



LAWS RELATING TO HUMAN RIGHTS OF WORKING PARENTS IN FACTORIES(INDIA): AN APPRAISAL

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ABSTRACT

Parenthood is a mechanism of upbringing and taking care of the child. Parenthood is an inalienable right of a Parent irrespective of their status viz. Gender, Economic, Physical, etc.; yet not provided unconditionally in situations where a parent is working. Numerous impediments raise a pillar of hurdles for a Working Parent to reach out to the child. Right to life includes Right to live with dignity and the utmost dignity is to care your child and have access to your parent. But, despite legal recognition internationally and nationally the working parents still face challenges to have the bare minimum rights. Health, Safety and Welfare conditions are required to be channelized so as to secure the Human Rights of the working parents in the factory premises. This paper is an attempt to unveil the Legal Mandates available in respect to Parents working in Factories and to put forth suggestions to plug the loopholes.

KEYWORDS

Parenthood, Dignity, Human Rights, Working Parent.

INTRODUCTION

The Globe is full of beautiful creations of Nature. A plethora of living beings is witnessed with varied features and looks. Isolation is not a living condition for most of the living beings on the Planet. Togetherness is an inalienable fact and could be seen in

the same kind of group or at times in different groups as well. The biological process of life is the most pious phenomenon to support the entire growth and evolution of the entire nature. Parent-Child relation is the most beautiful and pure relation and is seen in all the lineages of the living creatures.

Parenthood is a mechanism of upbringing and taking care of the child. Parenthood is an inalienable right of a Parent irrespective of their status viz. Gender, Economic, Physical, etc.; yet not provided unconditionally in situations where a parent is working. Numerous impediments raise a pillar of hurdles for a Working Parent to reach out to the child. Social class, culture, wealth, and income have a very strong impact on the selection of methods of child-raising by a parent. Also, cultural values play a vital role in the raising of a child by the parent.

Human rights are the basic rights and freedoms that belong to every person in the world, from cradle till grave. They apply regardless of where you are from, what you believe or how you choose to live your life.

A working parent is a mother or a father who gets engaged in a work-life. Contrary to the favored belief that employment equates to efforts apart from parents' duties as a childcare provider and homemaker, it's thought that housewives or househusbands count as working parents. The variations of family structures include, but aren't limited to, heterosexual couples where the father is the breadwinner and also the mother keeps her duties focused within the house homosexual parents who combat a variety of labor and residential styles, single working mothers, and single working fathers. There also are married parents who are dual-earners, within which both parents provide income to support their family.



The main areas of concern for working parents are finance, childcare provision, and managing work/life balance. Stressed and distracted employees are more likely to be ill and less likely to perform, so providing help to them is merely a question of common sense.

Working parents structure an outsized proportion of the workforce; however, employers who offer flexible working practices across the workforce are more likely to draw in and retain employees.



JURISPRUDENCE ON HUMAN RIGHTS OF WORKING PARENTS IN

FACTORIES :-

INTERNATIONAL LAW

The factory legislation¹ in India is mostly inspired by either The Constitution of India or the International Conventions or Treaties.

The most widely accepted principles related to Human rights are those imbibed in the Universal Declaration of Human Rights which describes the rights of workers to social security, fair wages and hours of rest from work.² International Covenant on Economic, Social and Cultural Rights also promotes the rights of workers and occupational health and safety.³ Also important is the International Labor Organization which sets out labor

¹ The Factories Act, 1948.

² The Universal Declaration of Human Rights, 1948, arts. 22: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality; art.23: 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. 2. Everyone, without any discrimination, has the right to equal pay for equal work. 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. 4. Everyone has the right to form and to join trade unions for the protection of his interests; art.24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

³ The International Covenant on Economic, Social and Cultural Rights, 1976, arts. 6: 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual; art.7: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

standards⁴ for promoting decent working environment at work place. United Nations Global Compact is another guiding principle to encourage businessmen to adopt sustainable practices at work place.⁵

LEGAL MANDATE IN INDIA

THE CONSTITUTION OF INDIA

The Constitution of India in the Preamble has secured to all the citizens, inter alia, Social justice that can be seen as Fundamental Rights like a right to life⁶ that includes a right to live and work alongwith dignity⁷, the prohibition of forced labor⁸ and the abolition of child labor⁹ and as the Directive Principles of the State Policy such as the conditions of work should be humane and just¹⁰, living wages to be paid to worker¹¹ and arrangements to be made for early childhood care of children of workers¹².

The Right to life includes a right to live with the dignity that has been recognized by Hon'ble Supreme Court in the various judgments.¹³

The economy has seen the shift from contract to status with the simple reason of acknowledging the basic human rights that include working with dignity.¹⁴

THE FACTORIES ACT, 1948

The legislature enacted The Factories Act, 1948 with a view of providing with a mechanism related to working of a factory, working conditions of workers, the administration and inspection of working of factories and the penal provisions for the non-compliance.

The act was enacted on the 23rd September, 1948 and was enforced on the 1st April, 1949.

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays; art.8: The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations.

