

Maternity Benefits Laws for Sri Lankan Female Employees: Reference to Maternity Benefits Ordinance and the Shop and Office Employees Act

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Abstract— As in many developing countries, the increasing SriLankan female employment constitutes crucial sectors of the working population. By analogy, it has been associated with low wages, poor working conditions and significant erosion of labour standards. Hence, the women workers' rights are challenged and a question arises that women workers could win their rights and social justice without any discrimination. Therefore the laws on female employment should receive a special focus. Sri Lankan women workers both in public and private sectors are governed by major employment statutes, but with lacunas. In accordance to the provisions of Maternity Benefits Ordinance No.32 of 1939 and The Shop and Office Employees Act, female employees' rights are not secured. SriLankan constitution also guarantees only women to challenge discriminatory administration action of public sector authorities while it is ensuring both male and female protection. Nonetheless, the labour legislations for female workers are not touching with the maternity benefits in an effective way to ensure the social security and justice regarding holidays, overtime and leave, allowances and to strengthen the job satisfaction. Certain categories of women employees are also not covered by existing labour laws regarding the maternity benefits of domestic service and migratory employment in the Middle East. This study emphasizes that the reforms are to be introduced on maternity benefits laws in SriLankan female employment in order to inculcate the social security, rights and job satisfaction for national development to overcome many challenges and to win the rights of female workers in the future. Further this will mainly deal with the maternity benefits laws of female employment and how it should be implemented the new laws and reforms in order to protect the social stage of female workers for the national development.

Keywords— Female employment, Maternity benefits, Job satisfaction

I. INTRODUCTION

Until the advent of the British, Sri Lanka had a static agricultural economy. With the industrial revolution of Sri Lanka after the opening of the hill country for the cultivation by the British coffee, tea and rubber have begun. To perform an economic development from this industrial

revolution, women workers were used. Hence, female employment had been taken a vital concern from about 1827 in Sri Lanka.

With the development of labour law, Sri Lanka began by the intervention of the state as a means of achieving social justice. Several legislations came into force from earlier times in order to protect both male and female labourers' rights. Establishment of governmental and non-governmental organizations was another significant point in labour law to strengthen the rights of labourers.

The goal of industrial law involves with the achievement of social and economic justice. Modern law has brought certain legislation to preserve social justice and throughout it has highlighted job satisfaction of the labourers in Sri Lanka with the concept of equity. Therefore, even female employees are able to achieve their rights and freedom under modern law.

Those protective and welfare labour legislations have imposed obligations such as hours of work, overtime payments, weekly rest, safety at work place, working conditions, health, injury at work, maternity benefits, holidays and leave entitlement, protection of children and women against exploitation, fixation of minimum wages, termination, compensation, pensions and job security to translate the concept of social justice into its practical and applied aspects.

Among them, it is identified that at certain times female employees are unable to obtain its maximum advantages. This is mainly because there are not more legislations which are only for the female workers. This research analyses on Maternity benefits laws in Sri Lankan female employment under the Maternity Benefits Ordinance No 32 of 1939 and Shop and Office Employees Act No 19 of 1954. This will mainly deal with the maternity benefits laws of female employment and how it should be implemented the new laws and reforms in order to protect the social stage of female workers for the national development.

The research problem clarifies that the existing laws on maternity benefits in Sri Lankan female employment with reference to Maternity Benefits Ordinance and The Shop and Office Employees Act do not fulfil the requirements of

female workers in order to ensure their social security and justice, rights and job satisfaction.

Objectives of the research are to,

- i. Identify the maternity benefits offered by aforementioned acts in Sri Lanka
- ii. Examine the international legal mechanisms on maternity benefits laws
- iii. Introduce new methods to improve the existing laws on maternity benefits in order to ensure their social security and justice, rights and job satisfaction

II. METHODOLOGY

To fulfill the aforesaid objectives, both qualitative approach and quantitative approach were used. Hence, this study is conducted by using a mixed approach. Both primary and secondary data have been used for purpose of this research. Primary data was collected through the interviews of female employees from both public and private sector and secondary data was collected from available books, research studies, web sites, paper articles published by the local and foreign intellectual of the subjects.

