

EQUALITY AND MATERNITY BENEFITS FOR WOMEN IN THE LABOUR FORCE

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Abstract

In recent times the issues of gender-equality and women empowerment have once more surfaced as vital questions that continue to divide civil society. This paper aims at analyzing these issues especially in terms of the general and historical notions of equality and their changing colours in the light of the development of society and the legal framework and legislation of maternity relief. The basic premise of women empowerment finds its roots in the concept of equality. Women have, because of their very nature, been subjected to discrimination and violence in the past and continue to face such issues in the present. This paper highlights the need for equality to be redefined in terms that are more empathetic, if not sympathetic, to the peculiar position women occupy in society and the need to afford them protection and encouragement in their quest for equality particularly in economic dimensions.

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I. Introduction

THE NATIONAL Commission on Labour in 2002¹ stated that, any social, economic or industrial system that ignores the potentials, talents and special attitudes of the female half of employable workforce will be flawed on many counts. It is, therefore, necessary to ensure equal opportunities and protection from indignities to women employees so as to best improve the Indian economy as a whole.

For instance the Equalities Review² defines an ‘equal society’ as one which *protects and promotes equal, real freedom and substantive opportunity to live in the ways people value and would choose, so that everyone can flourish.*

An equal society recognizes people’s different needs, situations and goals and removes the barriers that limit what people can do and can be.³

Gender equality and women empowerment have often been regarded as two sides of the same coin. Realising the need for empowering women in workplaces the Maternity Benefit (Amendment) Act, 2017⁴ was enacted. The Act introduced some crucial changes to bring the law in consonance with the changing society. In the same year, the Paternity Benefit Bill, 2017⁵ was introduced, albeit not for the first time, and it too sought to inculcate modern notions of gender equality, recognising at its core that equality is a basic human right.

II. The Human Rights Perspective

Following the Second World War, a new world order emerged that necessitated equality being elevated to a fundamental human right. Article 1 of the Universal Declaration of Human Rights (UDHR), adopted by the United Nations on December 10, 1948 proclaimed that ‘*all human beings are born free and equal in dignity and rights*’.⁶

¹Government of India, “Report of the Second National Commission on Labour, 2002” (Ministry of Labour and Employment and Rehabilitation, 2002).

² The body established by the Prime Minister of UK to carry out an investigation into the causes of persistent discrimination and inequality in British society.

³ Commissioned by the Prime Minister of the United Kingdom, “Fairness and Freedom: Final Report of the Equalities Review” 16 (2007).

⁴ The Maternity Benefit (Amendment) Act, 2017 (Act 6 of 2017).

⁵ The Paternity Benefit Bill, 2017 (Bill 90 of 2017).

⁶ The Universal Declaration of Human Rights, 1948, art. 1.

Pertinently it was the Indian delegate Hansa Mehta who suggested the substitution, in article 1, of the words “*all men are born free and equal*” with “*all human beings are born free and equal*” in a move that sought the use of gender- neutral language.

Article 2 states that, ‘*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status... .*’⁷

In this manner it became evident that UDHR recognised not only civil and political rights but also extensive social and economic rights were given primacy.

III. A Fundamental Right to Equality of Dignity and Identity

In fact, Dworkin, while propounding his principle of ‘intrinsic value’ said “*each human life has a special kind of objective value*”.⁸ He goes on to say that if people in a particular group are not treated equal to the rest of the population then it is a reflection that they have not been valued equally.

Treating people with dignity is synonymous with not merely respecting, but also embracing the differences that arise in people, which may occur on the grounds of gender, physical or mental capabilities, cultural background and religious or other beliefs.

In fact, it is said that each individual is a unique mixture of different identities. Some of these identities are susceptible to change over the years as an individual is exposed to new experiences, education, and interaction with diversified peoples.

As Amartya Sen, in his work, *Identity and Violence*,⁹ fittingly said that it is dangerous to assume that people all over the world fall into defined categories based on some perceived simple formula. He illustrates that being Muslim does not mean having the identity of a militant jihadist. Muslims, like any other group of people with or without religious affiliations, have the same political, civic or humane tendencies. The roots of multiculturalism, therefore, lie in the integration of different cultures and identities and the freedom to exercise a choice in such matters.

⁷*Id.* art. 2.

⁸ Ronald Dworkin, *Life’s Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* 69-71 (Vintage Books, New York, 1994).

⁹ Amartya Sen, *Identity and Violence: The Illusion of Destiny* (Penguin Group, London, England, 2006).

In the same manner of thinking, gender in this day and age can no longer be taken as impediment to the fairer sex or a benefit to the male. To deny a female employment or to give her less favourable working conditions simply on the grounds of her gender is arbitrary and can have severe repercussions on the economy of the nation.

Dignity cannot be contested in terms of its legal and ethical value. Work is not simply an economic transaction; respect for the importance of human life and dignity requires that the fair treatment of workers also be a fundamental standard of the employment relationship.¹⁰ Hence to deny a woman employment or to arbitrarily interfere in her conditions of work is to deny her dignity and self-worth.

IV. Status Discrimination and Prejudice

Women in the labour markets in India face a number of deterrents that hinder them from effectively entering into the workforce, primarily that of gender stereotyping, other deterrents include, concentration in low paid, part-time and temporary work, unequal pay, pregnancy-discrimination and harassment. Presently, with the advancement and promotion of higher education, young women often have the same qualifications, if not higher than their male counterparts and consequently have higher expectations in terms of employment, but they continue to face the same disadvantages as generations before them in the labour markets.¹¹ Women of nearly all ethno-religious groups are paid less than the least well-paid group of men.¹²

V. Unwavering Equality

Early attempts to counter discrimination were focused on the legal concept of equality; that likes should be treated alike.

The problem with this notion is that it begs the central question of when are two people said to be sufficiently alike as to warrant equal treatment. In the famous English Classic Musical, My Fair Lady, the lead protagonist, Henry Higgins in a song fittingly titled, “*A Hymn to*

¹⁰ John W. Budd, *Employment with a Human Face: Balancing Efficiency, Equity and Voice* 1 (Cornell University Press, New York, 2004).

¹¹ Reimara Walk and Vasanthi Srinivasan, “Work-family balance of Indian women software professionals: A qualitative study” 23 *IIMB Management Review* 39-46 (2011).

¹² Bob Hepple, *Equality: The Legal Framework* 24 (Bloomsbury Publishing, London, 2nd edn., 2014).

Him," sings 'Why can't a woman be more like a man?'.¹³ The Musical revolves around a strong woman attempting to retain her identity in spite of the controlling machinations of a small-minded man.

