

DISSERTATION

ON

An Analysis on Maternity Benefit Laws of Bangladesh

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Declaration

I declare that this thesis submission entitled ‘**An Analysis on Maternity Benefit Laws of Bangladesh**’ represents my ideas in my own words which have not been submitted in any other universities before and where other ideas or words have been included , I have adequately cited and referenced the original sources. I also declare that I have followed all academic honesty as well as integrity.

Furthermore, my submission does not violate any already existing copyrights.

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ABSTRACT

This paper is approached to determine the position of Maternity Benefit in Bangladesh. In developing countries like Bangladesh; benefits in the maternity period are not widespread as a vast number of female workers are less educated. In present times it is necessary to spread awareness among the female workers to cope up with the International standards. Bangladesh Labour Act of 2006 is in force in Bangladesh now which has a number of provisions relating to Maternity benefit which needs to be reformed in certain parts of the Act. This Act does not include managerial level workers for which women in this platform get their entitlements as privilege .Bangladeshi Law is compatible with International laws but particularly some points need to be changed which would be analysed in this paper. Moreover, following study will provide sector wise maternity benefit situations in Bangladesh. Women are unconscious about their rights that must be transmitted properly so that the female workers do not get separated from their claim. The research suggests that some effective measures for existing laws should be taken by the government. Thus, Women must be conscious about their rights and employers are cooperative and supportive to the females in maternity period to ensure their maternity benefits.

CHAPTER 1

INTRODUCTION

Maternity is a divine gift of nature. A new life witnesses the light of the world through this. But this time seems so crucial for a working mother who is working as a labour. She deserves all the benefits of the Maternity period and the post childbirth period while working as a labour. In the present time, maternity benefits are definitely a matter of concern. Female workers once they get pregnant, women in several areas of the globe know less than nothing about the maternity benefits available to them. So, naturally, considering all the issues related to them, making efficient legal remedies for all the mother soldiers who are working from dawn till dusk, is now a challenge for all the countries of the world.

Historical Background of Maternity Benefit in Bangladesh

The century old labour law system in Bangladesh was enacted during the British rule of the sub-continent in 1881. Later laws concerning different labour issues such as The Factories Act (1965) , The Industrial Relation Ordinance (1969), Workmen’s Compensation Act (1923), Trade Unions Act (1926), Trade Disputes Act (1929), Payment of Wages Act (1936), Maternity Benefits Act 1939 and The Employment of Children Act (1938) were some of the labour laws enacted during the British period. After the separation of the Indian Subcontinent in 1947, almost all the laws during the prior partition were kept in force including some amendments and modifications , in the form of administrative rules by the Pakistan Government.¹ In 1971, after independence, the Bangladesh Government retained the previous laws through the Bangladesh Law Orders (President’s Order No. 48). The Bangladesh Labor Act, 2006, was the first major labor law change. The Bangladesh Labor Act, 2006 codified pre existing labour laws to reduce overlapping and contradictions, bringing major improvements to industrial relations. Before the Bangladesh Labor Code 2006 merged all employment laws, there were three separate Acts regulating maternity benefits for women prior to and after childbirth. They were The Maternity Benefits Act, 1939 which was mostly used in the manufacturing sector and other organizations, The Mines Maternity Benefit Act, 1941 and The Maternity Benefits (Tea Estate) Act, 1950.

¹ Md. Zahidul Islam, ‘MATERNITY BENEFITS IN BANGLADESH LABOR LAW: AN EMPIRICAL STUDY ON APPAREL INDUSTRY’ (2015) Manarat International University

Those three Acts have been repealed and merged into the new labour law under chapter IV as ‘Maternity Benefits’. Although this law was amended in 2013, but some sections of Chapter IV have not been changed.²

Bangladesh Labour code gave leave of 16 weeks to mothers and did not mention the managerial level workers. In the amendment of 2013, the non managerial workers are included who work in the factories only. Also most of the employers of the RMG sector do not give proper maternity benefits.³ Another study found that most of the NGO’s in Bangladesh do not follow maternity benefit laws properly. The employers are not willing to give maternity benefits accordingly.⁴