By extension, it is compared the maternity benefits laws on Sri Lankan Female Employment under the above mentioned two labour legislations. The research designs to spotlight on the existing laws, drawbacks and later the recommendations of the new proposed structure.

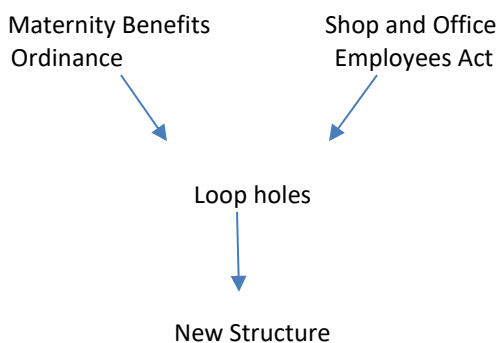


Figure 1. Conceptual Framework

Source: Author's original Construction

As the limitations in this study, it is not considered on the paternity benefits as there is no provision for paternity leave in the labour and employment laws of Sri Lanka.

Moreover, maternity laws in Sri Lanka are discussed mainly through the Maternity Benefits Ordinance No 32 of 1939, Shop and Office Employees Act No 19 of 1954 and their amendments as the major statutes. International implementation on maternity benefits is limited to key countries in the world and Asian countries due to the similarities of cultural, social issues.

III. MATERNITY BENEFITS ORDINANCE NO 32 OF 1939

The payment for maternity benefits to women workers and other matters relating to the employment of such women before and after their confinement are included in this act. Through the Amendment act No43 of 1985 the provisions are expanded in order to enhance the benefits from this legislation. This ordinance applies to all women workers other than those employed in or about the business of a shop or an office, or on a casual basis. According to this, worker is entitled to be paid at a time rate under the law or terms of contract of employment six-sevenths of the wages. For women workers who worked in estates, register of women workers and notice book for the maternity leave with the relevant information are kept by the employer. Amendment act No43 of 1985 stipulates that the period of such woman shall be entitled to the payment of maternity benefits is twelve weeks; that is two weeks prior to her confinement and ten weeks after her confinement. This results in the issue of a live child and she has only one child or no child. In all other cases it is six weeks as originally provided in the principal enactment ; that is two weeks prior to and four weeks after the confinement. In contrast with the Shop and Office Employees act when calculating the number of days of maternity leave weekly off days and holidays were taken into account in Maternity Benefits Ordinance.

Section 2 of the ordinance states that no employer shall knowingly employ a woman worker at any time during the period of four weeks immediately following her confinement. This seems that it ensures social justice of women workers and job satisfaction of them. The payment during the maternity leave will be at the normal weekly rate.

Section 10A also provides that the employment of a woman worker shall not be terminated by reason of her pregnancy or confinement. Section 10B states that where a woman gives notice to the employer that she expects to be confined within three months she could not be employed during that period on any work that will be injurious to her or her child. Hence, the entire enactment provides a wide justice to female employees in Sri Lanka while preserving the job satisfaction although it contains drawbacks and loopholes.

IV. SHOP AND OFFICE EMPLOYEES ACT NO 19 OF 1954

This act is considered as the “Charter of Rights” of the white collar workers in the country. It is to provide for the regulation of employment, hours of work and remuneration of persons in shop and offices and for matters connected therewith or incidental thereto. Part 1A of the act provides circumstances for the maternity benefits for every female person employed in the business of shop or office. In leave in pregnancy and confinement, it states that notice should be given to her employer that she expects to be confined within fourteen days from the date specified in the notice. Then, she is entitled to leave for the period commencing on that date and ending on the date of her confinement, and her employer shall allow such leave. Therefore, it seems that how this act provide a reasonable benefits during such period to a female worker.

Further, she can take and shall take leave for a period of twenty-eight days commencing on the date of her confinement. Section 18H States that this leave in addition to holidays or leave to which the employee is entitled to. By analogy, it is a benefit for such women employees in order to enhance their social rights.

According to the issue of remuneration for that period of leave, if she is accordance with section 18B (1), she shall be paid full remuneration for the entire period of leave if that period does not exceed fourteen days or for fourteen days of that period if that period exceeds fourteen days.

