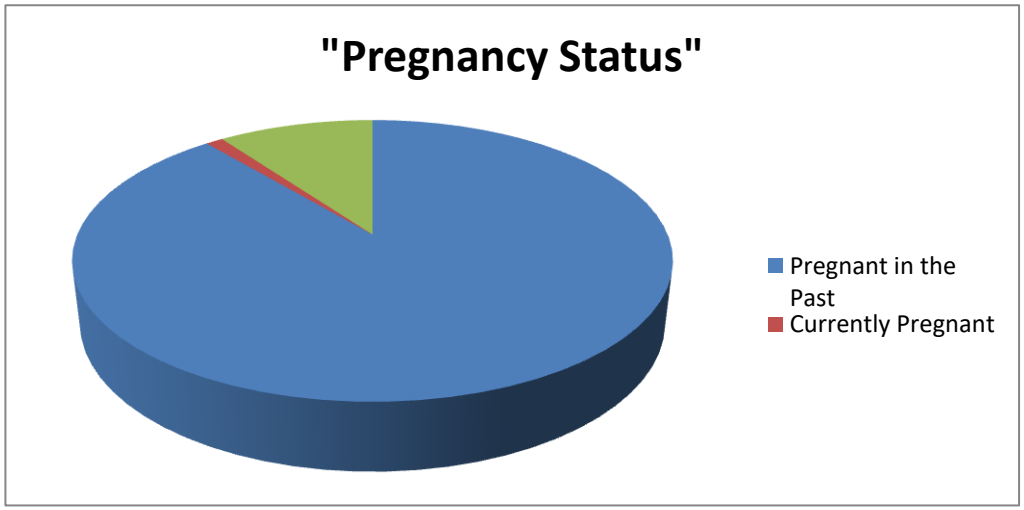
The main focus of this research work is private educational institutions from different corners of Punjab. The Researcher has collected data from married female employees of 7 private universities that comprise 25 percent of the total number, 8 private colleges (29%) and 11 private schools i.e 39 percent of total number and 7 percent of other private organizations that include a private bank and a company.

6.2.2 Job Title of Females from whom Data is collected



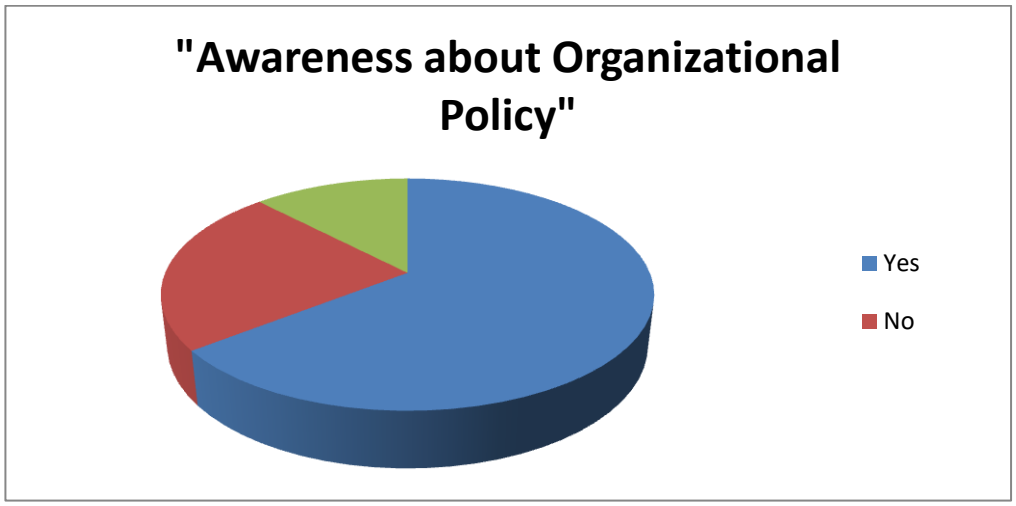
The data is collected from working female employees who are at least graduates or either possesses a masters or a doctorate degree. The data shows that the respondents are well educated and cannot be fooled by their employers with respect to fake organizational policies on maternity benefits. 41 percent of employees are assistant professors in various private universities and colleges, 23 percent are Professors, 31 percent are teachers, 3 percent are qualified clerks and one percent held the post of branch managers in the private banks or senior consultants in a private company.

6.2.3 Pregnancy Status of female Respondents and Maternity Awareness



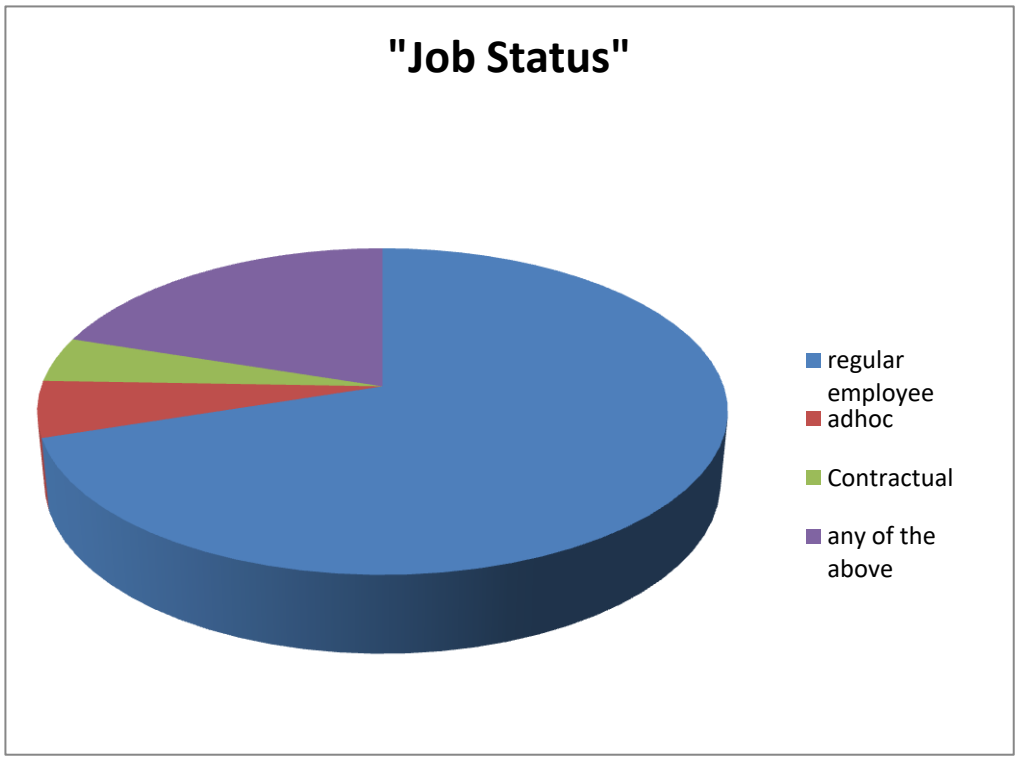
Out of all the 90 Respondents, 90 percent of female employees got pregnant in the past and have availed maternity benefits. 9 percent of them never got pregnant and are not pregnant but are aware of maternity benefits. Out of all, 1 percent of females is currently pregnant and is aware of maternity benefits.

6.2.4 Percentage of Females Aware about the Organizational Policy on Maternity



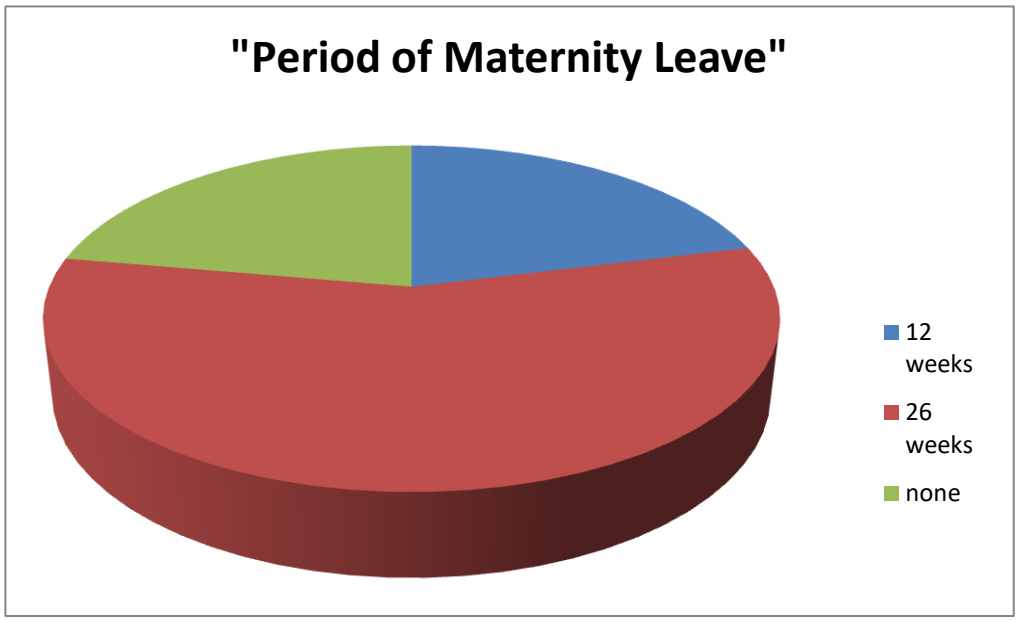
The data shows that out of the total number, 65 percent females are aware of the organizational policy on maternity, 23 percent said that they are not aware of the organizational policy on maternity and 12 percent responded that they do not anything about the organizational policy.