In that age, women of higher classes were prohibited from working although they were highly skilled in music, languages and painting having had the privilege to travel the world enhancing these skills that would never bear much fruit other than being showcased at an occasional party or as an adornment in their own homes.

The women of lower classes, however, were forced to work in poor working conditions, with minimal and unequal wages and subject to the abuse by men. They were prevented from having any education other than the basic elementary education, that too if they were so lucky.

The position in India during these times was quite similar. Women were seen primarily as homemakers rather than breadwinners. In fact, working patterns continue to assume a male as a breadwinner and a female as a housewife.

Although this position has seen a drastic metamorphosis, perhaps even a reversal in some parts of the world, but the change in India has mostly been confined to wealthy upper-class urban families. One might observe that this position is slowly changing to encompass rural and poor regions of the country with the introduction of compulsory and free education for all and special measures such as free text books for young girls, scholarships, opening of bank accounts for girls, mid-day meals and providing quality education to young girls through institutions like Kasturba Gandhi Balika Vidyalaya Yojana. The change, however, is little and far between.

VI. The Present Domestic Legal Framework

The law currently takes the approach that centers on the biological differences between men and women. This in reality can be an obstacle in achieving true equality. It functions on the premise that a woman's treatment is comparable to that of a man in similar circumstances. This begs a question whether the circumstances of a woman can always be comparable to a

¹³ *My Fair Lady* (1964) was one of the adaptations of *Pygmalion* written by George Bernard Shaw in 1912, which was itself based on the part in Ovid's *Metamorphosis*. *My Fair Lady* dealt with issues of wealth, privilege, class warfare and advance learning and whether these were vastly superior to the capabilities of a commoner.

man. An example of this would be an attempt to compare a woman absent from work on account of pregnancy or confinement to a man absent from work on account of sickness. Are these two circumstances truly comparable?

Pregnancy and Maternity

It is often observed that pregnant women and those returning to work after a maternity break suffer high levels of discrimination and harassment.¹⁴ The special protection granted to pregnant women only applies to a defined period of twenty-six weeks.¹⁵ The reason for the specification of twenty-six weeks, which is the period recommended by the World Health Organisation, is that it covers the crucial first months when exclusive breastfeeding gives health benefits to both, mother and child.¹⁶

Pregnancy and maternity are an especially vulnerable time for working women and their growing families. Expecting and nursing mothers need special protection to safeguard not merely their own health but also that of their infants. These mothers also require sufficient rest to give birth, recover and nurse their infants.

At the same time, they require protection that ensures that they will not lose their jobs or be subjected to other unfair practices simply because they have availed maternity leave and benefits. Thus, safeguarding the health of women availing maternity benefits and protecting them from job discrimination is one of the vital ways to provide a wholesome environment of equality of opportunity and treatment, of men and women at work and enabling workers to raise secure families.

Society as a whole has an interest in the promotion of the health of expecting women and it is this societal interest that is manifested in the enactment of laws concerning maternity benefits all over the world.

¹⁴ Aparna Chandra, Mrinal Satish, *et al.*, *Securing Reproductive Justice in India: A Casebook* 447 (Centre for Constitutional Law, Policy and Governance, National Law University, Delhi, 2019).

¹⁵ The Maternity Benefit Act, 1961 (Act 53 of 1961) as amended by The Maternity Benefit (Amendment) Act, 2017 (Act 6 of 2017), s. 5 (3).

¹⁶ World Health Organisation, “Infant and young child nutrition: Global Strategy on infant and young child feeding” (April 16, 2002).

VII. The Maternity Benefit Act, 1961

Germany was the first country to introduce maternity allowance in the end of the nineteenth century albeit doing so under the scheme of sick insurance. Subsequently other countries followed suit and the International Labour Organisation also adopted provisions that empower women of all ages, nationality, ethnicity or status, working in private or public, industrial or commercial undertaking to compulsorily avail six weeks of maternity benefits after childbirth and be allowed to abstain from working for a period of six weeks prior to the expected date of delivery.¹⁷

In India, the law relating to Maternity Benefits was first enacted for the province of Bombay through the Bombay Maternity Benefit Act, 1929¹⁸ where female factory workers were granted maternity benefits before and after their deliveries. Subsequently, similar laws were extended to other provinces.

The then Central Government on its part enacted three statutes; The Mines Maternity Benefit Act, 1941;¹⁹ The Employees State Insurance Act, 1948²⁰ and The Plantations Labour Act, 1951.²¹ However, all of these legislations had drastic differences pertaining to the requisite period of employment for eligibility, the rate of benefits prescribed, the period of leave and other aspects. To remedy this deficiency, the Central Government finally enacted the Maternity Benefit Act, 1961²² which sought to bring about consistency in all aspects of maternity benefit by repealing the Mines Maternity Benefit Act, 1941 and the maternity benefit provisions of the Plantations Labour Act, 1951.

Applicability

The Maternity Benefit Act, 1961 applies to every establishment being a factory, or plantation including any such establishment belonging to the Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances.²³

¹⁷ The General Conference, 1919 of the International Labour Organisation, adopted the Maternity Protection Convention, 1919 (Convention No. 3) and was revised in 1952 (by Convention No. 103).

¹⁸ The Bombay Maternity Benefit Act, 1929 (Bom. Act VII of 1929).

¹⁹ The Mines Maternity Benefit Act, 1941 (Act 19 of 1941).

²⁰ The Employees State Insurance Act, 1948 (Act 34 of 1948).

²¹ The Plantations Labour Act, 1951 (Act 69 of 1951).

²² The Maternity Benefit Act, 1961 (Act 53 of 1961).

²³ *Supra* note 10, s. 2 (1) (a).

The Act also extends its application 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.²⁴

Moreover, the State Government is required to give two months' notice if it intends to include any other establishment, or class of establishments within the ambit of the Maternity Benefit Act, 1961.²⁵

The Maternity Benefit Act, 1961, thus, extends its provisions to all factories defined in terms of the Factories Act, 1948 and, thus, benefits any premises where ten or more workers are working, or were working on any day of the preceding twelve months, and which undertakes a manufacturing process with the aid of power²⁶ or where twenty or more workers are working, or were working on any day of the preceding twelve months, and which undertakes a manufacturing process without the aid of power.²⁷

The Act also clarifies that its provisions do not extend to a Mine as defined under the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.

Furthermore, an important aspect of the Maternity Benefit Act, 1961 is that it applies equally to all women belonging to the establishments determined under the Act irrespective of wage differences.

Additionally, to avail of the benefits the woman employee should have actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of at least eighty days in the twelve months immediately preceding the date of her expected delivery.

Pertinently, this requisite of having been in actual employment for a period of eighty days in the last twelve months is solely for availing maternity benefit and the Act has not extended this prerequisite to any other facility or payment under it within its ambit. Thus, for example,

²⁴ *Id.* s.2(1)(b).

