

THE STUDY OF GLOBALIZATION AND ITS IMPACT ON THE EVOLUTION OF MATERNITY ACT

by

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ABSTRACT

The maternity laws of all the nations are influenced the most due to the impact of globalization. This paper is a research work of the lacuna that is present in Indian Maternity rules and regulations in comparison to the changing times. The age range at which women of this generation give birth in average has significantly increased. Due to globalization working as mother is more common than last hundred years. Simultaneously, the health issues and the rearing and bearing of a child scenario has seen a significant change. With the advanced technology sweeping from one nation to another surrogacy, test tube babies genetically modified ways of reproduction have been observed. All of such changes has posed a serious lacuna in the laws prevalent in India regarding motherhood and maternity benefits. The changes that the courts have recognized and upheld have also been dealt carefully in this paper. The suggestions of how the law can be better implemented has been described in the paper.

INTRODUCTION

Globalization is the first focus on every developing and under-developed nation. The World Economic Forum's¹ annual January meeting in Davos is normally a low-key affair, with well-heeled attendees exchanging notes on global business opportunities or powder conditions on the local ski slopes while clutching champagne and canapes. The ultra-rich and sparkling wine reappeared in January, but the attitude was one of worry, defensiveness, and self-reproach, according to all sources.

A succession of political earthquakes had shaken the future of economic globalization, for which the Davos² men and women view themselves as stewards. Globalization can imply many things, but the long-awaited ambition of expanding cross-border free trade in products was in jeopardy.

Globalization might occur in services, capital, or ideas, making it a notoriously ambiguous term; nonetheless, what it usually meant was making cross-border trade cheaper something that many at the time saw³ as an undeniable benefit. In practice, this meant that industry would shift from rich countries with high labour costs to poor countries with lower labour costs. To compete, people in wealthy countries would have to accept lower wages or risk losing their employment. Whatever happened, the items they used to make would now be imported and would be considerably cheaper. Mainstream economists and politicians reinforced the consensus on globalization's benefits, with little concern for political ramifications.

Globalization and maternity evolution go hand in hand. As some Asian countries see a rising imbalance in their sex⁴ ratios in favor of boys, a global debate on female selective

¹ Giles Mohan, Dislocating Globalisation: Power, Politics And Global Change, vol. 85, no. 2 (April 2000), pp. 121-133 (13 pages) <https://www.jstor.org/stable/40573406>

² Karolien Lenaerts, Zachary Kilhoffer, Traditional and new forms of organisation and representation in the platform economy, Work Organisation, Labour & Globalisation, Vol. 12, No. 2, Digital Economy and the Law (Winter 2018), pp. 60-78 (19 pages) <https://www.jstor.org/stable/10.13169/workorglaboglob.12.2.0060>

³ Miroslav N. Jovanović, Is Globalisation Taking us for a Ride?, Journal of Economic Integration, Vol. 25, No. 3 (September 2010), pp. 501-549 (49 pages) <https://www.jstor.org/stable/23000870>

⁴ Thomas Allmer, I am a single mum. I don't feel like I can be as competitive as other people': experiences of precariously employed staff at UK universities, Work Organisation, Labour & Globalisation, Vol. 12, No. 1 (Spring 2018), pp. 62-77 (16 pages) <https://www.jstor.org/stable/10.13169/workorglaboglob.12.1.0062>

abortion (FSA) is gaining traction. While there has been a surge in demographic and sociological surveys on the subject, little is known about FSA as a chosen or contentious family-making activity in the places where it is done. Using the perspectives of feminists, doctors, and lower- and middle-class Hindu and Muslim women.

INTERNATIONAL MATERNITY RULES

Childcare is one of the most significant obstacles that women confront in the workplace. As a result, governments⁵ have been devoted in recent years to promoting paternity leave as a means of closing the gender gap⁶ at work and at home. The majority of the time, though, it is still women who are responsible for caring for their children.