In 2008, a researcher assessed Bangladesh's maternity leave laws to the laws in other nations. Here Workers working in factories had 12 weeks of maternity benefits, but managers had none.⁵ Bangladesh Labour Act, in section 65 Chapter 1 defines the term “Worker” which does not include the workers of managerial, supervisory or admin level. Workers who fall within the ambit of the Bangladesh Labour Act would gain after the new modification. According to studies, even the lowest-income women workers won't take time off to care for a new child unless they are assured paid leave.⁶ Companies that have a longer maternity leave have higher rates of new mothers who return to work. Rate is higher than 50% and they work longer hours than before, later of one to three years which assures that the woman is in the leadership position.⁷

Research questions:

The purpose of this research is to deliver a proper view of Application of Law regarding maternity benefits in Bangladesh.

² R.L Anam, (2008). “Inequalities and variations of maternity leave policies throughout the world: Special focus on Bangladesh”. *BRAC University Journal*,1, p- 93-98 <<http://hdl.handle.net/10361/409>> accessed on 29 March, 2022

³ Islam (n 1)

⁴ Omar Faroque, Md. Rafiqul Islam, Md. Obaidur Rahman and Md. Mominul Islam, ‘Maternity Benefit Practices at NGOs in Bangladesh’ *Laws and Implementation*’ (2013) Vol.4, No.4, p-172 <<https://www.scirp.org/html/41439.html>> accessed on 29 March, 2022

⁵ Anam (n 2)

⁶ Jutta M. Joesch, ‘Paid Leave and the Timing of Women's Employment Before and After Birth’ (1997) Vol. 59, No. 4 , p-1008-1021

⁷ Hilary Rau & Joan C. Williams, (2017) ‘A Winning Parental Leave Policy Can Be Surprisingly Simple’ <[A Winning Parental Leave Policy Can Be Surprisingly Simple \(hbr.org\)](https://www.hbr.org/2017/07/a-winning-parental-leave-policy-can-be-surprisingly-simple)> accessed on 06 September, 2022

The Research Questions can be framed as follows:

1. Is maternity Benefit a Legal right or a privilege?
2. Is our law Compatible with International Legal views regarding maternity leave?
3. Are Bangladeshi working women getting maternity benefits according to law?
4. Is Bangladeshi law Adequate Regarding Maternity Benefit, if not, what reformation be done?

Objective of the Research:

The goal of this research is to provide –

- A synthesis of information regarding maternity benefits Laws that are designed to help mothers achieve a better balance between work and life.
- To determine significant disparities between the maternity benefits legislation of Bangladesh and International Legal aspect.
- If the laws of Bangladesh which are enacted for the health and safety of mothers during maternity period are Contemporary and applicable or not. As well as Determination of application of laws concerning Maternity benefit in various working sectors of Bangladesh.
- To analyze the rights and benefits a Mother is entitled to, during her maternal period.

Research Methodology:

This research has been created using secondary sources of information. Secondary information and the information used in this study came from a variety of sources, including daily newspapers, textbooks, journals, research articles, legislative sources, and through online from the internet. The qualitative method was used to understand the research issue since it employs various systems of inquiry for the study.

Limitation of the study :

The limitation of the study is, the study is qualitative so there is no statistical data analysis. This study would be stronger and organized if a number of statistical data were imputed. All the information referenced is secondary data. It would be more informative if field work data analysis took place by which direct interviews and the experiences of the mother workers could be possible. So, if these limits are overcome then the paper may be in a standard version.

CHAPTER 2

MATERNITY BENEFIT

Definition :

The terminology Maternity Benefit in the context of employed and working women is commonly used. A maternity benefit is reimbursements made for working pregnant women to enable them maintain themselves even when off employment during maternity leave.⁸ Usually it refers to the money and convenience that is given to a woman in gratitude for the privilege of bearing and giving birth to a baby. The term maternity benefit can refer to a wide variety of different expenses related to pregnancy and childbirth. Counting the maternity benefit, maternity leave is obviously an important issue. The duration of a permitted female employee's disappearance the purpose of which is to bear children and care for an infant is referred to as maternity leave.⁹ A mother is eligible for this kind of leave both before and after the childbirth. All of these are for the welfare of the mother and her child.

