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CRITICAL ANALYSIS OF SOCIAL SECURITY SCHEMES FOR WOMEN IN INDIA

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ABSTRACT

The effective implementation of women-centric welfare measures has been an arduous challenge. These challenges in the work arena are seen in the form of gender biases, unequal pay, and allowances for similar types of work, and unsuitable working environment conditions for women. Many establishments prefer a male workforce over a female workforce to reduce financial overheads due to different regulatory measures. In this study, an attempt is made to identify the factors that prevent women workers and employees from aspiring for higher posts along with the different challenges faced by them. This study tries to reflect the real condition of Indian working women and the difficulties faced by them in balancing domestic and professional work, issues related to gender inequality, lack of implementation of legal measures such as equal remuneration for equal work, etc., and some remedies to address these issues.

Keywords: *Challenges, Women Workers, inequalities, gender bias, equal remuneration, crèche, sexual harassment, etc.*

I. INTRODUCTION

There has been an inherent urge in human beings to have stability and security in their lives. Security in society has become a necessity and reality of millions of lives throughout the world. The hardship and turbulence in life get a relief of stability and protection with these social security measures and provide a sense of being cared about. In contemporary

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times, the prevalence and coverage of social security status in any country have become a yardstick to measure its progress towards being a welfare state.[1]

The concept of human dignity and social justice are inherent constituents in the concept of social security. Social security is based on the idea that citizens contribute and are likely to play a constructive role in the development and advancement of the country and thereby should be protected against certain hazards. Initially, workers looked for the protection in form of small savings, employer's liability, or public insurance against any contingency[2]. Later, the onus to provide this protective environment was put on the employers, as the employer was responsible for creating the factory/work units and the environment that could cause harm or injury to the workers. Thereby, making the employer responsible for any loss sustained by the victim, and the protective legislation revolved around making the employer liable to protect against such consequences.

Further, in this process of evolution, many different measures have been adopted by different states to protect people in need. [3] There was a lot of emphasis on the individual efforts to provide some form of protection through the acts of charity and philanthropy followed by the development of a mechanism to provide mutual benefits during times of hardship. These were further evolved including state sponsorship & state participation and finally making its space in the major plans of Government policies in many countries.[4]

Working women face problems at the workplace just by virtue of being women. Social attitude to the role of women lacks much behind the law. The women who are equally qualified at par with men are not taken into consideration for the job. Gender bias creates an obstacle at the recruitment stage itself. The problem of gender bias dissuades women in the industrial setup when technological advancements result in the retrenchment of employees. The discriminating situation is prevalent in the unorganized sector. [5] There are issues of unequal and lower wages for female as compared to males even when the nature & duration of work is the same for men and women. There have been efforts to address these inequalities by enacting some laws like the Unorganized Worker Social Security Act 2008, and the Domestic Worker Welfare and Social Security Act 2010, etc. These acts do address the problem of inequality to some extent but lack in their proper and effective

1 Government of India, "Report on National Commission on Labour" (Ministry of Labour,1969) p.162.

2 Government of India, "Report on National Commission on Labour" (Ministry of Labour,1969) p.163.

3 *Ibid.*

4 *Ibid.*

5 "Unorganized Sector" means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

implementation. This has resulted in miserable living conditions and work environments for women, particularly in the unorganized sector. The following Acts which have been legislated for the welfare of women are discussed below.

II. ANALYSIS OF THE MATERNITY BENEFIT ACT, 1961

The Maternity Benefit Act 1961[6] provides for employment security to women during their maternity. It provides for full paid leave for a period of 6 months to take care of them and their child[7]. The maternity benefits under this act are applicable to all establishment which has 10 or more employees. These establishments can be factories, mines, plantations, Government establishments, shops, and establishments under the relevant applicable legislation or any other establishment as notified by the central government.

Increased Paid Maternity Leave

The Principal Maternity Benefit Act of 1961 provided for 12 weeks of paid maternity leave, which was further increased to 26 weeks by an amendment (The Maternity Benefit Amendment Act 2017)[8]. This amendment also offered flexibility to the women to avail of these leaves extending up to a maximum of 8 weeks before the expected delivery date and remaining leaves can be availed after the birth of the child. This act also has provision for the maternity benefit with respect to women who are expecting after having 2 children. For these cases, this act provides for 12 weeks of total paid maternity leave, out of which 6 weeks of leave each can be availed before and 6 weeks of leave after the date of delivery.