²⁵ *Ibid.*

²⁶ The Factories Act, 1948 (Act 63 of 1948), s. 2 (m)(i).

²⁷ *Id.*, s. 2 (m)(ii).

a woman who suffers a miscarriage is entitled to leave and payment of wages for six weeks after the date of her miscarriage irrespective of the period of her employment.

Maternity Benefit

The Maternity Benefit Act, 1961 provides that maternity benefit consists of payment as elucidated in section 5, which states that every woman shall be entitled to the payment of maternity benefit at the rate of her average daily wage and for the period of her actual absence from work, that is, the period immediately preceding the day of her delivery, the actual date of her delivery and any period immediately following that day

Yet the Maternity Benefit law found in the Act of 1961 was found to be lacking by modern-day women who still felt constrained by the ideas and philosophies of the late 1990s, so over the years changes were made to the legislation, for instance changes in the requisite number of days of her employment to enable a woman to claim maternity benefit, the manner of calculation of the benefits, etc. but the most drastic changes came in the year 2017.

Further section 5(3) lays down the maximum period for which the woman may avail the maternity benefit and fixes the limit of twenty-six weeks of which not more than eight weeks shall precede the expected date of delivery.²⁸

The proviso attached to this section states that a woman having two or more than two surviving children shall be entitled to maternity benefit for a maximum period of twelve weeks of which not more than six weeks shall precede the date of her expected delivery.²⁹

Adopting or Commissioning Mothers

In a much needed move the Maternity Benefit Act confers upon a woman who legally adopts a child below the age of three months or a commissioning mother, maternity benefits for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.³⁰

Work From Home (WFH)

²⁸ The Maternity Benefit Act, 1961 (Act 53 of 1961), s.5(3), as amended by The Maternity Benefit (Amendment) Act, 2017 (Act 6 of 2017), s. 3 (A) (i) for "twelve weeks of which not more than six weeks".

²⁹ *Ibid.*

³⁰ *Id.* s. 5 (4).

Where the nature of work assigned to a woman is such that she can work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.³¹

The Maternity Benefit Act, 1961 in distinct sections covers payments and facilities additionally entitled to a woman such as medical bonus, leave for miscarriage, leave for tubectomy operation, leave for illness arising out of pregnancy, delivery, premature birth of the child or miscarriage, nursing breaks and crèche facility.

Miscarriage

One critical anomaly existing in the Act is concerned with its definition of miscarriage. The Act defines ‘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)*”.³² Thus, so far as the expulsion occurs prior to or during the twenty-sixth week of pregnancy, it would be covered under the expression of miscarriage and entitle a woman to leave for miscarriage along with wages for a period of six weeks from the day following her miscarriage.³³ However, it does not extend the same benefit to cases in which miscarriage occurs after the twenty-sixth week.

Pertinently, the Act does not prescribe any provisions for cases in which the child is still-born or the child dies soon after birth and is survived by the woman. In such a scenario, the Act is silent on leave and wages to be granted to the grieving woman.

Leave for Illness Arising out of Pregnancy, Delivery, Premature Birth of the Child or Miscarriage

The Act manifestly does provide benefits to a woman for illness arising out of pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy or

³¹*Id.* s.5(5).

³²*Id.*, s.3(j).

³³*Id.*, s.9. The provision also covers ‘medical termination of pregnancy’ and provides the same leave and wages as in the case of miscarriage.

tubectomy operation for leave with wages at the rate of maternity benefit for a period of one month.³⁴

The Act incidentally does not attempt to define the term ‘illness’ and, thus, has given the term a wide connotation by including within its ambit any illness arising out of any condition, be it pregnancy, miscarriage and right up to a tubectomy operation. Further, a reading of section 10 reveals that to claim such benefit arising out of illness one need not have claimed maternity benefit or miscarriage benefit and, thus, this benefit stands independent of others specified in the Act and can be availed right from the time of pregnancy to the delivery.

Nursing Breaks

Another benefit granted to a new mother is the facility of nursing breaks. The Maternity Benefit Act, 1961 prescribes that in addition to the period of rest that was availed by the woman employee after the birth of her child, the woman shall, upon resuming her employment, be entitled to two nursing breaks of prescribed duration in a day until the child attains the age of fifteen months.³⁵

Moreover, the Act specifically enjoins that there shall be no deduction of wages for the breaks that the woman takes for the purpose of nursing her child in terms of section 11 of the Act.³⁶ This provision was intended to encourage improvement in infant health and endorse nursing and child care in a move to facilitate infant welfare.

Work of Arduous Nature

The Maternity Benefit Act, 1961 empowers a woman to request abstention from work of arduous nature, or work that involves long hours of standing or which is likely, in any way, to affect or impair the normal development of the foetus or is likely to cause her to miscarry or affect her health.³⁷ A woman employee can avail this benefit for a period of one month immediately preceding six weeks before her expected date of delivery or where the woman chooses not to avail the said six-weeks of maternity benefit, she may avail of her request to abstain from the work of arduous nature during the said six-week period.

³⁴*Id.*, s. 10. This leave and wage benefit is in addition to any maternity benefit the woman might have received under section 6 of the Act or any leave for miscarriage she might have availed under section 9 of the Act.

³⁵*Id.*, s.11.

³⁶*Id.*, s.13(b).

³⁷*Id.*, s.4(3).

By the same token, the employer carries upon him the all-pervading duty of not deducting the wages of the expecting woman employee for allotting her less arduous jobs.

This researcher believes that this provision of the Maternity Benefit Act, 1961 is laudatory and progressive in its forward thinking and efficacious approach. Yet there are still other aspects of the Act, that although forming a solid foundation, do need a certain degree of depth and substance so as to truly facilitate an empowerment of woman employees, one such aspect is the ambiguity concerning the word ‘illness’.

VIII. Does ‘Illness Arising out of Pregnancy’ Include Psychological Illnesses Arising out of Pregnancy?

“Mental pain is less dramatic than physical pain, but it is more common and also harder to bear. The frequent attempt to conceal mental pain increases the burden: it is easier to say ‘My tooth is aching’ than to say ‘My heart is broken’”.³⁸ – C.S. Lewis.

Research indicates that women are twice as likely to develop common mental disorders, such as anxiety and depression, as compared to men. Research has also shown that 20 percent of Indian mothers are likely to be affected by postpartum depression. According to further research by the World Health Organisation (WHO), economic loss in India due to mental health conditions will amount to an estimated \$1.3 trillion between 2012 and 2030.³⁹

Mental health is influenced by a number of social, cultural, political, economic and environmental factors such as national policies, living standards, working conditions and community support.⁴⁰

The Suicide Death Rate among women in India is almost three times higher than that of countries with similar socio-demographic development globally. Married women in India are the biggest victims of suicide deaths among women in India, mainly because of arranged marriage, early motherhood and economic dependence on husbands.⁴¹

³⁸ C.S. Lewis, *The Problem of Pain*, (Cenetary Press, London, 1940).