International labour rules have been established to provide maternity protection for women employees since the International Labour Organization (ILO) was founded in 1919. The International Labour Organization's Maternity Protection Convention⁷ establishes basic standards, while the associated ILO Maternity Protection Recommendation supports extra measures. The following are important aspects of maternity protection:

According to the International Labor Organization (ILO), mothers⁸ have a right to rest before and after childbirth in order to protect their health and that of their child. The International Labour Organization (ILO) says in Convention No. 183 that maternity leave must be at least 14 weeks long, with six weeks following childbirth.

⁵ Yehonatan Givati and Ugo Troiano, Law, Economics, and Culture: Theory of Mandated Benefits and Evidence from Maternity Leave Policies, *The Journal of Law & Economics*, Vol. 55, No. 2 (May 2012), pp. 339-364 (26 pages) <https://www.jstor.org/stable/10.1086/663632>

⁶ Jin Cao and Graham Murdock, Holding down half the sky: female knowledge workers and flexible employment in China's publishing conglomerates, *Work Organisation, Labour & Globalisation*, Vol. 9, No. 2 (Winter 2015), pp. 14-35 (22 pages) <https://www.jstor.org/stable/10.13169/workorglaboglob.9.2.0014>

⁷ Mark R. Jacobson, Maternity and Paternity Leave: Implications for the National Security Workforce, (2018), <https://www.jstor.org/stable/resrep27469>

⁸ Emma Kwegyir-Afful, George Adu, Evelien R. Spelten, Maternity Leave Duration And Adverse Pregnancy Outcomes: An International Country-Level Comparison, *Scandinavian Journal Of Public Health* Vol. 46, No. 8 (December 2018), Pp. 798-804 (7 Pages), <https://www.jstor.org/stable/48615400>

According to the Organization of Economic Cooperation and Development (OECD), the United States is the only developed country in the world that does not provide paid maternity leave to mothers. There is no federal law⁹ in the United States that guarantees women (or men) paid time off after having a child. Instead, they leave it up to employers, with more than 40% of medium-to-large businesses opting out of providing any paid maternity leave at all, according to a 2016 poll of medium-to-large businesses. Some businesses make it a point to provide paid time off.

MAJOR MATERNITY BENEFITS PREVALENT IN INDIA

The age of motherhood is varied in today's generation. Maternity leave is available to any woman employee who has worked for the same employer for at least 80 days in the 12-month period preceding the estimated birth date. The crucial aspect of this law is that it must be the same employer, and the 80-day period cannot be transferred to a new employer.

In 2017, the maternity leave benefit was extended to 26 weeks of paid leave, with an additional 12 weeks available for adopting a child under the age of three months. It can be taken for up to 8 weeks before birth and then again after delivery. The leave time is reduced to 12 weeks for employees who already have two or more children.

The Maternity (Amendment) Bill 2017 is a bill that amends the Maternity Act.

Maternity leave has been increased from 12 to 26 weeks under the Maternity (Amendment) Bill 2017. Prenatal leave has been increased to eight weeks. If a woman¹⁰ has two or more children, she is only entitled to 12 weeks of maternity leave and six weeks of prenatal leave. By increasing maternity leave to 18 weeks, India has joined an exclusive group of 42 countries that offer extended maternity leave. Other aspects of the maternity amendment law are listed below.

⁹ Laura J. Faulk, Destructive Maternity In "Aurora Leigh", Victorian Literature And Culture Vol. 41, No. 1 (2013), Pp. 41-54 (14 Pages) <https://www.jstor.org/stable/24575671>

¹⁰ Nidhi Vij Mali, A Comparative Assessment Of Maternal Health And Maternal Health Policies In India And The U.S.: Need To Transition From A Biomedical Model To A Biopsychosocial Model For Maternal Health Policies, Journal of Health and Human Services Administration Vol. 40, No. 4, The Socio-Environmental Context of Our Actions: Marginalization and its Influence on Building a Culture of Health, part II (SPRING 2018), pp. 462-498 (37 pages) <https://www.jstor.org/stable/26417099>

Adoption leave is also included in this amended act. This benefit is offered to women who adopt a child under the age of three months. They are entitled to a 12-week vacation. Commissioning moms are likewise entitled to a 12-week leave under this Act. Moms who fertilise their eggs to make an embryo and implant it into another woman for incubation are known as commissioning mothers. They basically¹¹ use a surrogate to conceive.