Work from Home option

The amended Maternity Benefit Act of 2017 also introduced an enabling provision that allows for a "work from home" facility for women after availing of their 26 weeks of paid leave. However, this is just an enabling provision and actual terms and benefits on which a work-from-home option can be provided to the women post giving birth to the child are to be mutually agreed upon with the employer. This provision became redundant during the COVID-19 pandemic which saw mandatory work-from-home provisions for all workers irrespective of gender and maternity status. Now, after normalcy has begun to set in probably this provision will gain some traction and may be invoked by women to gain some benefits post-pregnancy.

6 Maternity Benefit Amendment Act, 2017 (Act 6 of 2017).

7 *Ibid*.

8 *Supra* note 6 at 3.

Creche facility

The Maternity Benefit Amendment Act 2017 also introduced the provision to provide for a creche facility mandatorily within a prescribed distance for every establishment employing 50 or more people. Women employees would be permitted to visit the crèche 4 times during the day (including rest intervals) The Maternity Benefit Amendment Act makes it mandatory for employers to educate women about the maternity benefits available to them at the time of their appointment. The provision for crèche[9] is also available in Factories Act, 1948 though the implementation of the same is lacking in most organizations.

Although these were welcome steps with respect to maternity benefits, the status of on-ground implementation requires research. There have not been many studies that document the impact of changes brought by the amendments made in 2017 to the principle Maternity Benefit Act of 1961. Only few studies like VV Giri National Labor Institute in 2019 can be referred. This study highlighted various lacunas mainly unawareness about mandatory requirement of providing information regarding maternity leaves in the appointment letter and creche facility.

In this context, the case, namely *Smt. Popi Paul @ Popi Das Paul vs. The State of West Bengal & Ors*[10] is appropriate to refer. In this case the petitioner delivered a child in September 2016 and, in March 2017 applied to the Principal of the Respondent/College in issue to rejoin her duties since, the College had appointed her until the 29th of June, 2017. The petitioner was not however allowed to rejoin her duties and, therefore claims through writ petition, both her right to avail of the maternity leave and to rejoin her duties in the absence of any formal communication from the Respondent/College in issue rescinding her engagement. The Court gave decision in favor of the petitioner and allowed to rejoin her duties upon completion of the maternity leave.

III. ANALYSIS OF THE FACTORIES ACT, 1948

The Factories Act has provisions that offer extra benefits to women, such as not allowing them to work near cotton openers[11] and providing creches within the factory premises. According to section 48[12] of the Factories Act 1948, any factory that employs more than thirty women workers must have a suitable room or room for children under six years of

9 The Factories Act, 1948, s. 48.

10 *Smt. Popi Paul @ Popi Das Paul vs State of West Bengal*, 2017 SCC OnLine Cal 7924.

11 Factories Act 1948 as amended by the Factories (Amendment) Act, 1987 (Act 20 of 1987) s. 27.

12 *Supra* note 10 at 5.

age. These rooms must be well-lit, ventilated, clean, and under the supervision of trained women who can take care of children and infants. The State Government can make rules regarding the location, construction, furniture, and equipment of these rooms. Additionally, factories must provide additional facilities for the care of children, including washing and changing facilities, free milk, or refreshments, and allowing mothers to feed their children at necessary intervals.

IV. ANALYSIS OF THE UNORGANISED WORKERS SOCIAL SECURITY ACT, 2008

The Unorganized Workers Social Security Act 2008 is legislation that aims to offer social security and welfare measures to workers who are employed in the unorganized sector[13]. This includes self-employed workers, small business employees, casual workers, and daily wage earners who do not have access to formal social security benefits. The Act requires the creation of a National Social Security Board to supervise the implementation of social security schemes for unorganized workers[14]. It also mandates the establishment of various social security schemes, such as life and disability cover, health and maternity benefits, old age protection, and skill up-gradation of workers. The Act intends to enhance the living conditions and social status of unorganized workers and their families.