Section 19 refers that payment can be made in legal tender and only authorized deductions and with the consent of the employee. Such deductions should not exceed 60% of the remuneration due. It seems that above provisions has no application to income tax payments and any payment made on a court order. Moreover, the payment should be made within ten days after the expiry of the payment period if monthly paid. In accordance with the regulations of remuneration, determination with consent and determination by tribunals are concerned. The minister on request by not less than 25% of the employees or by the employer or employees is specified under the determination with consent.

For work which is prohibited during and after pregnancy, first she should inform to the employer from the date specified the notice and any such work as may be injurious to her or her child is prohibited. Employment is not to be terminated due to the pregnancy or confinement or illness in consequence thereof. When the female employee is on leave, no notice of dismissal shall be given to her. These factors contribute to empower their job satisfaction.

V. INTERNATIONAL LEGAL FRAMEWORK

Maternity protection is given a specific concern under international legal framework. International Labour Organization (ILO) is such an international institution which was adopted the first Maternity Protection Convention in 1919. Then, in 1952 and 2000 Maternity Protection Conventions were supplemented to strengthen the maternity benefits. In 2014, 24 member states including Sri Lanka ratified Convention No.103 in order to provide social security concerning the cash benefits for female workers.

In contrast with the domestic legislation on maternity benefits of female employment, an expansion of benefits and social security can be identified. In relation to Asian countries, they also follow a similar approach to Sri Lanka. In Singapore, they have two approaches such as the employer liability and government funded schemes. Under the Child Development Co savings act, if the employee is qualified she will be paid entire period of maternity leave and as well as second or subsequent confinements. The circumstances under this act are that the child should be a citizen of Singapore, parents should be lawfully married and employee should serve at least 90 days before the birth of the child. Foreign workers are also entitled to maternity benefits under certain limitations if they are covered under Employment act.

In Malaysia, it seems that Employment act provides benefits similar to Sri Lanka. Hong Kong and China have taken a wider approach for the protection of the female employees’ rights under employment Ordinance. They provide additional leave in the incidents such as illness, disabilities related pregnancy or birth. After the confinement, employees are able to alter the working hours in order to fulfil their job satisfaction.

In Japan, offering the maternity benefits does not depend on the type of the employment. Under labour Standards act, father may also apply for the childcare leave until the child reaches one and half years. Employment Insurance act and national health Insurance Law also provide maternity benefits and the national treasury finances one eighth of the cost childcare leave benefits.

Philippines refer the Labour Code and Kasambahay act for the maternity benefits. The government contribution is also seen in this country in order to enhance the job satisfaction among female workers.

Labour Protection Act and the Social Security Act provide maternity benefits in Thailand for medical treatment expenses for child confinement expenses meals, treatment expenses in hospital, cost of ambulance or transportation for patients.

In Viet Nam, all female workers hired on the basis of contract of employment in any sector under the Labour code irrespective the type of the employment. For careers

of military personnel is has been given a specific attention and social insurance is the main factor in providing the maternity benefits.

Moreover, the Convention on the Elimination of all Forms of Discrimination Against Women has recognised maternity leave as a human rights obligation. Article 11(2) of this convention requires states “to introduce maternity leave with pay or comparable social benefits” and argues on the maternity leave for the self-employed women. Therefore, it ensures a protective and reliable employment relationship and it is also an important development in human rights of women.

World health Organization also offers the attention on maternity benefits as a matter of legal protection considering social, cultural aspects. Furthermore, it considers on the issues of abortion. Therefore, it ensures the social justice of the women employees in the workplace.

VI.RESULTS AND DISCUSSION

In accordance to the Maternity Benefits Ordinance No.32 of 1939 maternity benefits are provided before and after their confinement. Section 2 of this ordinance states that no employer shall knowingly employ a woman worker at any time during the period of four weeks immediately following her confinement. This ensures the social security of female workers. Section 3 stipulates that the period for which any woman shall be entitled to the payment of maternity benefits shall be twelve weeks that is two weeks prior to her confinement and ten weeks after the confinement provided the confinement results in the issue of alive child and she has only one child or no child. In all other cases it will be six weeks as originally provided for in the principal enactment. Herein, it is considered the twelve weeks inclusive of all non-working holidays. It can be identified same scenario in The Shop and Office Employees Act, but it contrasts with the issue of calculating the number of days of maternity leave weekly off days and holidays as they were taken into account. Moreover, while it is speaking of seventy days and forty two days under Maternity Benefits Ordinance it is taken into account twelve weeks and six weeks. The payment during the period of maternity leave will be at the normal weekly rate.