6.2.5 Job Status for being entitled to Maternity Benefits



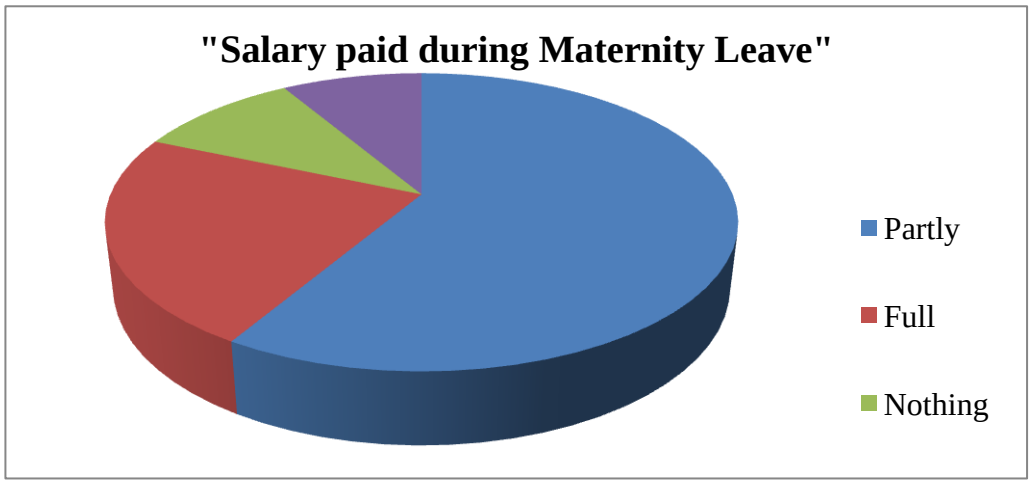
The data shows that 70 percent respondents said that you can avail maternity benefits only if you are a regular employee in an organization. 5 percent says that if you are an ad hoc employee then you can avail maternity. Similarly 4 percent have said that if your job is contractual then you can avail maternity benefits whereas 20 percent said the maternity benefits are available to all irrespective of their job status.

6.2.6 Period of Maternity Leave



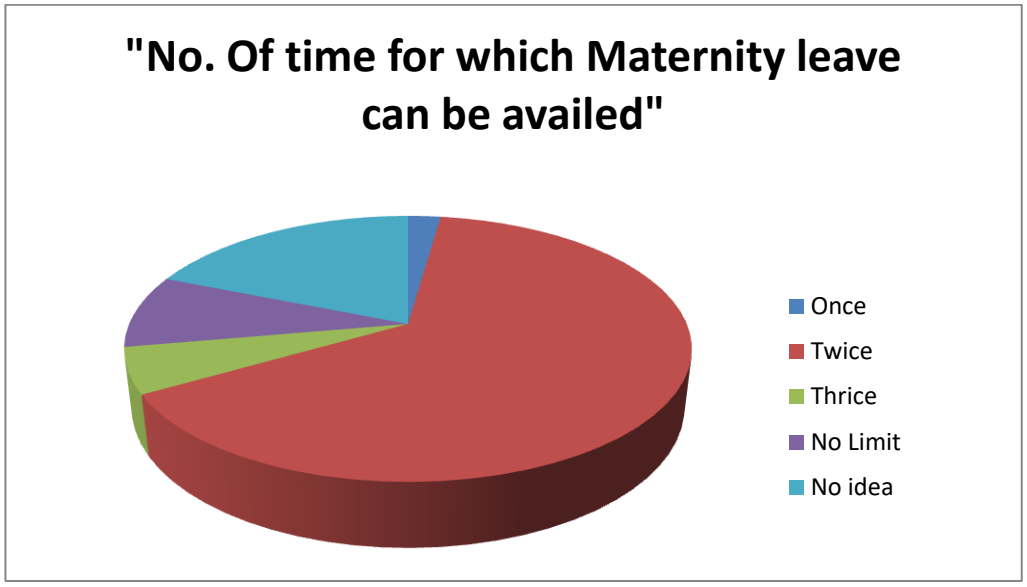
Out of the Total 21 percent employees said that they get 12 weeks of maternity leave, 57 percent responded that they get 26 weeks of maternity leave and 22 percent said that they get nothing on the name of maternity leave.

6.2.7 Salary paid during Maternity Leave



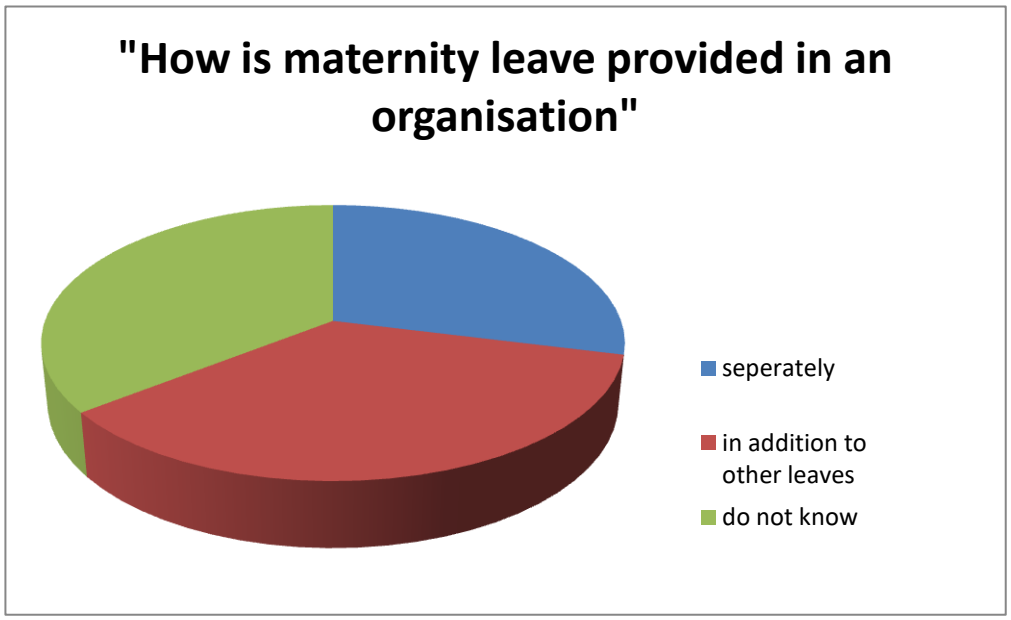
As per the data 44 percent respondents discloses that they get full pay for the period of maternity leave, 26 percent said partly and 30 percent said that they are paid nothing for that period

6.2.8 Number of times a working female can avail Maternity Leave



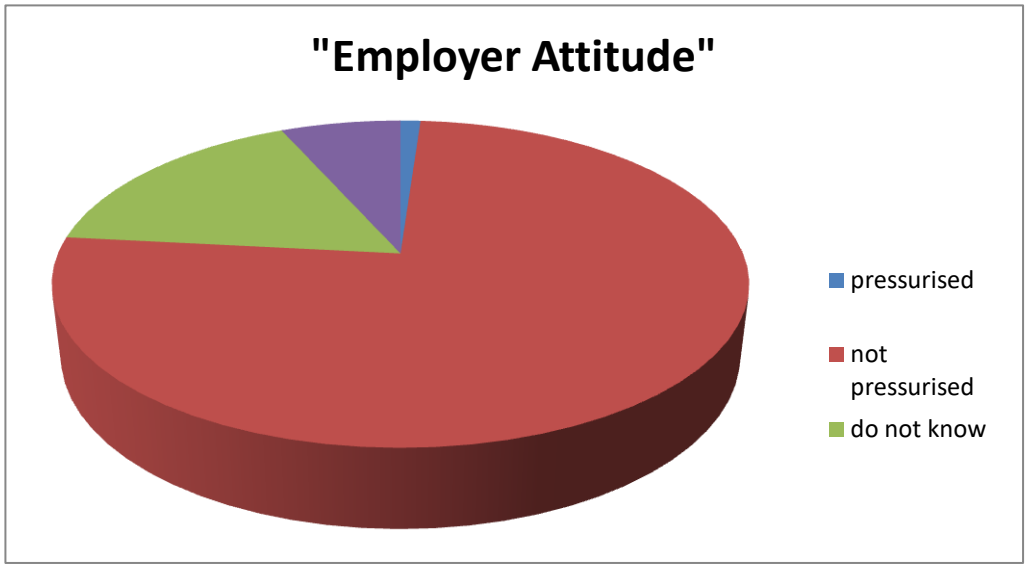
As per the data available, 64 percent respondents said that they can avail maternity leave twice during their job, 2 percent responded that they can avail it once, 6 percent said thrice, 9 percent said that there is no such limit and 19 percent of the respondents had no idea about this.

6.2.9 Maternity is provided separately or in addition to other leaves



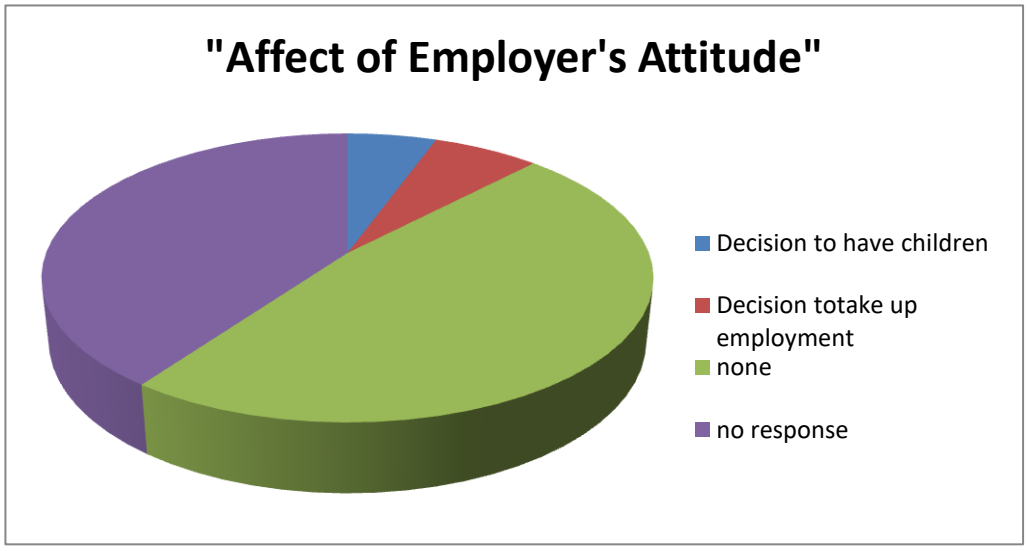
36 percent of females said that maternity leave is provide in addition to other leaves given in a organization (casual or earned leaves),28 percent said that it is provided separately whereas 36 percent said that they have no idea about this.