Women must be notified about their rights under the Act at the time of hiring, according to the Act¹².

- Female civil officials are entitled to 180 days of paid leave for the birth of their first two children.
- A woman worker who has taken maternity leave must be paid for at least 80 days in the 12 months leading up to her due date. The amount due will be computed using the average daily wage of the workers. She is also entitled to a Rs 3,500 incentive in addition to her 12-week wage.
- If no free medical care has been given by the employer, a pregnant lady is also entitled to a medical incentive of up to Rs 1000.
- If the nature of their profession allows it, it also allows nursing women to stay at home after the 26-week period has passed.
- Individual creches have also become necessary for businesses under this Act. A few well-known companies can also set up creches within a certain radius.

CHANGES DUE TO GLOBAL EXPOSURE ON THE MATERNITY ACT

The Union Government has adopted four new Labour Codes relating to Wages, Social Security, Industrial Relations, and Occupational Health, as part of a much-needed overhaul of India's legislative framework relating to labour. The Maternity Benefit Act of 1961 is merged and modified in Chapter VI of the Code on Social Security, 2020.

¹¹ Sajai Singh, Lakshmi Ramachandran, Craig A. de Ridder, Jeffrey D. Hutchings, Indian Maternity Benefit (Amendment) Act, 2017 (last visited Feb. 7, 2022)

¹² The Maternity Benefit (Amendment) Act, 2017, No. 6, 2017 (India)

The Employees' State Insurance Act of 1948 (ESIA) and the Central Civil Services Rules of 1972 are two pieces of legislation that govern employee benefits

The Employees' State Insurance Act of 1948 applies to all non-seasonal factories¹³ that run on electricity and employ ten or more people, as well as non-seasonal factors that operate without electricity and employ twenty or more people (ESIA). The act was enacted to establish a social insurance programme to safeguard organized-sector workers in the event of an emergency, such as maternity leave. Employers must offer periodic payment to the covered woman if any sickness, miscarriage, or unavailability occurs as a result of pregnancy or early birth, according to this act. Maternity leave is for 12 weeks, although it can be extended by another month if the pregnancy causes sickness or difficulties.

LACUNA IN MATERNITY RULES OF INDIA

Firstly, surrogacy¹⁴ is a term still unfamiliar in our courts of India. The 2017 Act is similar to regulations in the United Kingdom, France, Canada, and Sweden that allow women who adopt children under the age of three months and commissioning moms to take time off. The amendment is ambiguous about what happens if a mother adopts a kid who is more than three months old and if she is entitled to a leave of absence. Surrogate moms¹⁵ whose wombs are exploited by commissioning mothers are likewise not included in the Act. Surrogate moms who rent out their wombs and give birth must undergo a variety of medical procedures, including a C section. They also have to deal with the emotional toll of being removed from a child they carried. Surrogate moms, on the other hand, are entitled to some type of leave, at least long enough to recover from their ordeal.

Secondly, The 2017 Act draws an inexplicable distinction between a woman and a woman who has previously had two children. A woman who has not yet given birth to her first

¹³ Pankaj Kumar, Structural Analysis of Indian Contract Labor Laws, Indian Journal of Industrial Relations Vol. 49, No. 2 (October 2013), pp. 185-196 (12 pages), <https://www.jstor.org/stable/24546948>

¹⁴ Lindsay M. Sabik and Miriam J. Laugesen, The Impact of Maternity Length-of-Stay Mandates on the Labor Market and Insurance Coverage, *nquiry*, Vol. 49, No. 1 (Spring 2012), pp. 37-51 (15 pages), <https://www.jstor.org/stable/2348050>

¹⁵ Nidhi Vij Mali, *Supra* Note 10

two children is eligible for up to 26 weeks of leave, but a mother who has previously given birth to two children is not. The remaining aspects of the amended bill are discussed below.

There are other challenges in putting the 2017 Act into action. Despite companies intentionally attempting to become more gender-friendly, there are still frequent incidents of female employees being harassed for disclosing their pregnancy. While the Act says that a woman cannot be fired or discriminated against because she is on maternity leave, and that her compensation should be the average of her daily income, firms typically record maternity leave as average or no performance. This is a concern since businesses reward employees based on their performance.