³⁹ Anoushka Roy, “Mental Health in India – An Overview: Taking Stock of the Existing Policy.” *South Asia Journal*, available at: southasiajournal.net/, (last visited on March 21, 2020).

⁴⁰ The World Health Organisation, “Mental Health in India” (2018).

⁴¹ Dandona, Rakhi, et al., “Gender differentials and state variations in suicide deaths in India: the Global Burden of Disease Study 1990–2016” 3 *The Lancet Public Health*, e478 – e489, (2018).

At a global level, over 300 million people are estimated to suffer from depression, equivalent to 4.4 percent of the world's population.⁴²

The total number of people living with depression in the world is 322 million. Nearly half of these people live in the South-East Asia Region and Western Pacific Region, reflecting the relatively larger populations of those two Regions (which include India and China, for example).⁴³

The total estimated number of people living with depression increased by 18.4 percent between 2005 and 2015.⁴⁴

At the same time there needs to be a greater awareness of what constitutes psychological illness and a paramount need to do away with any stigma attached to such illness. With the rise in cases of depression and allied illness, the country, its law makers and society as a whole can no longer shirk its duties in enabling its women employees to make the best use of the special provisions for their protection without any fear of discrimination or loss of employment or any sort of stigma being attached to such illness, so as to ultimately create a balanced and happy workforce.

The State is enjoined, under Part IV of the Constitution of India, to secure to citizens, both men and women, the right to adequate means of livelihood.⁴⁵ Further, the State is also enjoined to ensure that the health and strength of its workers; men and women, are not abused.⁴⁶ Moreover, article 42 of the Constitution of India specifically directs the State to secure just and humane conditions of work and maternity relief.

The State achieves these directions by enacting laws, formulating rules and laying down policies that protect and empower women employees but this researcher is of the opinion that these laws and rules often take long periods of time and much deliberation before being adapted to the current needs of women in particular and society as a whole.

⁴² World Health Organization, "Depression and Other Common Mental Disorders, Global Health Estimates" 5 (2017).

⁴³Id. at 8.

⁴⁴ GBD 2015 Disease and Injury Incidence and Prevalence Collaborators, *et. al.*, "Global, regional, and national incidence, prevalence, and years lived with disability for 310 diseases and injuries, 1990–2015: a systematic analysis for the Global Burden of Disease Study 2015" 388 *The Lancet* P1545 -1602 (2016).

⁴⁵ The Constitution of India, art. 39 (a).

⁴⁶Id., art. 39 (e).

It is a fact that a woman suffering from post-partum depression or any other form of psychological imbalances would be counter-productive in the workforce. There will be a predominant socio-occupational deterioration from her pre-morbid level of functioning. This will ultimately affect her productivity and efficiency as a member of the workforce. Moreover, if left untreated, psychiatric disorders that occur during and after pregnancy could drastically affect maternal health as well as infant life.

This researcher opines that illness being undefined and wide in its present usage; it could be construed to cover both physical and mental illness. Thus, in addition to any physical ailments, the term can be extended to include psychological or mental disorders including and not limited to depression, bi-polar disorders, panic attacks, post-traumatic stress disorder and post-partum depression.

It can no longer be ignored that the prevalence of depression has been reported to be between 10 percent and 16 percent during pregnancy.⁴⁷ Frequently, depression during pregnancy can be missed. Pregnant women may have many clinical signs and symptoms overlapping with those seen in major depression (e.g. sleep and appetite disturbance, diminished libido, and low energy). Some medical disorders commonly seen during pregnancy, such as anemia, gestational diabetes, and thyroid dysfunction, may be associated with depressive symptoms and may complicate the diagnosis of depression during pregnancy.⁴⁸

Risks of Untreated Depression in the Mother

The risks of untreated depression in the mother include risk of self-injurious or suicidal behavior, inadequate self-care, and poor compliance with prenatal care.⁴⁹ Women with depression often present with decreased appetite and consequently lower than expected weight gain in pregnancy, factors that have been associated with negative pregnancy

⁴⁷ Margaret Blair, "Pregnancy. A Psychological and Social Study", in S. Wolkind, E. Zajicek (eds.), 140 *British Journal of Psychiatry* 57-73 (American Press, 1981).

⁴⁸ M. Klein and M. Essex, "Pregnant or depressed ? The effects of overlap between symptoms of depression and somatic complaints of pregnancy on rates of major depression in the second trimester", 2 *Depression* 308-314 (1995).

⁴⁹ Pearson KH, Nona's R and Cohen LS. "Practical guidelines for the treatment of Psychiatric disorders during pregnancy", in K Pearson and Santvana Sharma (eds.), *Women's Health and Psychiatry* 115-23 (Lippincott, Williams and Wilkins, 2002).

outcomes.⁵⁰ Women with depression are also more likely to smoke and to use either alcohol or illicit drugs, behaviors that further increase the risk to the foetus.

Further, some studies suggest that maternal depression adversely impacts the health of the developing foetus.

Impact of Maternal Depression on the Family Unit

Interpersonal difficulties, disruptions in mother-child interactions and attachment due to maternal depression may have a profound impact on infant development.⁵¹ Children of depressed mothers are more likely to have behavioral problems and exhibit disruptions in cognitive and emotional development.⁵² Studies have also shown that depression during pregnancy significantly increases a woman's risk for post-partum depression.⁵³ Antenatal depression thus may have significant adverse effects that may extend beyond pregnancy and have more significant long-term effects on psychosocial functioning.

IX. Mental Health Legislation

Incidentally, India adopted its first Mental Health Act in July, 2017. This law enshrines various benefits for mentally ill individuals and seeks to protect their dignity, as well as, privacy throughout the period of their treatment. The Act is a landmark shift from the age-old stigma connected with mental illness and the trauma patients go through during treatment. It is clear from a perusal of the mental health law that it concentrates more on high intensity mental illnesses and the benefits provided to such patients. But mental illness is present in varying degrees and it needs to be addressed at even the smallest of levels.

The present Mental Health Act, 2017 has not framed any specific provisions for mental health awareness at the workplace. However, it directs the government to take measures for spreading general awareness about the same.

India is a welfare state, which means that all of its laws are geared towards maximisation of

⁵⁰ S. Orr and C. Miller, "Maternal depressive symptoms and the risk of poor pregnancy outcome. Review of the literature and preliminary findings" 17 *Epidemiologic Reviews* 165-171 (1995).