6.2.10 Employer's attitude towards Maternity



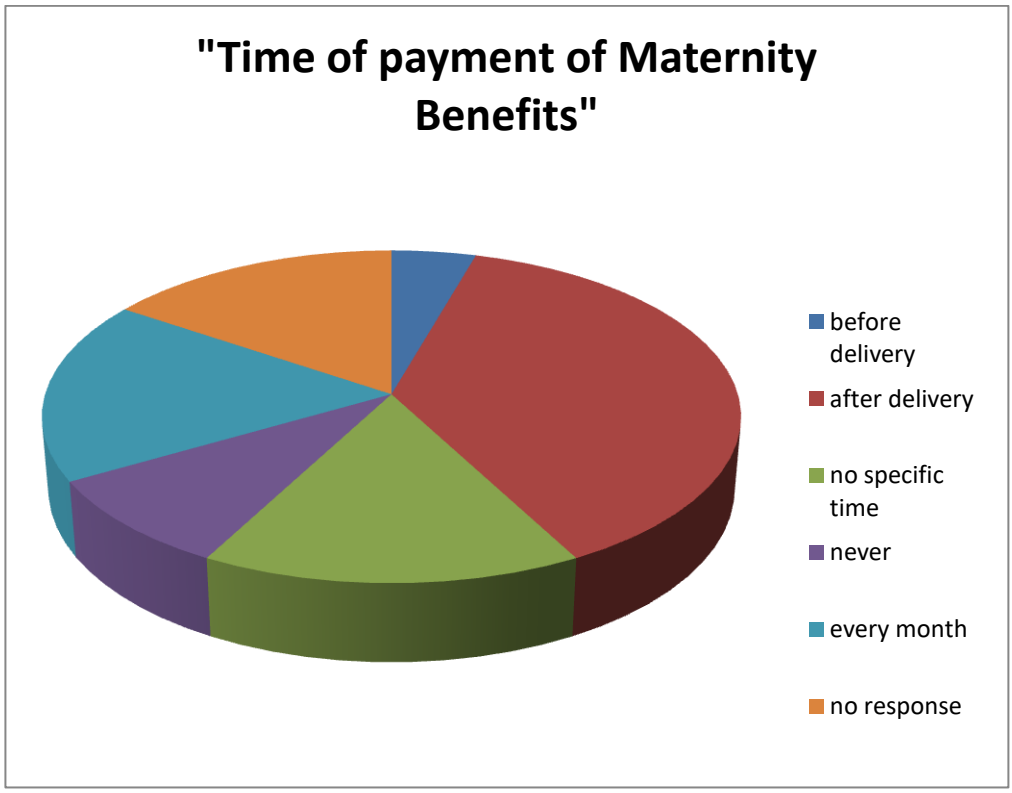
Only 0.1 percent of respondents said that their employer has pressurized the employees for not taking maternity, 76 percent said that it had never happened in their organization, 16 percent respondents are not aware of any such incident and 7 percent have given no response about this.

6.2.11 Affect of Employer's attitude towards Maternity



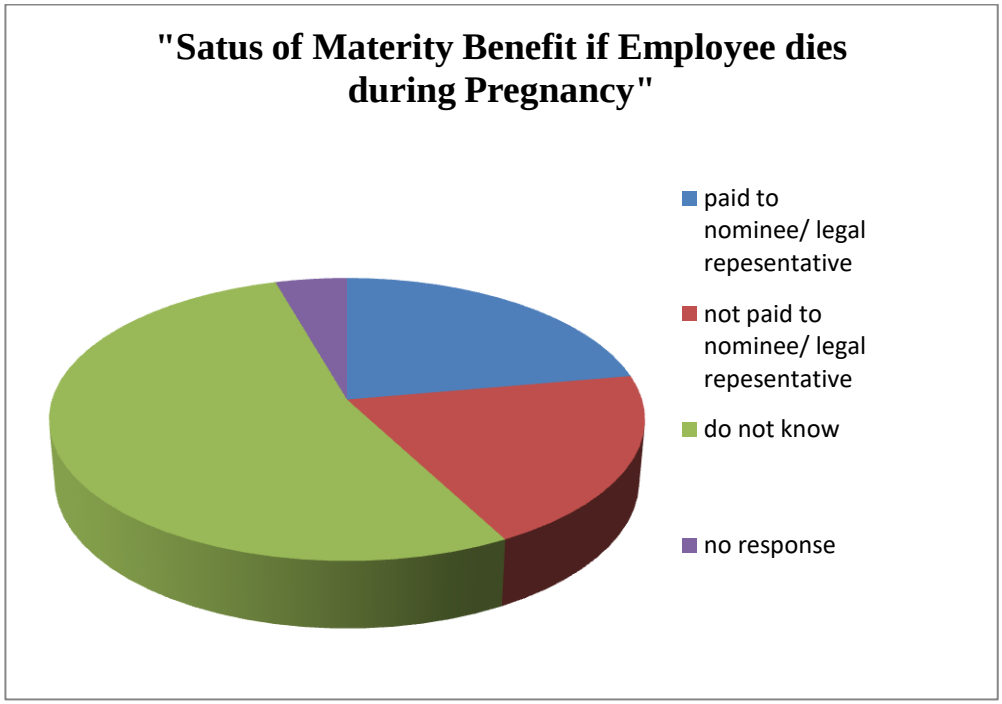
As per the study, 5 percent respondents said that their employer's attitude regarding maternity leave has affected their decision to have children. 7 percent respondents said that their employer's attitude regarding maternity leave has affected their decision to take up the employment. 48 percent said that the employer's attitude has put no affect on the employee whereas 40 percent of them stood quite on this issue.

6.2.12 Time of payment of Maternity Benefit



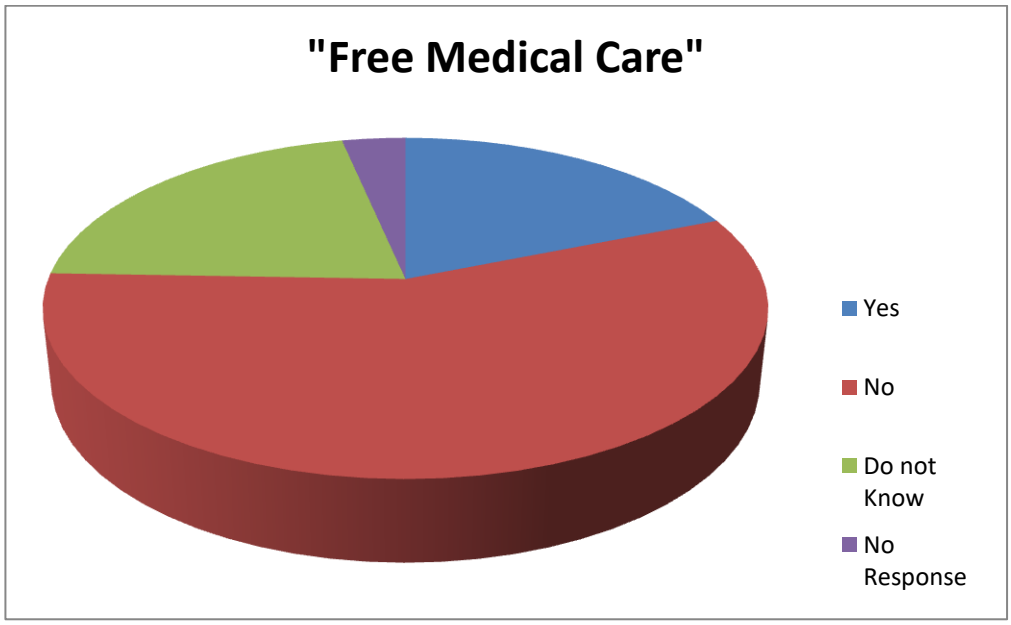
On this question, 4 percent respondents replied that the maternity benefits gets paid to them before delivery, 38 percent respondents said that they get paid to them after delivery, 15 percent said that there is no specific time, 9 percent said that they are never paid any benefits, 18 percent said that they get it every month after delivery and 16 percent remain quite on this.

6.2.13 Status of "Maternity Benefits" on death of an Employee



On this point, 22 percent responded that in case of death of an employee during pregnancy, her benefits are to her nominee or legal representative. 20 percent said that her benefits are not paid to her nominee or legal representative. 53 percent are not aware about it and 4 percent gave no response on this.