It is also found that a female worker should provide a notice to her employer mentioning that her date of delivery is within a month or fourteen days. After confinement she must inform the employer within a week, about her date of delivery for the purpose of ascertaining the number of days she is permitted to absent herself from the employment and should specify the number of children she has. The loop hole identified is that there is no provision under existing law regarding extension of maternity leave in case of complication or sickness due to confinement or in case

of multiple birth. Therefore, it should be reformed in order to improve the job satisfaction on female workers in Sri Lanka.

Under those legislations maternity benefits are provided for who worked at least 150 days within the period of one year under the employer from whom she claims such benefit. This should also be reformed in order to develop the social security and their rights. The employment of a woman worker shall not be terminated by reason of her pregnancy or confinement. This also directly influences on the job satisfaction on female workers.

By analogy, international legislations provides maternity benefits from the government funds even for the expenses for treatment in hospitals, charges for transportation etc. Also they contain with special provisions for the female workers who engage in military duties, migrant workers. Under national legislation also new reforms are required for the protection of female workers’ rights in relation with such matters.

The interviews with the female employees both in public and private sector reflect that the majority of the women are unsatisfied with the existing maternity benefits in Sri Lanka. For instances, they revealed that in the situations of rape cases the woman has to face injustice in submitting the married certificate or proving her marriage to obtain maternity benefits from the work place. Hence, the impact of cultural stereo-typing on woman as being the primary care-givers should be focused through the existing laws in SriLanka.

Some of the loopholes which were identified in the existing laws are that there are no regular provisions on the issues such as health care, feeding hours, cash benefits. Under Shop and Office Employees Act it is not provided the nursing intervals and Maternity Benefits Ordinance if crèche is provided two intervals of 30 minutes and if it is not provided 60 minutes nursing breaks are provided. It is not concerned about the domestic workers and migrant female workers in Sri Lanka regarding their maternity benefits. Therefore, there is a necessity to impose new laws on maternity benefits of Sri Lankan female workers in order to enhance the job security and job satisfaction. Through that it will enable to ensure the national development in order to overcome many challenges in the future.

VII.CONCLUSION

In the sphere of recommendations, considering all the above described loopholes in the legal framework of maternity benefits on Sri Lankan female workers major three proposals can be made out. First is to implement new laws on extension of maternity leave in case of complication or in case of multiple births. This will be crucial to enhance the job satisfaction on female workers and it will lead to an effective organizational performance and also to a higher economical rate of the country.

On the other hand, there should be a concern about the feeding hours, health care during the period by changing the existing laws under the above discussed legislations. Through that also it ensures the health condition of female workers and can use their force in an effective way in order to enhance the organizational performance. This will eventually lead for the national development with the development of their job satisfaction. Therefore, it imposes individual and organizational benefits.

Furthermore, it should be implemented new laws on domestic and migrant women workers and military personnel regarding the maternity benefits. In addition, for raped women it should be implemented satisfactory provisions in order to prevent the injustice, they have to confront in obtaining maternity benefits from their workplace. For all those reforms the contribution from the government should be taken. Specifically the concern should go on the feeding hours, cash benefits, maternity leave and health care according to the views of the Sri Lankan female workers. It was repeatedly appreciated in this paper that there are loopholes and drawbacks in maternity benefits of Sri Lankan female employment and for the national development, a necessity to implement new laws is essential requirement for the increasing number of female workers in Sri Lanka. Therefore, in order to surmount this challenge it is recommended to draft a new legal notion with the contribution of the government and international organizations.

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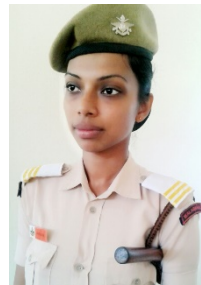
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