⁵¹ L. Murray, "The impact of postnatal depression on infant development" 77 *Journal of Child Psychology and Psychiatry* 99-101 (1997).

⁵² M. Weinberg and E. Tronick, "The impact of maternal psychiatric illness on infant development" 59 *Journal of Clinical Psychiatry* 53-61 (1998).

⁵³ MV O'Hara, DJ, Neunaber, et al., "A prospective study of post-partum depression: prevalence, course and predictive factors" 93 *Journal of Abnormal Psychology* 158-71 (1984).

social and economic welfare of the nation as a whole and the society and individuals in particular. It attempts to achieve this by constantly striving to obtain a balance between sometimes competing interests of the economy on one hand, and society on the other. It seeks to achieve this by persistent and stalwart laws that are enacted after much deliberation and concentrated study on various aspects both, economical and societal. In this same manner, the Maternity Benefit Act, 1961 was enacted and over the years modified and amended to keep up with the needs of the economy and society.

However, this researcher is of the opinion that medical research in India on the topic of mental health, particularly during the period of pregnancy is found in abundance, but for centuries there exists a stigma associated with psychiatric disorders and this resulted in cases going untreated leading to adverse impacts on society as a whole. Low rates of maternal mental health care underscore the need to improve recognition and delivery of treatment for mental disorders occurring during pregnancy and postpartum.

This position is changing in recent times, with society getting better educated and socially prominent persons being more vocal about mental health issues, society is gradually learning to be more accepting of mental health issues and, thus, individuals are better equipped to seek help to combat their inner demons.

This means that laws should also evolve along with other branches of knowledge and accommodate the changing needs of society. This researcher suggests, therefore, that the Act define the term illness and, therefore, categorically bring within its ambit both physical and psychiatric illnesses occurring during and after pregnancy. There exists a need for consistent and constant awareness on mental health disorders and the law should strive to be just and favourable to those affected by it.

X. Recent Amendments

Women's labour force participation in India has fallen and is among the lowest in the world. It is only slightly above Saudi Arabia and Pakistan. With females having a percentage of 23.413 percent of Labour Force Participation in 2019⁵⁴ according to data collected from the International Labour Organisation, ILOSTAT database.

⁵⁴ International Labour Organisation, ILOSTAT database, Labour Force Participation Rate, females, India, available at:

The Maternity Benefit Act, 1961 was revamped by the Amendment Act of 2017 finally bringing several breakthroughs that ought to have been implemented much earlier. The Bill was passed in August, 2016 by the Rajya Sabha and subsequently passed by the Lok Sabha in March, 2017. Its amendments catered to the previous deficiencies that were recognized as elementary and crucial for women currently employed in labour markets.

The amendment of 2017 was recognition of the fact that reversing the decline in women labour force participation is a social, political and economic imperative. The Maternity Benefit (Amendment) Act, 2017 has remarkably extended its protection to ‘Adoptive Mothers’ of a child below the age of three months and ‘Commissioning Mothers’ and enables them to avail maternity benefit or leave of twelve weeks.

It has also introduced progressive facilities like crèche facilities, option to work from home and obligation of employer to inform women employees of their rights to maternity benefits.

The Indian government is now also contemplating a mechanism by which employers of expectant fathers may also be accountable to contribute a portion of the maternity benefit.

XI. Paternity Benefits and its Role in Empowering Women

Paternity leave refers to the benefit of paid leave offered to a male employee on account of birth of his child to enable him to look after the welfare of his newborn and its mother. It is, however, estimated that less than half of the countries, globally, offer their employees any form of paternity leave. On the rare occasions when paternity benefits are offered to employees it often ranges for a period ranging from two-three weeks to just a few days. Moreover, many-a-times, men don't avail the full paternity allowance provided to them for various social and psychological reasons. However, this trend seems to be positively changing in recent times.

In fact, Zomato, a popular food delivery app, made headlines in June, 2019 by introducing a twenty-six weeks paternity leave for its male employees. But this innovative step remains an exception rather than the rule. India is one over ninety countries that do not have a national framework to enable fathers to get paid leave to be with their infants.

<https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS?end=2019&locations=IN&start=1990&view=chart>
(last visited on March 8, 2020).

It is submitted that gender equality necessarily involves a close association between paternity leave and a change in mindsets about perceived gender stereotypes. Men must be given equal prospects to undertake care-giving and until companies and society acknowledge the responsibility and role that men must play in care-giving of the new-born infants, the lion's share of responsibility for care-giving of the infant will fall on the mother, who will be compelled to cut-down on her working hours and this will be detrimental to her professional development, in spite of the fact that she had devoted her life to building a career. This aspect of gender equality often gets overlooked.

In this regards, it is a well-established premise that excessive focus on policies aimed solely at women, without a similar change brought in the behaviour and policies pertaining to men sustains anachronistic beliefs and stereotypes that, in the long-run, impede efficiency of these policies and equality in the society in general and the workplace in particular.

Paternity leave also touches upon vital socio-psychological dimensions of strengthening the familial bonds between the father and the new-born, concretising the role of the father in the up-bringing of his children and issues of gender equality in the basic unit of society, i.e., the family.

In a survey undertaken by Unilever in association with *Promundo*, an organisation engaged in promoting gender equality, it was detailed that more than 65 percent of surveyed women stated that mothers would have improved bodily fitness if fathers availed a minimum of two weeks of paternity leave and over 72 percent of women stated better psychological wellbeing would be direct consequence.⁵⁵

Personal benefits aside, paternal leave has also been linked to economic benefits as well. For instance, it is projected that in Sweden every time a father avails the parental leave provided under the domestic leave, the earnings of the mother increase by 6.7 percent in relation to each added months of such availed leave.

The Proposition of the Paternity Benefit Bill of 2017

⁵⁵ Nikki van der Gaag, Brian Heilman, *et al.*, "State of the World's Fathers: Unlocking the Power of Men's Care" 83 (2019).

Soon after the amendments brought to the Maternity Benefit Act in 2017, the Paternity Benefit Bill was proposed by Rajeev Satay, a Maharashtrian Member of Parliament, highlighting the benefits it would bring to fathers of newly-born infants.⁵⁶

The Bill proposed for a paternity leave of fifteen days, extendable to a period of three months, for all workers whether employed in organized or unorganized sectors of employment. The most characteristic facet of the proposed Bill was that it highlighted the equal benefits that paternity leave would have on the welfare of fathers and mothers alike.⁵⁷

Mr. Satay, while urging the merits of the proposed Bill was quoted to have said that, “*Child care is the joint responsibility of both parents. They must devote time to the newborn to ensure its proper well-being*”.⁵⁸

But regrettably, the Bill did not survive into a law, which would have ushered in a new era of supportive husbands and doting fathers in addition to benefiting all men in the workforce. It would have fostered a much needed change in the existing norms of women availing maternity leave which fades away their vitality as crucial members of the workforce and it aggravates the dogged gender inequalities in the workplace as well as in the confines of the home. It is true that the proposed Bill might not have entirely done away with all gender disparities but regardless, it would have played an instrumental role in reversing gender stereotypes.