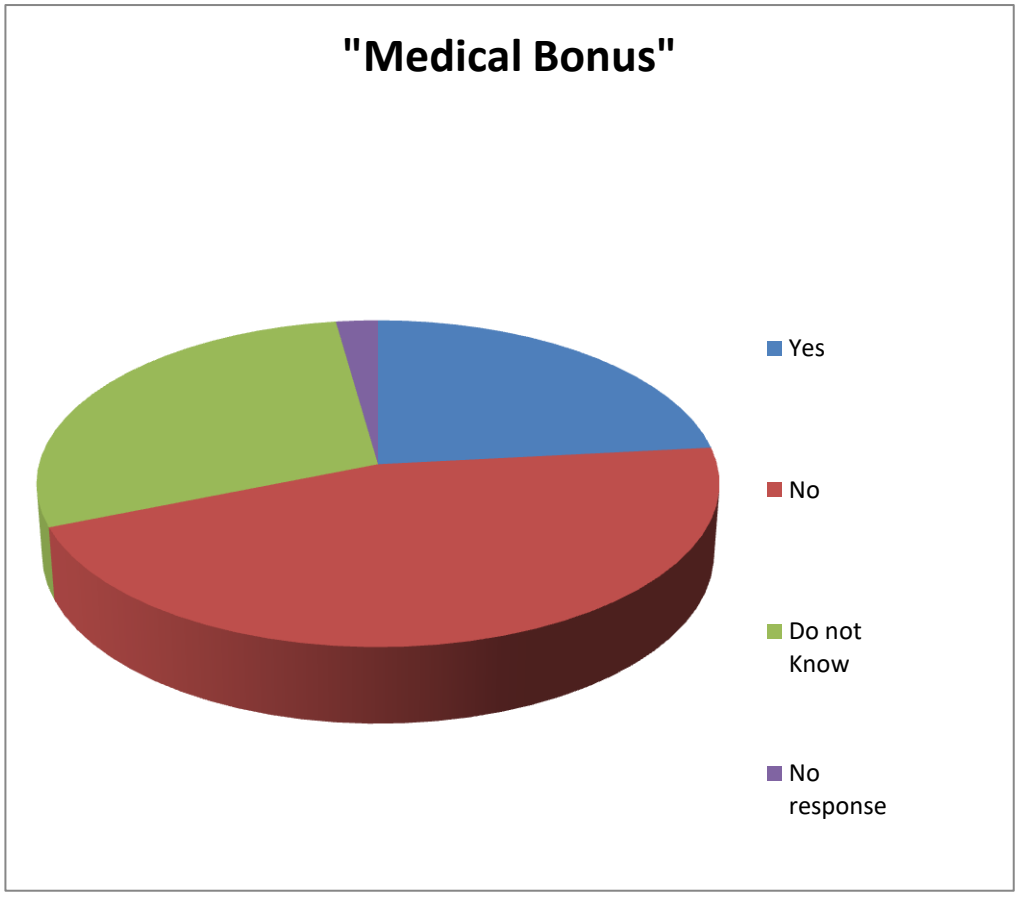
6.2.14 Percentage of Pregnant Employees who got free "Medical Care" during Pregnancy



As per the data, 19 percent respondents said that they get free medical care from their organization during pregnancy, 57 percent said no to this facility 21 percent respondents do not know about it and 3 percent respondents have not given any response.

6.2.15 Percentage of Pregnant Employees who got "Medical Bonus"

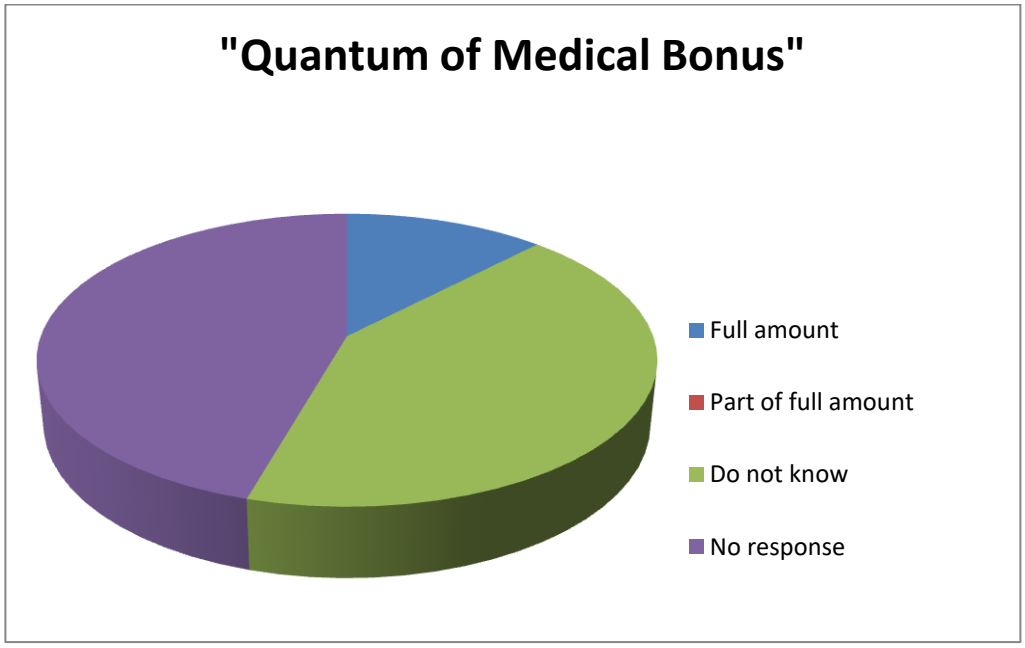
"Section 8" provides that "every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of Rs.3500, if no pre-natal confinement and post-natal care is provided for by the employer free of charge to the employee."[310]



On this point, 23 percent have said yes to the provision of medical bonus in addition to maternity leave pay. 46 percent have said No and 29 percent have said that they do not know about it and 2 percent remained silent on this.

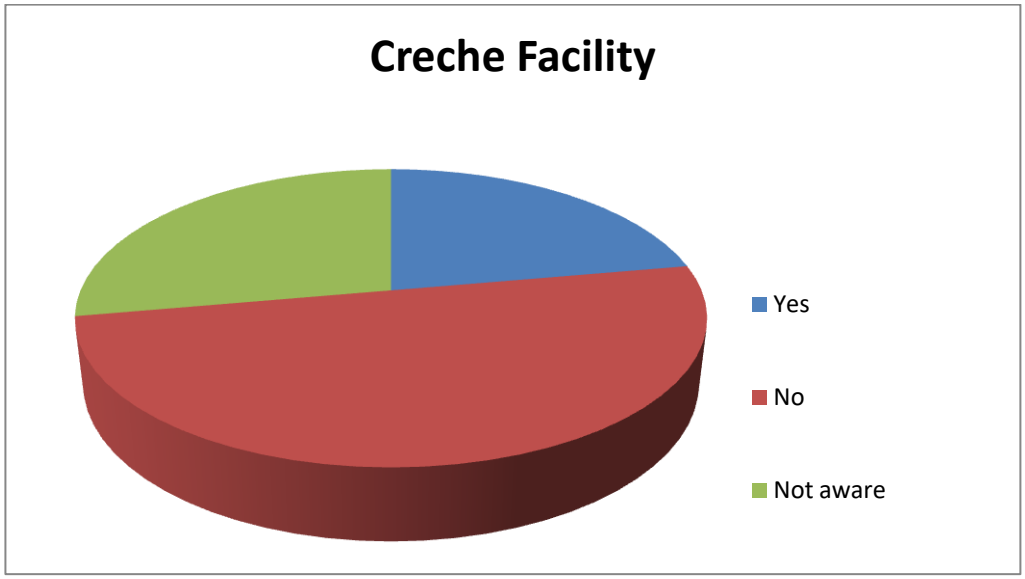
[310] The Maternity Benefits Act, 1961 (No. 53 of 1961).

6.2.16 Quantum of Medical Bonus Received by Pregnant Employees



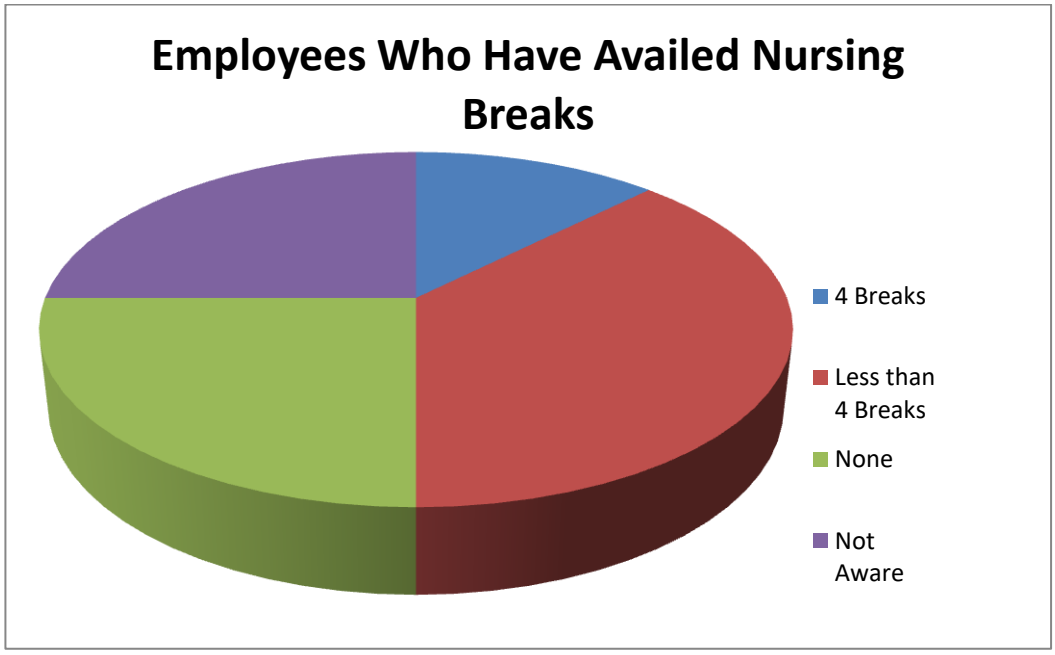
As per the data, 12 percent respondents said that they get full amount of medical bonus as per the law, 42 percent said that they do not know about this and 46 percent have not replied to the question.