As a result, when women return from maternity leave, it is usual for them to be passed over for advancements. There's also the concern, as previously stated, that companies will be hesitant to hire pregnant women or women in general owing to the lengthy maternity leave.

This Act has also been criticised in general. It appears to meet the demands of corporate working women, who account for a small percentage of all working women, but not those of women who work in the informal sector.

Around 90% of women¹⁶ are employed in the unorganised sector. There are ongoing grave abuses of human rights. This Act does not give these violations the attention they deserve. Contractors, for example, have been known to force sugar cane workers to have hysterectomy (surgical to remove the uterus) in order to prevent the issues that occur with menstruation and pregnancy.

Therefore, recently the subject of adopted mother was uplifted in the court. In the Supreme Court, a public interest litigation petition has been filed challenging the constitutional validity of Section 5(4) of the Maternity Benefit Act, 1961, which states that adoptive women are only entitled for maternity leave if they adopt children under the age of three months. This was being argued under the recent case of Hamsaanandini Nanduri.

¹⁶ Jacqueline E. Darroch, Section 5: Need For And Receipt Of Maternal And Newborn Health Care, ADDING IT UP: Investing In Contraception And Maternal And Newborn Health, 2017 Estimation Methodology, (Last Visited Feb. 10, 2022) <https://www.jstor.org/stable/resrep32781.7>

CONCLUSION

Tracing through the history of maternity act the already paved path of the maternity act in India has been because of the western influence¹⁷ in our country. Therefore, it is needless to acknowledge that even though In India the right of the development of rights for women has taken a considerable amount of time. The oppression of this gender is been tied to it's conventional ideas among the majority. Simultaneously, the health difficulties and child rearing and birthing scenarios have changed dramatically. Surrogacy, test tube babies, and genetically engineered forms of reproduction have been witnessed as modern technology spreads from one country to another. All of these changes have created a severe gap in the legislation governing motherhood and maternity benefits in India. The courts have been advocating recent judgements for a liberalisation of women and has been actively providing benefits for the same. However, the implementation¹⁸ of the same will still take few more years to show a significant result. Furthermore, just 22.3 percent of women in India participate in the labour market, resulting in a 72 percent gender disparity. This reflects a significant underrepresentation of women in the labour market, and it is critical to address this by focused policy. It's worth noting that the above research is based on data from 2019, and it's a safe bet that the COVID-19¹⁹ situation would have only aggravated the problem. The recent developments on the loopholes of the 2017 proposed act is commendable. The question through the Public Interest Litigation of mother's adopting children above three months are the ones we are advocating for. The of these are being put forward with the help of the influence from the neighbouring countries and nations. The impact of globalisation is therefore extremely powerful in the field of maternity act and its changes to be seen. From allowing single fathers to adopt to questioning the leave

¹⁷ Berna Aytac and Alison Pike, The Mother-Child Relationship and Children's Behaviours: A Multilevel Analysis in Two Countries, *Journal of Comparative Family Studies*, Vol. 49, No. 1, Tribute Issue: Dr. George Kurian: Past, Present & Future: A Kurian Legacy (Winter 2018), Pp. 45-71 (27 Pages) <https://www.jstor.org/stable/44873428>

¹⁸ Amit Sengupta, Maternal health in underserved tribal India, *Sexual and Reproductive Health Matters* Vol. 27, No. 1 (December 2019), pp. 304-306 (3 pages) <https://www.jstor.org/stable/48617576>

¹⁹ R. Rima Jolivet, Charlotte E Warren, Pooja Sripad, Elena Ateva, Jewel Gausman, Kate Mitchell, Hagar Palgi Hacker, Emma Sacks and Ana Langer, Upholding Rights Under COVID-19: The Respectful Maternity Care Charter, *Health and Human Rights*, Vol. 22, No. 1, Special Section: Mental Health and Human Rights (JUNE 2020), pp. 391-394 (4 pages) <https://www.jstor.org/stable/26923513>

to be rightfully granted to a surrogate mother are the valid arguments brought about by the impact of successful global relationships among the various countries.