The scheme formulated by the Central Government shall provide welfare benefits to unorganized workers. These benefits include maternity leave, insurance, retirement benefits, gratuity payments, provident funds, disability benefits, housing schemes, family pensions, bonus payments, and equal remuneration. The unorganized sector employs over 93 percent[15] of the labor force, which has limited social protection and low earnings. Small enterprises employ two-thirds of the workforce, and almost half of the national income comes from this sector[16]. Casual wage workers and self-employed individuals make up a significant portion of the unorganized sector. However, there is limited data available on employment numbers and quality in this sector, which makes it difficult to analyze informal employment[17].

13 The Unorganized Workers Social Security Act, 2008, s. 2l.

14 The Unorganized Workers Social Security Act, 2008, s. 2m.

15 Ministry of Labor and Employment, "Unorganized Worker" *available at* https://labour.gov.in/unorganized-workers (last visited on May 01, 2023)

16 Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, *available at* https://www.prsindia.org (last visited on May 01, 2023)

17 International Labor Organization, *available at* www.ilo.org (last visited on May 01, 2023)

V. ANALYSIS OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

This legislative act came into effect to provide protection to women from sexual harassment at their place of work. This law was enacted to provide legislative cover to the already framed guidelines by the judiciary (Supreme Court of India) in the form of the Vishakha Guidelines[18] for the prevention of sexual harassment. This act mandates any workplace with more than 10 employees must implement this law, however, this act is not implemented by most employers. In a 2015 report of FICCI-EY, it is claimed that 36% of Indian companies and 25% of MNCs are not compliant with the Sexual Harassment Act, of 2013. The government has been trying to enforce it and has also warned employers to comply with this act or face stern action[19].

VI. ANALYSIS OF THE EQUAL REMUNERATION ACT, 1976

The Equal Remuneration Act of 1976 was enacted to implement the constitutional goal of equal pay for equal work, as stated in Article 39(d)[20]. This act ensures that men and women workers receive equal remuneration and prohibits discrimination based on sex in employment matters. According to Section 2(h) of the Act, "same work or work of a similar nature" refers to tasks where the required skill, effort, and responsibility are the same for both genders under similar working conditions. Any minor differences in these aspects between men and women should not have practical significance in terms of employment terms and conditions. Overall, the Act aims to promote gender equality and eliminate wage disparities in the workforce.

The principle of Equal Pay for Equal Work was first[21] considered in the year 1962 when the Supreme Court declared that it cannot be decided in a court of law. But later on, it received recognition in 1987[22]. Here the issue of concern was a claim for equal remuneration of male and female Stenographers. This was ruled in favor of lady stenographers as the Court was in favor of equal pay.

18 *Vishakha and others* v. *State of Rajasthan,* AIR 1997 SC 3011.

19 The Economic Times, a*vailable at* https://economictimes.indiatimes.com (last visited on May 02, 2023)

20 The Constitution of India, art. 39(d).

21 *Kishori Mohanlal Bakshi* v. *Union of India,* AIR 1962 SC 1139.

22 *Mackinnon Mackenzie's,* [1987] 2 SCC 469.

In a leading case[23], the Supreme Court has held that although the principle of equal pay for equal work is not expressly declared by our Constitution as a fundamental right it is certainly a constitutional goal under Articles 14[24], 16,[25] and 39(c)[26] of the Constitution. This right can, therefore, be enforced in cases of unequal scales of pay based on irrational classification.

VIII. FALLOUTS OF THE WOMEN-CENTRIC SOCIAL WELFARE ACTS IN INDIA

Gender discrimination against women

Policy formulation holds significance, but when social security becomes an obligation for employers, as observed in India, it may lead to discrimination against women. Furthermore, implementing additional provisions such as providing childcare facilities demands increased financial investments and operational expenses. Consequently, certain companies in India may hesitate to hire women, and if they do, these women might experience reduced compensation to offset the anticipated higher long-term costs. This was very much visible in the recent findings by the World Economic Forum (WEF) which ranked India at 135 out of 146 countries in the Global Gender Gap Index in the report's 2022 edition[27].