6.2.17 Percentage of Employees who availed the benefit of Crèche facility in Organization



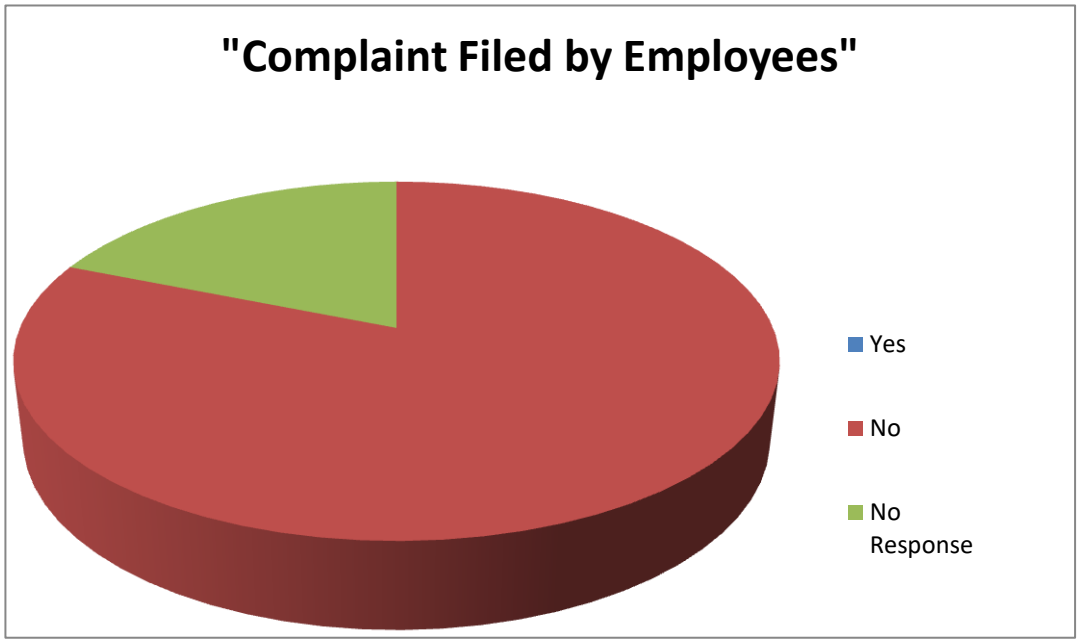
On being asked that if the organization has provided the crèche facility for nursing mothers, 20 percent of women replied YES, 45 percent said NO and 35 percent are not aware of any such facility.

6.2.18 Percentage of Employees who have availed Nursing Breaks



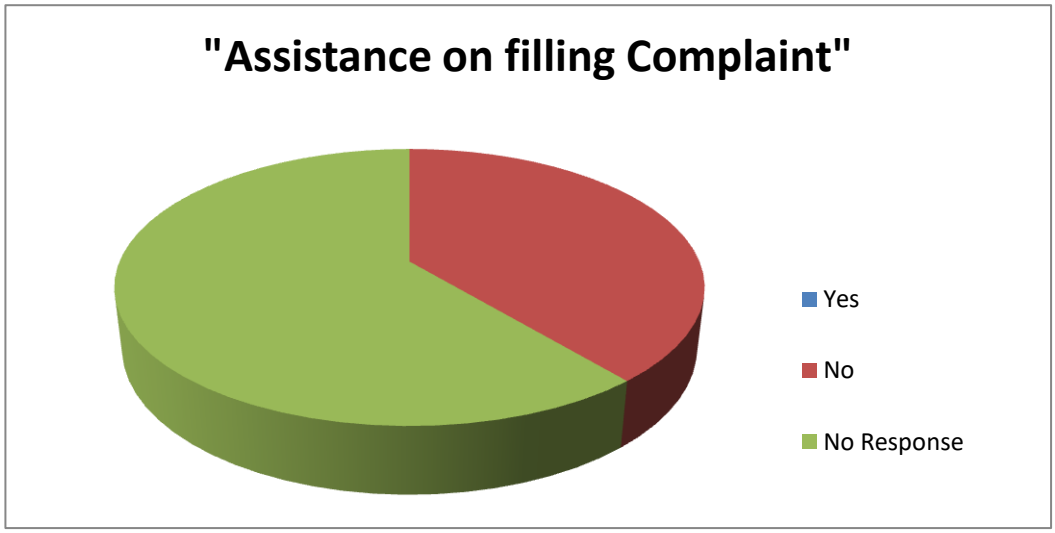
On being asked about the nursing breaks available to female employees in their organization, 10 percent women said they get 4 breaks in a day, 30 percent replied less than 4 breaks, 20 percent said none and a major proportion of women workers are not aware about it.

6.2.19 Percentage of Employees who have filed Complaint on their Maternity Benefits been withheld by Employer



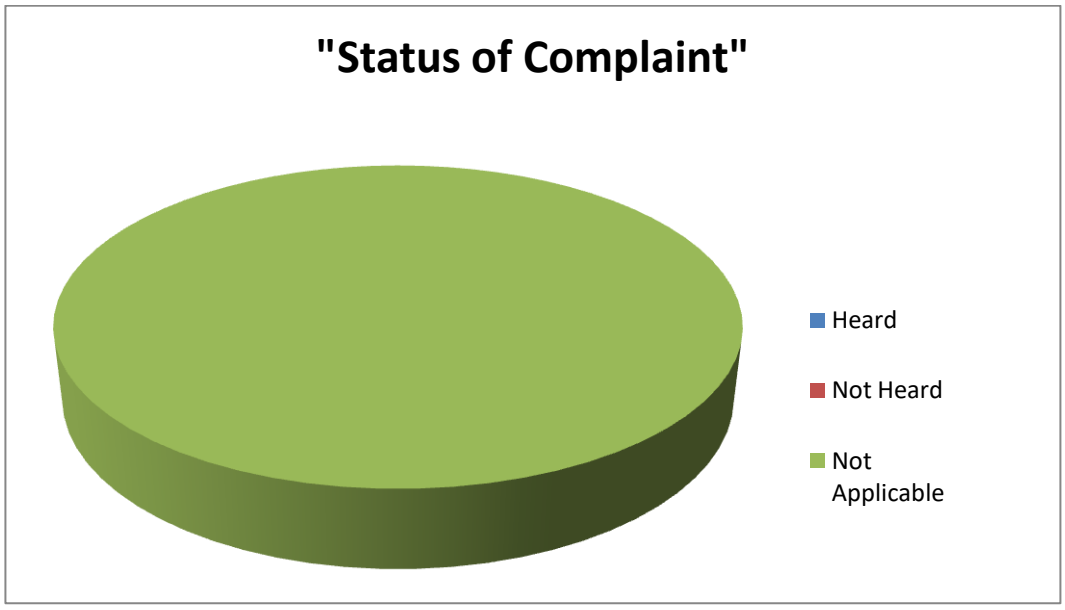
Out of the total respondents, 81 percent of respondents have never filed any complaint against the grievance of their maternity benefits been withheld by their employer and 19 percent have given no response on being asked about this information.

6.2.20 Percentage of Employees who received Assistance on filling complaint



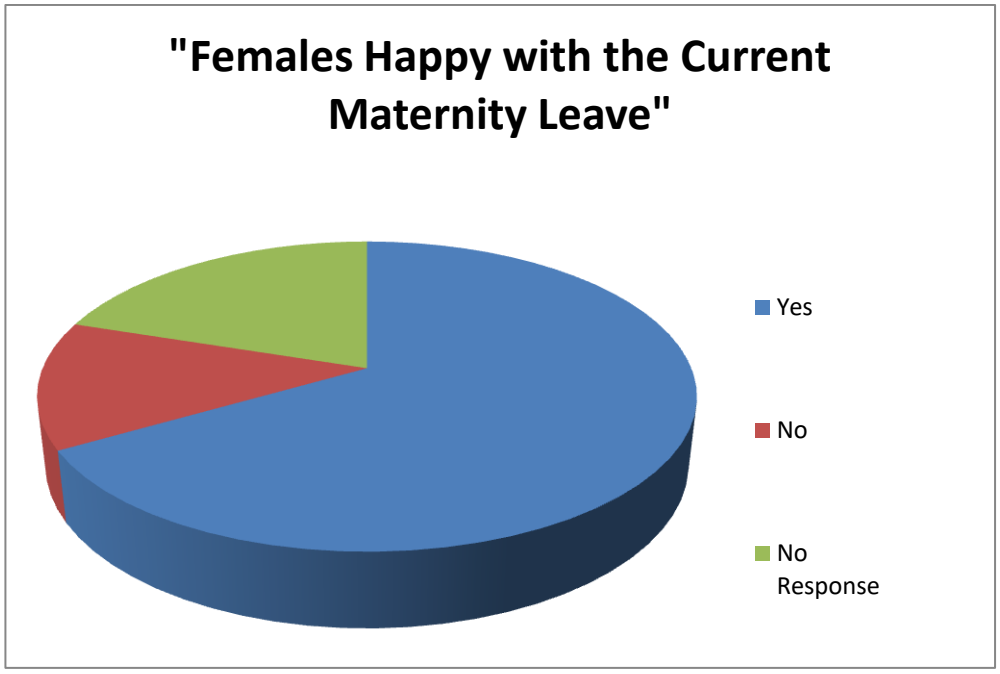
When asked about this information, 39 percent respondents said No on receiving any assistance on filing a complaint against maternity benefits not been paid by the employer whereas 61 have not responded anything.

6.2.21 Status of Complaint



The data shows that out of 90 respondents none has ever filed any complaint so the question of it's being heard or not heard doe not arise.

6.2.22 Percentage of Employees happy with present Maternity Benefits



The data shows that 67 percent females are happy and satisfied with the present maternity law and 13 percent showed dissatisfaction whereas 20 percent have not responded.

6.3 Reasons given by Female Employees in support of Maternity Benefits

- It is the right of every female
- It secures career.
- It is necessary for better health of mother and the child.
- It helps a mother to heal mentally and physically.
- It helps to develop mother-child bonding**.**
- It provides financial support to a female during her leave**.**

6.4 Suggestions for Improvement in Current Law by Respondents

- Tamil Nadu provides 9 months leave. Same should be adopted in Punjab.

- Present law should be strictly implemented.
- Maternity leave should not be limited to two children. It must be available every time a female gets pregnant or suffers health problem like miscarriage.