Pertinently, researcher Erin Rehel was quoted, in the Maternity and Paternity at Work Report, 2014 conducted under the aegis of the International Labour Organisation, to have described the role of the father as follows:⁵⁹

By drawing fathers into the daily realities of childcare, free of workplace constraints, extended time off provides the space necessary for fathers to

⁵⁶ The Paternity Benefit Bill, 2017 (Bill 90 of 2017), available at: <http://164.100.47.4/billtexts/lbilltexts/asintroduced/678LS%20AS.pdf> (last visited on Jan 11, 2020).

⁵⁷ James Vazquez, “What Is the State of Paternity Leave in India (2020) - Bel-India.” Bel, Jan. 23, 2020, available at: bel-india.com/what-is-the-state-of-paternity-leave-in-india/ (last visited on Jan. 11, 2020).

⁵⁸Ibid.

⁵⁹ Erin Rehel, “Maternity and Paternity at Work Report” (International Labour Organisation, 2014).

develop the parenting skills and sense of responsibility that then allows them to be active co-parents rather than helpers to their female partners.

It is important to note that the concept of paternity leave is not completely absent in India.

Government Sector Employees and Paternity Leave

Employees in government sectors do benefit from paternity leave. In 1999, the Central Government introduced the following provisions of paternity leave under Rule 551 (A) of the Central Civil Services (Leave) Rules, 1972:

- a. A male Central Government employee, including an apprentice or a probationer, having not more than two children can utilize a fifteen days' period of leave to look after his new-born infant and its mother.
- b. The male employee must utilize the leave, fifteen days before the delivery or during the period of six months after the birth of the infant. If the male employee fails to avail the said leave than the leave is treated as lapsed and will be regarded as void.
- c. A leave salary payable during this period of fifteen days is equivalent to the salary earned by the employee before he availed the said leave.

Private Sector Employees and Paternity Leave

Although, the Central Government is obligated to provide paternal leave under the Central Civil Service Rules, 1972, there exist no laws that require private sectors to furnish paternity leave to their male employees. Hence it is left to the discretion of the private companies to exercise the choice of whether they wish to offer their male employees any paternity benefit and the extent thereof.

The larger companies often embark on their own policies of paternity relief through their individual Human Resource Policies. For instance, Microsoft presents its twelve weeks of paternity leave, Infosys provides a meager five days paternity leave and Facebook offers seventeen weeks of paternity leave.

Furthermore, Unilever launched its own ‘Global Paternity Leave Standard’ in 2019 for all its employees across the globe, providing all fathers a minimum of three weeks of paternity leave.

IKEA India is another pioneer in the avenue of parental leave. In 2018 it introduced a policy that provides all of its employees a parental leave for the duration of six months. The company in its press statements reveals that its policy aims at supporting women to re-join work and breakdown outdated notions that only women have to take care of the children. It is observed that the parental leave is often availed by men when their wives have gone back to work.

The Courts too have recognised the need for paternity leave as is evidenced in the case of *Chander Mohan Jain v. N.K Bagrodia Public School*,⁶⁰ Chandra Mohan, who was a teacher of N.K Bagrodia Public School moved the Delhi High Court challenging the rejection of his paternity leave application and salary deduction for the period of absence from school. Jain took fifteen days’ leave in December 2008 immediately after his wife’s premature delivery. The school said that it had no provision for paternity leave. The court held that all male employees of unaided recognized private schools should be given a salary, allowances, leave, and other benefits.

Thus, a growing recognition of the benefits of paternity leave for not merely the father but also for the mother and infant as well as its economic and social impacts have lead to a few large private organisations adopting more innovative policies on paternity leave yet there is still a long way to go for the private sectors as well as the unorganized sectors who have no such benefits.

Why is Paternity Leave Stunted?

Even in the few cases where private organisations do offer paternity leave and/ or allied benefits like flexibility of schedules, the male employees still find it difficult to avail these benefits on account of the blow it would bring to their egos or for the shame they feel in availing of benefits that are characterized to be for females.

⁶⁰ (2009)163 DLT 1.

In fact, statistics reveal that in Japan only one percent of fathers availed the whooping paternity leave of twenty-five weeks that is offered to them. Even in Brazil, Canada, United States, Argentina and the United Kingdom, a majority of fathers desist from availing paternity leave because they feel they are ill-suited to care-giving as compared to females, although the position in these countries are far more positive than that of India.

Pertinently, Japan currently ranks the first in providing the maximum paternity leave to its male employees. Japan offers twenty-five weeks of fully-paid paternity leave.

The United States has one of the worst policies on parental leave that grants unpaid leave of twelve-weeks to new parents but only to those companies that have employed a minimum of fifty employees in the preceding year.

Public figures and celebrities have also played a role in popularizing and creating awareness on paternity leave. For example, in 2015, Mark Zuckerberg, CEO and founder of Facebook, availed a two-month long parental leave at the birth of his infant. He has played an instrumental role in shedding the stigma attached to men availing paternity benefits.

However there remains much to be done in India to enable this stepping stone to gender equality. In addition to a legal framework and a reliable governmental policy prescribing paternity leave there is an even greater need for breaking stereotypes and changing preconceived notions attached to men and women.

In a recent study conducted by *Promundo*⁶¹ has reported that more than 80 percent of men in India, Pakistan, Egypt and Nigeria felt that bathing, feeding and changing infants was a woman's duty.

Another reason why men hesitate in availing this paternity break is that they worry it may adversely affect their career growth. This is a problem often faced by women who re-join work after availing maternity leave. Moreover, men are still perceived as breadwinners and they are not comfortable in shedding this role, albeit temporarily, to take on the role of care-

⁶¹*Promundo* is a US based organisation that works towards achieving gender equality involving men and boys in partnership with women and girls, and individuals of all gender identities.

giver and this is one more reason added to the plethora of reasons that deters them from availing paternity benefits.