Types of the burden on the employer

Employers are responsible for covering the complete expenses related to providing leave to their employees particularly paid maternity leaves to the women employees. This includes continued payment while on leave and the additional costs of hiring replacement workers to complete the absent employee's tasks. Additionally, this policy leads to increased expenditures for temporary training provided to the replacement employee working on behalf of the absent employee. This becomes an overhead for the employee and also is seen in terms of the Gender Pay gap. The gender pay gap was 28% in 2018-19 as per the labor force survey data of the National Sample Survey Office (NSSO). The situation has further deteriorated due to covid pandemic by increasing this gender gap. As per the World Inequality Report 2022 men in India capture 82% of labor income and women just about 18% which is an alarming situation with respect to the gender pay gap.

23 *Randhir Singh* v. *Union of India*, [1982] 1 SCC 618.

24 The Constitution of India, art. 14.

25 The Constitution of India, art. 16.

26 The Constitution of India, art. 39(c).

27 World Economic Forum, "Global Gender Gap Report 2022" (July 2022).

Women lose their jobs

There have been a few studies estimating the number of women losing their jobs due to the impact of social security scheme implementation concerning women due to lack of data. Therefore, direct attributable data of women losing jobs in relation to these social security schemes is very difficult. However, the different inferential situation presents a case of attributing the lower female participation rate to the overall cost associated with the social security benefits.

Financial burden only on the employer

In many developed countries, the financial burden of maternity leave is distributed among various entities, including the government, employers, insurance agencies, and social security programs. For instance, in Singapore, the employer covers the cost for 8 weeks, while public funds support the remaining 8 weeks. In Australia and Canada, the entire cost is covered by public funds. France operates on a social insurance scheme to cover the expenses, and in Brazil, the cost is shared among the employer, employee, and the government. However, in the Indian scenario, the entire financial burden of the social security benefits lies with the employer which makes him reluctant towards effective implementation of social security schemes for women one hand and also discourages employment of women in their organizations.

Gender inequalities

Gender bias is one of the major challenges of the women working force. There are various welfare provisions for women but the implementation of the same has become a major task. To overcome from these challenges, strict implementation of various welfare provisions is required.

IX. CONCLUSION AND SUGGESTIONS

The analysis made above of various Acts showed that effective implementation is still not achieved. Various challenges faced by women can be resolved by improving the conditions for women workers with the help of trade unions for example maternity leaves can be made available to women and it could also support women in achieving higher posts and promotions.

Women have time and again proved their capability in all fields of life. The present COVID crisis is an example of it where women are equally participating and working as corona

warriors. Based on the above study, the suggestions are given below.

Gender-Inclusive Policy Development: Policymakers should ensure that social security policies take into account women's unique needs and circumstances, such as the gender pay gap, caregiving responsibilities, and the vulnerabilities faced by elderly women. To resolve the multiplicity of applicable laws, policies, and schemes the government introduced labor codes. The strict implementation of the code on Social Security 2019[28] will address these issues and would be beneficial for working women in the unorganized sector. A body working as a watchdog is required to ensure the effective implementation of social security schemes. This body shall have mandatory participation of women and they should constitute half of the members of the body.

Improving Widow and Survivor Benefits: Enhance survivor benefits for widows and dependents of deceased workers to offer greater financial security to women who have lost their spouses or partners.

Promoting Financial Literacy and Inclusion: Encourage financial literacy among women, particularly in rural areas, and facilitate their participation in formal financial systems. This may involve initiatives for women's banking, access to credit, and microfinance programs. Empowerment through Employment Opportunities and Training need to be achieved.

Addressing Workplace Violence and Harassment: Strengthen measures to combat violence and harassment against women in the workplace, as these issues significantly impact their social and economic security.

Public-Private Partnerships: Foster collaborations with private organizations and NGOs to design and implement effective social security programs for women. Providing social security could be made part of corporate social responsibility.

28 Ministry of Labor and Employment, "The draft code on social security, 2019" (2019) and "Recommendations by 2nd National Commission on Labour 2002".