⁴ The Forced or Compulsory Labour Convention, 1930, The Abolition of Forced Labour Convention, 1957, The Equal Remuneration Convention, 1951, The Discrimination (Employment Occupation) Convention, 1958.

⁵ The United Nations Global Compact, 2000, arts. 3,4,5,6.

⁶ The Constitution of India, Article 21: " Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law".

⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁸ The Constitution of India, Article 23: " Prohibition of traffic in human beings and forced labour: (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them".

⁹ The Constitution of India, Article 24: " Prohibition of employment of children in factories, etc: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment".

¹⁰ The Constitution of India, Article 42: " Provision for just and humane conditions of work and maternity relief: The State shall make provision for securing just and humane conditions of work and for maternity relief".

¹¹ The Constitution of India, article 43: " Living wage, etc., for workers: The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas".

¹² The Constitution of India, Article 45: " Provision for early childhood care and education to children below the age of six years: The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years".

¹³ *Kharah Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295; *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; *Corlie Mullin v. Administrator and Union Territory of Delhi*, AIR 1981 SC 746; *Peoples Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473; *OligaTellis v. Bombay MuncipalCoroporation*, AIR 1986 SC 180.

¹⁴ *Ibid.*

This act has been repealed by The Occupational Safety, Health and Working Conditions Code, 2020 which though enacted has not yet been enforced.

Salient features of the Factories Act, 1948

- The act provide for making the basic necessity arrangements in the factory premises under the head of health which includes drinking water, lighting, washrooms, etc.
- The act provide for making certain arrangements for safe and secure working environment under the head safety which includes fencing machinery, prohibition of employment of women and children near cotton-openers, lifts and stairs, etc.
- The act provide for provisions relating to hazardous processes.
- The act provide for other basic facilities to be there in the factory premises which includes first-aid facility, crèche, canteens, shelter rooms, etc

THE OCCUPATIONAL HEALTH, SAFETY, AND WORKING CONDITIONS CODE, 2020

- The Code applies on any factory that has 20 or more workers and the manufacturing process is being carried on with an aid of power or 40 or more factory workers where the manufacturing process is being carried on without any aid of power.
- The Code Emphasizes on health, safety and welfare of factory workers employed in various social sectors like business, manufacturing, industry, motor transport undertaking, trade, factory, building and other construction work, audio-video production, plantation, newspaper establishments, mine & dock-work and service sectors.
- The limit of the female workers for a purpose of creating a creche facility for children below 6 years of age, would increase to 50 female factory workers from 30 currently.

THE MATERNITY BENEFIT LAWS

THE MATERNITY BENEFIT ACT, 1961

The Objective of this Act is to safeguard the dignity of motherhood and of the new child's birth by providing full maintenance for the child and woman at this time when she is unable to work. Under the Maternity Benefits Act, 1961 the female employee has to serve the factory for a bare minimum period in 12 months preceding the date of expected delivery which has to be 80 days.

The Act provides for 6 weeks in case of termination or miscarriage and 12 weeks in case of pregnancy. The Act serves as an umbrella as it restrains service of a pregnant woman apart from the sole ground of misconduct.

THE MATERNITY BENEFIT (AMENDMENT) ACT 2017

Making It Easy For Mothers

The Maternity Benefit (Amendment) Act, 2017 amends the Maternity Benefit Act, 1961 to provide the following

26 weeks maternity leave for the first two children

12 weeks maternity leave for children beyond the first two

12 weeks leave for mothers adopting a child below the age of three months



The Act makes it mandatory for employers in establishment with 30 women or 50 employees, whichever is less, to provide creche facilities either in office or in any place within 500-meters.

Working mothers will be permitted to make four visits

during working hours to the creche

The employer may permit a woman to work from home if it is possible to do so

Every establishment will have to make these benefits available from the time of appointment

THE CODE ON SOCIAL SECURITY, 2020

The **Code on Social Security, 2020** is a code to consolidate and amend the legal mandates of social security with the aim to provide social security to workers in the organised or unorganised sectors. The Act came into force on the 3rd of May, 2021. The act amalgamated all the nine labour enactments which related to the social security in any manner including the factories act, 1948.

NATIONAL MINIMUM GUIDELINES FOR SETTING UP AND RUNNING CRECHES UNDER MATERNITY BENEFIT ACT, (2017), 2018

The National Minimum Guidelines for Setting Up and Running Crèches under Maternity Benefit Act 2017 (Guidelines) were enacted on 2 November 2018.

These Guidelines are meant to provide the minimum standards for establishment and running of crèches for all those establishments which are employing a number of 50 or more employees as mentioned under the Maternity Benefit (Amendment) Act, 2017.

THE ALL INDIA SERVICES (LEAVE) RULES, 1955

Maternity leave—Maternity leave to be granted to a woman member of the Service with less than two surviving children on full pay up to a period of 180* days from the date of its commencement. Leave (including commuted leave for a period not exceeding 60 days and leave not due) up to a period of maximum of two year, may be granted if applied for in continuation of maternity leave. Maternity leave may be granted for miscarriage and abortion cases subject to maximum of six weeks. In case of a valid adoption by a woman of a child under one year of age, a leave may be granted for 180 days on such adoption but not in the case where there are already 2 children or more surviving and if the adopted child be of an age less than one month, leave of one year to be allowed; if the adopted child be of an age six month to seven month, leave of six months to be allowed; if the adopted child be of an age nine months to ten months, leave of three months to be allowed.