6.5 Weird things that Happen during Pregnancy

Besides labour pain and post natal implications, a female faces a lot of troubles during the period of her pregnancy for which she requires adequate work off. There are number of problems that she face and cannot feel comfortable when staying or dealing in public for long hours.

6.5.1 "Mood Swings"

A female miss her periods as she conceives and from the time she misses it, her she start getting mood swings. There are situations when herself become irritable or gets irritated easily. This in return could affect her health and work efficiency or could even have a bad impact on the workplace environment.

6.5.2 "Farting and Peeing"

During pregnancy, it is common that a female finds difficulty in controlling her urine due to heavy pressure in the urinary bladder. So it happens that she pees and gets her clothes wet. She may also face uncontrolled gaseous activity due to intake of health supplement and changed dietary tastes and fart at times publically.

6.5.3 "Nausea and Vomiting"

The health supplements given in pregnancy from the first trimester itself in the form of folic acid tablets and multivitamins the medicines may churn your stomach and make a female feel queasy. So it becomes difficult for her to sit and work for long hours.

6.5.4 "Depression"

In expecting mothers, the inadequate prenatal care may result into depression. Women undergoing depression during that phase often have decreased appetite and consequently low weight gain than is expected in pregnancy.

"Maternal depression" also badly impacts the health of the growing fetus. So adequate leave and rest during pregnancy is a must for an expecting female.

6.6 "Maternity" and "Women Empowerment"

The issues of "gender-equality" and "women empowerment" have caught attention in recent times as "vital questions that continue to divide the civil society". Because of their "adjusting", "caring", "cooperating and "sacrificing" nature, women were "subjected to discrimination" and "violence in the past and in the present as well". The "pregnant" women and those rejoining the work often suffer high levels of "discrimination" and "harassment" after a "maternity break" of 26 weeks. This period of 26 weeks "covers the crucial first months" when "exclusive breastfeeding" is beneficial for the wellbeing of a mother and her child.

"Expecting females" and "nursing mothers" not only need "special protection" but also "require sufficient rest" to give "birth", "recover", "nurse their babies" to stay healthy. Simultaneously, they require some sort of assurance that they will not lose their jobs because they have availed "maternity leave" and "benefits". Thus, "maternity laws" are introduced throughout the world "to safeguard the health of women" availing "maternity benefits" and "protecting them from job discrimination".[311]

The "Empowerment of women" is "complex and multifaceted". It is one such characteristic that may influence an unhindered woman's participation in the workforce. In primitive times, women had a principal role in "childbearing" and "child rearing" even when they have the support of partners or spouses.

In case of working women, who do not have adequate support due to present nuclear family setup, this responsibility often becomes an obstacle to their work ability. The law mandates employers to provide female employees with a "paid maternity leave" to afford her with "sufficient time" and "sufficient space" for nurturing her just born baby.

It also obligates every establishment to have a crèche facility so that the female can take rest and nurse her baby. These measures will also encourage women to return to work without any tension of leaving their new born unattended.

[311] Neysa Amber Gomes Desouza, "Equality and Maternity Benefits for Women in the Labour Force" *ILI Law Review* 23 (2020).

On realizing the "need for women empowerment" at workplace, The "Maternity Benefit (Amendment) Act", 2017 was passed and "Paternity Benefit Bill", 2017 was also introduced in the same year, albeit to include "modern notions of gender equality", recognizing that equality is a basic human right".

"Paternity leave" means the benefit of a paid leave of 15 days extendable to a period of 3 months that is offered to a "male employee" of an "organized institution" or an "unorganized institution" so as to enable him to take care of his newborn baby and to provide support to its mom.[312]But unfortunately the Bill is not yet shaped as a law.

The state's role in supporting working mothers in order to minimize "workplace discrimination" and to encourage "female participation" in the workforce is of great significance. While "private employers" can contribute towards "social issues", such as "increased employment" and "equal opportunity", the government can be lead master in truly implementing it in the form of various schemes generating more employment opportunities.

The government should focus on incentive schemes to distribute the burden of "maternity leave". Moreover, "private corporations" should be conferred "certain incentives to encourage them to give full effects to these laws".

6.7 Conclusion

At present, it is found that in almost every country, a common and central feature in the legal provisions for "Maternity Leave" is that it permits new mothers to leave their work place before childbirth and return to their job after bringing their baby to the world. This study aimed at finding out the extent to which these principles that form the base of maternity protection rest are being enforced and implemented in different private educational institutions in "Punjab" and to identify reasons which create difficulty in their effective and wider implementation.

The study done on the "Private Educational institutions" (Universities, Colleges, schools) of different districts of Punjab discloses the problems faced

[312] *Id.*, at p36.

by employees in availing “maternity benefits” despite the “Maternity Benefit Act”.

Out of all women respondents, very few were found confident to provide the information. Many were reluctant in providing the “personal details” and “name of their organization” under the fear to lose their job. They were scared as during the “Covid 19 Pandemic” period, when the private organizations were already working with 50 percent employee capacity, none want to claim their rights so that they cannot lose their employment. As in such a situation, the employers will employ male staff in order to prevent themselves from additional financial burden of paying salary of “maternity leave”.

The Empirical Data collected reveals the results from 100 married pregnant female employees of different private educational institutions of Punjab having varied job status. 90% women got pregnant in the past and have availed maternity leave. Out of these only 44% were paid full salary during maternity leave period. Very few 65% of these females are aware of the organizational policy on “Maternity Benefits”. Only about 20% are aware of the period of Maternity leave and related benefits in the form of “creche facilities”, “nursing breaks”, “free medical care” and “medical bonus”. There is hardly any woman who was ever pressurized by the employer for not taking the maternity leave so only 80% have agreed that they have filed complaint against the employer or required assistance for it.

The research also discloses that 63% of the respondents are happy with the present Maternity leave policy. These females also tell that in addition to “post natal difficulties”, there are many other problems like “mood swings” and “depression” that females began to face from the initial stage of becoming a mom. So they suggested that “maternity leave” should be so framed that she has sufficient time before delivery also to maintain her health, her fetal growth in order to avoid “c-section delivery” and “epidural delivery” and be strictly implemented by every institution.

During the research work, the researcher got the opportunity to interact with few “judicial officers” and “deputy district attorneys”. The interaction cleared the cloud of belief among the people generally that the maternity benefits are provided in the government sector. But actually the picture is vice versa.

Although the females are provided “maternity leave” but there are other issues that remain unaddressed. One among them is the additional work load that they had to bear when they join back after “maternity”.

Women feel that maternity benefits are necessary but are not being implemented and enforced in “private organizations”. They are not paid for the period of maternity and private institutions also do not have a specific period during which the benefit will be paid to the employee.

CHAPTER-7

CONCLUSION AND SUGGESTIONS

"Social Security" represents a system of protection for people in contingencies viz. "retirement", "resignation", "retrenchment", "old age", "death" or "maternity". State as a "society's copartner" has a responsibility of harmonizing the mass comprising of the "poor", the "weak" and the "underprivileged". Since last decades, an unseen and inaudible revolution significantly impacted the "human civilization".

The concept of "social security" is not alien to India. The history of labour legislations in India is a witness to it. It was prevalent in the form of family or religious institutions in the past but gradually lost its importance due to "modernization". The shift from joint family to nuclear family system was also responsible for more demand of "social security". Sudden growth in industries further lead to the need for formulation of "effective labour policies" and laws.

Before independence, "social security" laws had no existence and remained neglected. But later, after independence the framers of the legislation formulated many provisions dealing with "social security" laws. However, there was hardly any discussion and no serious steps were taken towards the policies on "social security" until the "Ninth Five Year Plan". The "Five Year Plans" are quite about "social security planning" and "did not even take cognizance of the prevailing schemes".[313]

But during the last years, India has witnessed a shift in the "social security" measures. Even though there are numerous programs for social protection of the people but their implementation seems to be a distant dream due to the ignorance among the masses. The "Fundamental Rights" and the "Directive Principles of the State Policy" cast a "duty on the State to assure an adequate means of livelihood" and the right to work" to its "citizens".

The "Constitution of India" lay down that the "State can't be compelled to provide adequate means of livelihood" or "work to the citizens by an

[313] Abbas and Varma, *Social Security for Unorganised Workers in India*"6 (Action aid Publishers, Bangalore, 2009).

affirmative action". The "Directive Principles of state policy" are so designed to afford an idea "to the Central government and "State governments" to make "labour laws "to safeguard "social order and living wage for them" in consonance with the "economic" and "political" conditions of the country.[314]

Due to the increasing industrialization in the country and the restricted entitlement for "unemployment", "sickness benefit" and other benefits, a significant portion of the working population in the country remain outside the "social security" framework.

The various Indian legislations on "social security receives strength and spirit" from The "Directive Principles of the State Policy" enshrined in the "Constitution". "Social Security" is progressively seen as "an integral part of the event of economic process" and "better productivity".

The primary objective of "social security" is to provide "food", "shelter", "health", and "care" to everyone. Therefore "social security" falls within the meaning of "life" as provided by "Article 21 of the Constitution" i.e. "the right to live a dignified life". Commitment of "social security" to the destitute is enshrined within the Constitution and India as a "socialist state" has a principal aim of providing an honest normal living to its population.

There was much legislation passed in India that aimed at the "social security" of working class in the "organized sectors" and "unorganized sectors". However, despite "numerous beneficial legislations", majority of the workmen still remain deprived of the benefits under them.

This situation is the result of "ignorance" of the employees and "lack of commitment" to the rights and welfare of "labour", on the part of the "employers". The "employers" who are abided by the obligation of ensuring the "rights" and "welfare" of the people in the society ignore the rights of the working class.