XII. The Constitutional (Amendment) Bill, 2020

Another important aspect that needs to be considered is the particular relevance of maternity benefits in society with the emphasis currently being on family planning and fewer babies. In fact, on February 7, 2020, a Private Member's Bill was introduced by Shiv Sena's Rajya Sabha MP Anil Desai, in the Rajya Sabha titled *The Constitution Amendment Bill, 2020* which aims to make an addition in Part IV of the Constitution that would require the State to encourage people to have smaller families. The provision sought to be inserted as article 47A is reproduced as under:⁶²

47A. The State shall promote small family norms by offering incentives in taxes, employment, education, etc. to its people who keep their family limited to two children and shall withdraw every concession from and deprive such incentives to those not adhering to small family norm, to keep the growing population under control.

Pertinently, this isn't the first time a Private Member's Bill was introduced calling for population control. A similar Bill was introduced in 2016 but it did not reach the stage of voting. Similarly, in 2019 another Bill was introduced proposing to penalize citizens for having more than two children this Bill yet again failed to get passed.

The Bill of 2020 states in its Statement of Objects and Reasons:⁶³

The fact that population of India has already crossed over 125 crore is really frightening. The country has doubled its population in just forty years and is expected to unseat China as the world's most populated country in the next couple of decades i.e. by the year 2050.

It further goes on to say that people must be discouraged from having more than two children by withdrawing tax concessions, imposing heavy taxes and by making other punitive provisions for violations.

⁶² The Constitutional (Amendment) Bill, 2020, proposed art. 47A.

⁶³Id. Statement of Objects and Reasons.

Pertinently, such a provision would violate article 16 (1) (e) (the obligation of State Parties to ensure the same right to both men and women to decide the number and spacing of their children and have access to information, education and means to enable them to exercise these rights) of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).⁶⁴

It seems apparent to this researcher that such an addition would not only infringe upon the fundamental right of liberty guaranteed to every individual under article 21 of the Constitution of India and the fundamental right to privacy read in the same article 21. Such a provision would be archaic, narrow and arbitrary.

Thus, if the said provision is added to the Constitution it will be incumbent on the state to withdraw tax concessions, impose heavy taxes and formulate other punitive provisions for violations of the family planning directions. It is unknown if the said provision would affect the provisions of the Maternity Benefit Act, 1961 but this researcher ventures the opinion that the legislature could be compelled to amend related laws including the Maternity Benefit Act by withdrawing any benefits to women employees who have already had two children or in other words limiting the benefits only to women having their first or second child. At present the Bill has only been introduced in the Rajya Sabha and it is yet to be debated or voted on.

The question would, thus, be raised as to whether limiting the maternity benefits to two deliveries will play a role in limiting child birth? The answer thereto would depend on a number of factors such as the quantum of the benefit actually given to a woman employee and the disincentive that would result from limiting the benefit. It is opined by this researcher that such a disincentive may not in fact decrease the rate of child birth but it would most definitely hamper the health of working mothers and of their infants and thereby adversely affect the community at large.

Some other glaring questions that would need to be answered are:

1. Should the maternity facilities be limited to the first or second delivery of the woman employee or
2. Should they be limited to the first two children?

⁶⁴ The Convention on Elimination of All Forms of Discrimination Against Women (popularly known as CEDAW) was adopted on December 18, 1979 and came into force on September 3, 1981. India ratified the Convention only in 1993.

3. What happens if the woman employee has triplets in her first delivery or
4. What happens if she has twins or triplets in her second delivery?
5. Should she be penalized in these scenarios?
6. What happens if she has already had children prior to joining the workforce?

Thus, it seems that such a family planning policy raises more questions than it can answer. It brings to the forefront the unmistakable contradiction between apparent population check and the need to have a workforce with healthy female workers and able-bodied citizens of tomorrow. However, this isn't the only ambiguity that persists around the maternity benefit law. Another equally important question pertains to the payment of maternity benefit.

XIII. Who Should Bear the Cost of Maternity Benefits?

India is one of the very few countries where the financial responsibility for paying maternity benefit is borne solely by the employer of the expecting female employees. In most countries, the cost of maternity leave is shared by the government, employers of both expectant parents, insurance agencies and other social security programmes.

In Singapore, for instance, the employer bears the cost for eight weeks of maternity leave and public funds cover the remaining eight weeks of maternity leave. In Australia and Canada, public resources bear the full cost of maternity leave. In France, a social insurance system bears the cost of maternity leave. While the employer, employee and the government, all together share the cost in Brazil.

While large corporations with deep pockets, and seemingly endless financial resources, may be able to pay for the twenty-six weeks paid-leave policy, a majority of Indian organisations, which include micro, small, and medium enterprises and startups, cannot meet the expense of this policy, given their expansion challenges, resource constrictions and margin-pressures.

Additional necessities like crèche facilities require further capital and working expenses. Thus in light of all these added expenses, it is not a surprise that some companies in India might be hesitant in hiring young women. When they do take a chance, the women might face a diminution in wages as compensation as firms recompense for higher lifetime costs.

But these so-called compensatory measures are not conducive to encouraging women to enter into labour markets.

There are some other remedial decisions that ought to be embraced by the government. The government should share the cost of maternity leave with employers — by a mechanism by which the employer pays for thirteen weeks and the government pays for thirteen weeks, as in the case of the system followed by Singapore.

Furthermore, the government can increase tax rebates for maternity wages or set up an insurance plans to pay maternity wages, by allocating the premium with the employer. Another alternative could be providing for paternity leave for expectant male employees to counteract any prospect of gender bias. This has the additional upside of care-giving work being shared equally by both parents in keeping with perspectives of the twenty-first century.

It is true that women's empowerment needs well-built policies that emphasise the impetus that is gained by such measure and further employers should step in to perform their obligations. But the bottom line is that policy interventions need longevity and at this juncture it remains to be seen if the government is equipped in this regard.

As the Renaissance physician, Paracelsus said: "The dose makes the poison."

XIV. Suggestions

Strengthening Laws that Safeguard Women's Health

For this purpose, the government needs to first conduct studies to determine the impact of the existing laws and policies and then determine whether the laws are serving their purpose and ultimately improve upon those aspects that need to be further developed.

Further the definition of miscarriage under the Maternity Benefit Act should be re-examined and should be enlarged to include miscarriage that occurs after the twenty-sixth week of pregnancy.

There also needs to be a re-examination of the provision of 'illness arising out of pregnancy' and it should be construed to include psychological illnesses. The increase in cases of depression and allied illnesses in the country, makes it amply clear that the nation, its law makers and society as a whole can no longer shirk its duties in enabling its women employees to make the best use of the special provisions for their protection without any fear of discrimination or loss of employment or any sort of stigma being attached to such illness, so as to ultimately create a balanced and happy workforce.

The Act must define the term illness in a manner that categorically brings within its ambit both physical and psychiatric illnesses occurring during and after pregnancy.