Paternity leave—A man be granted a leave of 15 days after or before delivery for six months only if he has less than 2 children surviving.

Paternity leave for child adoption— A man be granted a leave of 15 days after or before a valid adoption of a child of less than one year of age; for six months only if he has less than 2 children surviving.

EFFICACY

THE FACTORIES ACT, 1948

- This act is applicable for premises where manufacturing process is carried with aid- 10 or more workers and where manufacturing process is carried without aid- 20 or more workers are or were working on any day in the preceding twelve months. The provisions do not apply to those factories where the number falls below. The workers there are left to the arbitrary exercise of authority by the employer.
- Creche facility has been provided where more than 30 women workers are there which is clearly ambiguous for those women who are working in small scale factories.
- Gender discrimination is clearly stated by specifically mentioning the male and female gender for different provisions and not mentioning about the third gender at all.

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020.

- This act is applicable for premises where manufacturing process is carried with aid- 20 or more workers and where manufacturing process is carried without aid- 40 or more workers are or were working on any day in the preceding twelve months. The provisions do not apply to those factories where the number falls below. The workers there are left to the arbitrary exercise of authority by the employer.
- Creche facility has been provided where more than 50 workers are there which is clearly ambiguous for those women who are working in small scale factories.
- Gender discrimination is clearly stated by specifically mentioning the male and female gender for different provisions and not mentioning about the third gender at all.

THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017

- Gender discrimination is clearly stated by specifically mentioning the male and female gender for different provisions and not mentioning about the third gender at all.
- Paternity leave is only for 15 days which is irrational in case of single parent left after the child birth.

NATIONAL MINIMUM GUIDELINES FOR SETTING UP AND RUNNING CRECHES UNDER MATERNITY BENEFIT ACT, (2017), 2018

- These Guidelines are meant to provide the minimum standards for establishment and running of crèches for all those establishments which are employing a number of 50 or more employees as mentioned under the Maternity Benefit (Amendment) Act, 2017. Not applicable to small firms making it promotive of arbitrariness.

THE ALL INDIA SERVICES (LEAVE) RULES, 1955

- Inadequate Paternity leave.
- Gender discrimination is clearly stated by specifically mentioning the male and female gender for different provisions and not mentioning about the third gender at all.

CONCLUSION

There is a very close relationship amongst safety measures and that of the efficiency of workers. Meaning thereby, if the adequate welfare measures are taken then it can enhance the productivity of the employees which will ultimately raise the profit of the organization. Efficiency results in increasing the average output per worker. It is reflected in increased productivity. The welfare measures increases the productivity of the organization as well as it enhances the morale and motivation of the employees which gives a positive impact on the efficiency level of the organization.

These measures are concerned not only with the physical efficiency, and safety of the workers, but also his general well being. They result in improving the conditions under which workers are employed and work. It provides protection to their life and limb. Inadequate provision of safety measures in factories may lead to increase in the number of accidents. Human failures due to carelessness, ignorance, inadequate skill and improper supervision have also contributed to accidents and the consequent need for such measures. A dire need to improvise the legal mandate with respect to the dynamics of the society and the economy. Where Right to life declares to live with dignity an assurance is required from all the employers to provide with safe and secured working conditions and providing with all the basic amenities required by the workers. Creche facilities need to be improvised for all the working staff regardless the number of workers. An important factor of gender disparity and discrimination has to be removed to mainstream the third gender. Health, Safety and Welfare conditions are required to be channelized so as to secure the Human Rights of the working parents in the factory premises.

Therefore, we can conclude by saying that our hypothesis viz. " The laws relating to Human Rights of working parents in factories are not efficacious and are inadequate in protecting the rights of all the potential working parents in the society" stands

proved.

REFERENCES

PRIMARY SOURCES:-

Legislative:

- The Constitution of India.
- The Factories act, 1948
- The Occupational safety, health and working conditions code, 2020
- The Maternity benefit (amendment) act, 2017
- The National minimum guidelines for setting up and running creches under maternity benefit act, (2017), 2018
- The All India services (leave) rules, 1955.
- The Social Security Code, 2020.
- The Universal Declaration of Human Rights, 1948.
- The International Covenant on Civil and Political Rights, 1966.
- The International Covenant on Economic, Social and Cultural Rights, 1976.
- The United Nations Global Compact, 2000.

SECONDARY SOURCES:-

Working Paper:

- RP.Rangeela, Mrs.Girija Anil : WELFARE MEASURES UNDER THE FACTORIES ACT: A CRITICAL APPRAISAL *available at:* <https://acadpubl.eu/hub/2018-120-5/5/417.pdf>
- Durga Prasad, Ch S. 1995. Workers' Participation in Management. Discovery Publishing House.