The female population working in the private sector is leading a life below satisfaction as the money that they are earning is not enough to meet their daily requirements. They have to play a double role thereby managing both their households and their careers. For the sake of securing their jobs they

[314] The Constitution of India, arts. 21, 38, 39, 41, 42, 43, 43-A and 47.

work in unhygienic conditions or some even return to work before their body actually recovers the post delivery weakness.

They give their best at job out of the minimum skills that they possess and become the victim of "gender discrimination". They lead a poor life as a result of lack of "basic knowledge", "ignorance of government", "inadequate laws" that are "insufficient" and "inefficient" to protect them from serious work constraints such as "lack of continuity", "insecurity", "wage discrimination", "unhealthy job relationship", "absence of medical care" and "accidental care" etc. Besides the fact that they possess same productivity and efficiency like men even then are forced to live under conditions of absence of "health care".

Many laws are made in India to provide "social security" to women against various risks that are unusual to their nature of work to uplift their status and improve their working conditions. They are the benefit legislations under which women workers are given various "rights", "benefits", "concessions", "protection and other safeguards".

The main goal of "labour laws" is "to prohibit the violation of rights of women workers" and "to provide them security and protection". But, most of these laws are available to the "organized sector" only and not to the "unorganised sector". This sector employs a wide majority of the women who remain unattended by the legislature. Moreover, the statutory provisions are not strictly complied by the organisation covered by any legislation.

Though the Government has passed the "Unorganized Sector Workers' Social Security Act, 2008" that aims "to provide social security benefits to the vulnerable classes of persons". The Act stands unsuccessful in fulfilling the demands of the "unorganized workers". The Act offers those schemes that are not applicable to all "unorganized sector" workers universally. The schemes apply only to an employee who along with his family is living below poverty line. Thus the Act is failed in realizing the aspirations of millions of poor workers.

So it becomes compulsory to make the journey of motherhood special as well as easy for women so that they will be able to take care of themselves as well as their child. They must be free from every kind of pressure both at work and at home.

The “Employees’ Compensation Act” is one such legislation among others that are seriously criticized mainly by the “employer”. The provisions of the Act are not fair towards the masters. It attracts attention as why only the employers are held responsible to pay full compensation against an accident for which they are not personally involved for causing death.

The Act also lacks implementation when it comes to the workmen. The implementation of the Act needs to be checked, particularly in regard to small establishments that “find excuses to avoid the payment of compensation to the workers”. The “bigger companies”, however, pay the compensation but often miss to report particularly in case of minor injuries.

The employer often takes the benefit of the ignorance on the part of labour and often ditch to pay his compensation or settles such cases on his own terms and conditions. Besides, there is no provision for medical help for the victim of accident. In case, where a worker dies or gets serious injuries, it becomes impracticable for his dependents to meet out the situation effectively.

There are many difficulties that exist in the implementation of “Employees State Insurance Act, 1948”. Some “establishments” have a well- managed health care system for its “senior employees” who are “earning “wages above the ceiling” and “who are not compelled to join the Employees State Insurance Scheme”. The scheme is appreciated by “non-regular employees”, “casual workers and contract workers” who have no alternative facilities and are ignored protection by the employer.

India passed “Employees Provident Fund Act, 1952” to provide a “Medical benefit Scheme for the organized working class in selected industries”. In case of “Provident Funds”, the worker becomes the cheap financer of the government. Collection of money of the workers from the “Employee’s share” and the “Employer’s share” is the guiding principle. This money is “utilized for the Government” and “passed back to the worker with interest when he leaves the services”. In other words, the “unseen future of workmen is saved which is either “death” or “retirement” in case of workers”.

With the advent of “industrialization” the role of women in every field has increased. They are participating actively at the work front. But when it comes to the family, women face lack of support. The employers feel hesitant to

employ a female worker in the fear of affected work efficiency during their "pregnancy". Women are the most "deprived" and "unfortunate" section of the society who live in the "pathetic" and "miserable" conditions with more responsibilities, "stress", and "tensions" in their life.

Another "social security" legislation that talks in favor of working women is the "Maternity Benefits Act", 1961 which retards implementation both on the part of government and the employer. The Act "provides for maternity benefits in the form of "medical bonus" and "maternity leave".

The "Maternity Benefits (Amendment) Act" 2017 though has provided for more women friendly provisions in the form of "crèche facilities", "work from home" option and "nursing breaks" for female workers but is silent on the "paternity leave". The "paternity leave" is the requirement as this would help sharing of burden between a working female and her partner.

The "Social Security Code", 2020 is an important step towards providing uniform "social security" measures for the workers of "organized sectors" and "unorganized sectors". The Code "exclusively authorizes the central government to make rules" for "compensation to employees in case of occupational injury or disease" and "also prescribing the distance within which the crèche shall be made".

Judiciary play a "remarkable role in strengthening the applicability of social security provisions", especially those relating to the "maternity benefits" of female employees. It has gone to every extent in ensuring "maternity benefits" to a female worker irrespective of her "job status". It also smoothen the journey of "motherhood" by providing the "maternity benefits" not only to the "biological mother" but also to the "commissioning mother" of the child.

This has not only enhanced the strong bonding between a mother and her child but also secured the job of a mother as usually she was asked to choose between work and family. An analysis of the various judicial pronouncements disclose the fact that the judiciary has come forward to make good the deficiencies in law and its implementations in providing relief to female workers whenever and wherever required in the form of "maternity benefits" and "Child Care Leave".

Besides the efforts made at the national level for providing "social security" to the female working class, international standards have also contributed towards it. Due to this backup support social security has now achieved the status of a "human right to which every human being is entitled".

"International Labour Organization" (ILO) has done a commendable work to achieve "social justice" for the workers and promoting opportunities of decent work conditions for men and women.

ILO has drafted numerous "conventions and recommendations" that cover a variety of subjects, such as matters relating to "employment", "unemployment", "conditions of employment", "employment of women and children", "occasional training", "industrial health and safety", "social security", "industrial relations", "maritime labour", "immigration", "freedom of association" and "right to form trade union".

India has not ratified most of these "International Conventions" because the "scope", "coverage and standards" envisaged in these "Conventions" are too high to be achieved under the existing conditions in India but they are included in the "social security" schemes in India.

"Human rights" are the "inherent" and "inalienable" rights of every person. These "rights are human" and therefore, "they are universal". The basic principles were initially laid by "Universal Declaration of Human Rights" and later by "International Covenant on Economic Social and Cultural Rights and International Covenant on Civil and Political Rights".

"Universal Declaration of Human Rights" stands worth in protecting "human dignity" by providing equal rights to all members of "human family" irrespective of their "race", "colour", "sex", "language", "religion", "political" or "other opinion", "national or social origin", "property", "birth" or other "status".

It also ensures the right to a "standard of living" adequate for the "health" and "well-being" of himself and of his "family" to every person. The various benefits under the "Universal Declaration of Human Rights" are "food", "clothing", "housing", "medical care", "necessary social services", and "the right to security in the event of unemployment", "sickness", "disability",

"widowhood", "old age" or "lack of livelihood" in "circumstances beyond one's control".

To women, "economic, social and cultural rights" are significant because "they are deeply related to poverty and inequality". Women are aware that their work life gets interrupted because of "care-giving and child-rearing duties". They are always paid less than their male fellows and have a "limited access to adequate social security benefits."[315]

"Covenant on Economic Social and Cultural Rights" covers "human rights" in the "economic", "social" and "cultural" sphere and undertake to ensure them equally to both men and women. It talks of the "right to work" in "just and favorable" conditions.

"International Covenant on Civil and Political Rights" ensures "equality of men and women in the enjoyment of civil and political rights". It talks about the "right to survival" and "right to life".

"International and Regional Instruments" have drawn attention to "gender-related dimensions of human rights issues". Significant among all is the "UN Convention on the Elimination of All Forms of Discrimination against Women".

It aims to ensure "elimination" of all "acts of discrimination" against women by persons or organizations and to ensure "full enjoyment of human rights to women on an equal basis with men", including "eliminating discrimination in employment".

Though, the "condition of working women has considerably improved" in India. But unfortunately, in spite of the "improvement in their status" they still "depend on men for many things". The reason behind this is the fact that "men in patriarchal society have the authority over the income" and "the decision making power of the family".

Since, the working women have gained "economic independence in the patriarchal set up" but "the basic infrastructure of society has not undergone any modification". Although a female's role is passing through a "transitional

[315]Claiming Women's Economic, Social and Cultural Rights, *available at:* https://www.escr-net.org/sites/default/files/Guide%20on%20Women's%20ESCR%20-%20Final.pdf (last visited on April 23, 2020).

phase" of "economic independence", she will remain "vulnerable to exploitation" because of the restricted mental growth of the society.

Comparison of "Maternity Leaves" of Various Countries:

S.No	Country Name	Leave Period
1.	"SINGAPORE"	"Up to 16 weeks"
2.	"AUSTRALIA"	"Up to 18 weeks"
3.	"CHINA"	"Up to 13 Weeks"
4.	"BELGIU"M	"Up to 15 weeks"
5.	**"INDIA"**	**"Up to 26weeks"**
6.	"SWEDEN"	"40 weeks"
7.	"NORWAY"	"49-50 weeks"
8.	"CANADA"	"76 weeks"

When compared to many other countries like "Singapore", "China", "Belgium", "Australia", "India" provides a good "maternity leave" but when compared to many others Sweden, Belgium and Canada, the "maternity leave policy" still has a room for improvement in terms of "parental leave:, "paternity", "additional leave" and "paid maternity". As during the empirical analysis it was found that many "private organizations" in "Punjab" provide "unpaid maternity leave" or "partly paid maternity leave" to its employees.

Indian society still needs to give recognition to women for playing the "lead role" in "the family, work place or in the society". Many reasons are responsible for the existing "disgraceful and terrific state of affair of women in unorganized sector". This is because of the fact that "technological growth" has a adverse impact on women's role thereby ignoring her growth or working on her improvement at work front through training and adequate legislation.