Contribution of the State and/ or Father of the Infant in Maternity Benefit

The current scenario reveals that the burden of maternity benefit falls heavily on many businesses and establishments. Thus, maternity benefit, instead of being a beneficial provision of attracting women to enter into the workforce in actuality proves to be an obstacle or a detriment, as employers are hesitant in employing women because the cost of maternity benefits hang heavy upon their heads.

The solution would be to create a mechanism by which the amount payable is shared between the employer of the expecting, adopting or commissioning female employee, the government and/ or the employer of the father.

In this way the employers would not regard the employment of women workers as a burden because the payment of the maternity benefit would be shared with the employer of the expectant fathers as well. This will, to a great extent, eliminate the prejudice that exists, that employment of women workers is more costly and cumbersome and will also contribute to the equal treatment of men and women workers.

Enacting a Paternity Benefit Law

Women empowerment, at its root is based on the matter of gender equality. Excessive focus on policies aimed at women, without any similar policies that also hold men accountable in aspects of upbringing of children will be detrimental to evening-out the playing field. Policies encouraging paternity benefit would also play a major role in eliminating outdated stereotypes and prejudices against women and in the larger picture, promote greater equality in the workforce as well as in society.

In the twenty-first century, fathers are more increasingly realising that they too have a significant role in raising their children and not merely in financially supporting the family. Fathers, in present times, are more willing to share equal responsibilities in all aspects of the upbringing of their children right from infancy.

Moreover, it is vital not only for the purposes of gender equality and wholesome family-life, but also to encourage professional growth of women employees, which is often inhibited by the fact that the entire responsibility of care-giving is placed solely on the mother who has to spend more time at home and less time at work.

Thus, there is a need for paternity leave and work-life balance programs that should be aimed specifically at men. There can be no women empowerment until men are given equal opportunities to be caregivers, and companies regard men as equally responsible for care-giving.

Granting Benefits to Companies that Conform with the Laws Empowering Women at Workplace

In a move to encourage businesses and establishments to implement provisions of laws that will empower women workers, these corporations should be conferred with certain incentives to persuade them to give full effects to these laws.

These incentives may be in the form of tax exemptions, tax concessions, easier access to loans or credit, simplification of compliances and the like. These benefits would go a long way in promoting and supporting companies in the efforts to encourage women participation in the workforce while at the same time, ensuring that companies do not shirk off their responsibilities towards the female half of the workforce.

These measures would also ensure the implementation of the beneficial provisions. A more direct involvement of the government would also send a clear message of the priority given to these laws.

The government would also be in a better position, to conduct a thorough impact analysis of its policies and programmes, identifying areas of limitations and working to improve upon those identified limitations. In the larger picture, the State would also be far better off, as far

as being able to keep up with its international obligations under the various international conventions it has ratified in respect of women's rights.

Creating More Awareness Regarding the Rights of Women Employees to Benefits

The existence of a legislation that grants maternity benefits to women workers and that encourage women workers to pursue professional commitments after having children will be redundant and will subsist as a mere paper tiger unless the government takes a more active stand in creating awareness regarding these laws.

The fact that a law is enacted does not necessarily mean that it is being implemented. It is apparent that there is lack of awareness among the employers as well as employees regarding the benefits and rights conferred upon female employees and the reasons why these are indispensable.

If awareness is not created all these measures will be seen as a mere burden or farce and there will be no improvement in the situation and in the development of the economy.

Furthermore, the government also needs to undertake a systematic study into the laws and their implementation and determine the number of women capable of working, the number of educated women, the number of women who have had to give up employment as a result of care-giving and the impact of all this on the Indian economy.

The employers on their part have an obligation under law to inform their female employees of the rights and benefits available to them and to foster a sense of their commitment towards creating a more wholesome work environment. They should also have periodic awareness programmes to apprise their employees of their rights and the latest amendments made to these rights.

Breaking Stereotypes and Changing Mindsets Through Governmental Policy and Programmes

The paramount need of the hour is to change the mindsets of the people. Enacting more laws, creating awareness regarding the rights and benefits and enforcing implementation will not give desired results unless the root of the problem is analysed and cured of its disease.

Strangely enough, it is not the legislative or constitutional limitations but the minds of men and women that are the significant factors in India's social predicaments. Traditional attitudes

and rigid customs or just obstinate denials of human rights still beleaguer most women, and the reformative laws remain largely 'paper tigers'.

These laws are either not accepted or, out of reach of most women, for lack of awareness about their existence and/ or application. The crux therefore is changing the traditional ideas that women alone should bear the responsibility of care-giving or keeping homes, irrespective of their professional achievements and goals or their financial capabilities.

Indian women's problems are unique. They face deep-rooted prejudices in social relationships. They do not, generally, have equal status in marriage. The dowry system is still rampant. In simple words they receive the short end of the stick merely on account of their gender.

The solution lies in driving home the point that these laws are intended to elevate women to the position of men and to foster gender equality. Their purpose is to enhance society and encourage economic development. They are not intended to be prejudicial towards men but merely to break ingrained and adverse stereotypes and encourage equality in terms of article 14 of the Constitution of India.

Rethinking the Constitutional (Amendment) Bill, 2020

The Constitutional Amendment Bill of 2020 is proposed as a means of controlling population but its repercussions would extend far beyond.

The Bill itself does not consider the many consequences that would result from it. If, for instance, maternity benefits are withdrawn for women having more than two children what would that mean for infant and maternal mortality, how would that impact women's employment, and in the larger picture, what would that mean for economic development and societal and community welfare.

The Bill raises far more ambiguities than it resolves; *inter alia*, should maternity benefit be limited to first two children, should women be penalized for exceeding the prescribed limit?

There needs to be a more concrete research and deliberation and societal interests must be heard as well before any such family planning policy is adopted.

XV. Conclusion

Undoubtedly the country has progressed by heaps and bounds from its initial position that women should be prevented from receiving quality education and should only occupy roles of homemakers and housewives.

Women, in the present age, have a far more liberal position in society and far greater economic independence than their predecessors of bygone eras. Many women are seeking higher education, encouraged by changing mindsets and governmental support to aim higher, dream bigger and achieve more.

With an enhancement of skill-sets, they are better equipped to demand for higher positions, both economically and socially, and have thus increased their employability. Such a broadening of horizons has propelled economies of scale and has forced notions of equality to be questioned and examined in light of whether there has been done enough to uplift women so that their perceived gender weaknesses do not hinder them in putting their best foot forward in the labour markets.

Although it appears that notions of equality have evolved and the equal treatment of men and women as far as encouragement provided to women to enter into labour markets is championed, the country still has a long way to go if it has to change the conceptions of employers that employing female workers is not an impediment or a burden to business and industry.