The observation and collection of data based on the empirical research reflects that a large portion of female workforce depends heavily on the private sector. The females are educated to graduate and post graduate levels and many are also doctorates.

The data discloses the fact that maternity is the need of every female married employee who wishes to have a child or children. A higher percentage of respondents feel the need of maternity leave in view of their own health and that of her baby during pregnancy and after delivery.

They feel that a sufficient amount of leave is necessary for a female "post delivery" so as to enable her to take care of her child and also to become physically and mentally strong to balance the responsibility of being a mother along with that of being an employee. Though there are women friendly legislations but their awareness is not widespread. The females are aware of their employment related rights but are hesitant to claim in the fear of losing their employment.

However, while the law has brought some cheers on grounds that it at least acknowledges that women are entitled to maternity benefits, the critics point out that it will benefit only a minuscule percentage of women employed in the organized sector while ignoring those employed in the unorganized sector such as "contractual workers" facing highly exploitive work conditions, "farmers", "casual workers", "self-employed women" and "housewives". The moment a woman becomes pregnant she is seen as a liability. The new law has no provisions to eliminate this mindset of the population.

Another glaring flaw in the new legislation is that it makes no mention of "paternity leave" and is a blow to "gender equality". This puts the onus of the newborn's rearing entirely on the mother. Paternity leave helps a male to extend support to her lady to develop grips in her new role as a mother and also to develop a sensitive father baby bond.

The overall conclusion of the research work is that "social security" is a "human right" recognized by various "national enactments" and also supported by "international instruments". Females are the backbone of every nation, like India where female is worshipped since ages, her role in every phase and facet needs to be recognized and respected.

The State and the government should make such women favorable policies that the employer should not step back from providing the benefits to women. The Government should focus making the "social security" laws especially

those relating to “maternity benefits” of women more meaningful and beneficial for them.

Suggestions

The “key recommendations” of the “researcher” to make the “social security” laws especially the “maternity benefits” more beneficial for the working females in India are the following:-

1. In the light of present scenario of the economic reforms, India requires “a National Policy on social security” for workers in “private sector irrespective of their job status” or “nature of work”.
2. It is required that various “Awareness Programmes” and “Campaigns” must be organized in a comprehensive way by the NGOs, “social workers”, “law students”, “paralegal volunteers” and “law faculty” to “create awareness about benefits under schemes” and the “procedures followed in case of violations of work related rights.”
3. “Welfare Funds must be transformed into instruments of social security” by “decentralizing their administration” through “a board consisting of representative of workers, employers and the government”.
4. A “private organization” must make its female employees aware of the body/ board to whom she can file a “complaint” for the redress of her grievance.
5. Every “private organization” must update its employees (females) about any changes introduced in rules and regulations of its “maternity policy”.
6. A “private organization” must display on its website the details of benefits available to a female worker generally and in relation to her pregnancy and child birth.
7. Every private organization must arrange a “regular check up” and “food supplements” for female employees “free of cost”.
8. The law must provide for the appointment of a “female inspector” in every private organization to monitor “work hours”, “working conditions” and “nursing breaks” of a pregnant female worker.

9. There is a need that the next “Five Year Plans” must focus on the areas of “medical care”, “accident benefits” and enhanced “maternity benefits”.

10. Many countries like “Australia” and “Britain” have “Semi autonomous agencies” in “social security” sector, to provide services and benefits directly to the beneficiaries. India should also make an effort towards such service provider for better implementation “social security” schemes.

11. There is a need to pay attention “on the quality of medical facility” provided to the workers in case of any serious “diseases” or “injury” under “Social Security” System. The “organization” must have well “trained doctors”, “nurses” and other staff to treat the workers to the level of their satisfaction with adequate medical methods.

12. The law must be amended with regard to the quantum of imprisonment and fine in the interest of female workers.

The penalty in the form of “imprisonment” and “fine” provided under the “Maternity Benefits (Amendment) Act”, 2017 for an employers who makes a default in making payment of any amount of “maternity benefit” to a woman entitled under this Act or if he discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act is very less. Most of the employers would rather prefer to undergo the punishment instead of paying the 6 months salary of “maternity leave” to a female employee.

13. Another major concern is the “burden of the cost” laid on the employer by the “Maternity Benefits (Amendment) Act”, 2017 to making a provision of “crèche” in its “organization”. Due to this large “monetary burden” along with increased maternity period, employer of every organization would prefer giving job to a male person in order to avoid this future “maternity cost”. The law must include the provision specifying the contribution of the “Employer”, “Employee” and the “State” in a “certain proportion” by introducing some kind of “maternity funds” in the organization.

14. Another critical loophole in the Act, 2017 is that it defines under Section 3(j) “miscarriage” as “miscarriage means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is

punishable under the Indian Penal Code (Act 45 of 1860)". However it makes no mention of the cases in which the child is still-born or dies soon after birth and is survived by the woman. The Act must provide for leave and salary to be paid to the grieving woman/ mother.

15. India requires to amend its "maternity leave policy" by introducing paid additional leaves per child in case a female delivers "twins". This would help her retain her health and also sharing household and child care responsibility by her spouse.

16. There is an urgent need to introduce a "paid parental leave" separately or on sharing basis between the couple. The current maternity is "gender specific" and is a gendered benefit as it is not given to male employees. This would result in reduction in the number of female employees especially in "private sector" organizations as by hiring women employees, many employers would try to run from the risk of incurring an additional cost in the form of "paid maternity", "free medical care" and "medical bonus" if such women employees choose to have a child.

17. There is a need to enact a "Paternity Benefit Law" and have a "uniform centralized paternity leave policy". As in "private companies" the choice to pay and the extent of "paternity leave" is left on the Employers. There is no law for "paternity leave" in "private sectors. The private companies therefore formulate their own policies of paternity relief.

18. The "Maternity Benefit Act, 1961" is applies to all "establishments" but in reality this is not the case every time. Many establishment falls beyond its coverage because of lack of information and outreach by the government. So, "Campaigns" and "Outreach Programs" should be initiated to locate such left out establishments.

19. Many females are removed from the employment if they claim "Maternity Benefits" without assigning any reason. In the "Maternity Benefit Act", 1961, there is nothing "deterrent" for such employers. This lacuna has to be removed.

20. The "Maternity Benefit Act", 1961 provides to 12 weeks of leave to women with two or more "surviving children" which is a clear discrimination between mothers. So this provision must be amended.

21. The amendment of 2017 has focused that a child needs its mother during the initial phases and has not considered the need of a father during this time. Hereafter, it is disgraceful as it accords no importance to Paternity Benefits and Paternity Leave. This would help in eradicating the dogmas surrounding maternity and women being the sole caregivers.

22. The Statute neglects the working women in the organized sector who take up work in an unorganized sector so that her family does not sleep empty stomach. Such female employees are not even aware of anything like "Maternity Benefits" or other work related rights. So the State should actively participate in creating awareness to such workers and to introduce certain rights for their benefit too under the "Maternity Benefit Act", 1961.

23. The eligibility criteria of 10 employees keep a lot of small scale industries out of the bracket of providing maternity benefits. These criteria should be revised so as to include these start ups within the purview of maternity benefits.

For women, "Pregnancy" and "Motherhood" represent a particularly vulnerable period for during which require extra safeguards to preserve their own and they their children's health. Expecting and "nursing mothers" need enough time to give birth, recuperate and nourish their child.

They would need a stress free period to develop a "mental bonding" with their child. Simultaneously, they require assurance they do not lose their jobs due to "childbirth-related complications" or "maternity leave".

So, safeguarding the health of "expecting females" and "nursing mothers", as well as protecting them from "workplace discrimination", is a prerequisite for achieving sincere equality and treatment for men and women at work, as well as enabling workers to raise families in a financially secure environment.

Nowadays, as women are progressing with time, it is no surprise that they raise their kids simultaneously with their jobs. They need to maintain a work-life balance especially during the time of pregnancy and immediately after the birth of their infants. "Maternity rights" such a "paid maternity leaves" allow them to take care of their newly born infants and to recover after childbirth.

As the first few months after childbirth are the most vulnerable and crucial time for both the mother and the infant, this time must be given to them.

Hence, paid maternity leaves and other maternity rights are recognized as essential labor rights of women. Therefore, it is essential for the Government of every country to recognize the "maternity rights" of women to ensure that pregnant women are not being harassed at the workplace and also that they have been taken care of.

In India, the concept of "social security" is of great significance. It is considered as an integral part of its development process. In light of its importance, many rules and regulations are being tested and many researches and discussions are being made for effective implementation of the "social welfare" schemes for the "private sector organizations".

In India, "social security" legislations have been give broad attention by the "Central Government" and "State Governments" to provide a program of social security for its millions of workers to cover them during contingencies. After independence, these "social security" legislations caught a great speed and so the government passed many important "Social Security Acts".

So, a need is felt to have a web of universally accepted social security schemes. The researcher also suggests that the penal provisions in all the welfare legislations need to be redefined. Female workers are needed to be protected and respected. The loopholes in the legislation should be removed for the benefit and empowerment of female workers. India had a long practice of providing "social security" and assistance towards the weaker sections of society.

"Maternity Protection" to women encourages attachment to the employment and increase "productivity and economic growth by reducing household miseries", "health risks and maternity mortality".

It also enhances "gender equality". Notions of equality of men and women have developed and taken a strong place in Indian Society. The country still has a "long journey" to pass for "encouraging women to enter into workforce" and "for changing the conception of employers that employing female workers is not an impediment or a burden to the organization".

Employer's failure to provide maternity protection in its organization is due to the cost burden on his shoulders alone and the difficulty of replacing staff during "maternity leave".

If there is an efficient system of maternity protection, employers will find that the employee has a more committed, loyal and happier attitude towards work that would cultivate more efficiency among the female workers. “It is high time” to realize that “maternity leave must be planned for minimal disorder” and “maximum efficiency on the part of female workforce.

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