What Is Right?

Rights are the necessary circumstances of social existence that a person cannot normally achieve the greatest version of themselves in the absence thereof. In other words, rights are the claims that people have in common with one another. These would be the circumstances that must exist in order for the individual as well as his community to be healthy. Ethical and legal issues, in particular concepts of justice and morality, place considerable emphasis on the significance of right in their respective fields. The concept of rights as set foundations of culture and society is one that is commonly held to be vital to civilizations.

Definition of Privilege:

⁸ "MyWelfare," (*My Welfare, Department of Employment Affairs and Social Protection- Online Services*) <<https://services.mywelfare.ie/en/topics/parents-children-family/maternity-benefit/>> accessed July 2022.

⁹ Shahana Huda Ranjana, 'Maternity Leave is a basic worker right' *The Daily Star* (Dhaka, 29 March 2021) <<https://www.thedailystar.net/lifestyle/news/maternity-leave-basic-worker-right-2068309>> accessed on 18 July, 2022

Benefits and opportunities that are not achieved but are awarded to particular groups of people on the basis of their status in a social circle are examples of privilege.¹⁰ Therefore, privilege is indeed the enjoyment of a special advantage that the majority of people cannot have, as well as a bundle of undeserved benefits granted to members of a certain group.

Is Maternity Benefit a Legal Right or Privilege?

Maternity benefits raise a female's possibilities of returning to work and boost organizational engagement, effectiveness, and career progression. Whenever a woman is gaining, the economic system can progress. Women must have financial stability To stand on her own feet. Maternity benefits must be provided so women can work. Considering current male-dominated culture, maternity benefit itself is regarded a feminist issue. But it deserves to be highlighted that Maternity benefit is not awarded, it is achieved. When the right is not given as per law that would not be turned into a privilege. But when there is no provision relating to a particular group regarding maternity benefit and the employers giving benefits of their choice that would be counted as a privilege.

No one can take the place of a mother. The necessities of a mother wouldn't depend on her job. Government needs to ensure successful execution of current laws that enhance facilities for every industry's working women. Maternity benefits are a right, not a privilege that can be provided however employers think fit for women because this is not a mere pity for them, they are entitled to have these benefits which they gain.

The role of motherhood is celebrated and honored in a number of different ways mostly in the workplace on Mother's Day. However, it's kind of strange how the same place of work refuses to acknowledge the pregnancy of the same mother. In point of fact, every effort is made to ensure that a pregnant mother leaves their employment rather than fighting for what is legally hers. Many women, including expectant mothers, experience anxiety when trying to plan a family as a direct result of the negative attitude that is prevalent among employers. Women are restricted from their rights as human beings, specifically maternity leave, while also being a driving factor

¹⁰ "Day 3: What Is Privilege? - United Way for Southeastern Michigan" (*United Way for Southeastern Michigan*) <https://unitedwaysem.org/equity_challenge/day-3-what-is-privilege/> accessed 12 July 2022.

in the country's progress. Organizations could motivate women to work by offering daytime caring as well as relaxation throughout pregnancy. Maternity leave allows women to care for their newborns without employment obligations. A healthy mother can focus on her job when she returns. If women have to fight to access what is legally theirs, their labour force participation rate will drop and development goals won't be met. So, as maternity leaves and benefits are the legal right of a woman, It is the demand of time to ensure their rights, and enacting rights for treating private and managerial level employees equally, without treating them as a privileged group of society.

Standing of Maternity Benefit in Bangladesh :

Throughout Bangladesh, women work in ready-made clothing, manufacturing, housekeeping, tea gardens, as well as in the private sector- banks, NGO's and cooperatives are usually seen. Initial class isn't really educated, whereas the other is current system-wise, quite skilled. Different groups of women have different working styles, atmospheres, and pay scales, but it's the same maternity benefit. The Labour Code of 2006 provides maternity benefits for laborers, although section 2(65) of the Labour Code, the term of workers excludes management or administrative level workers.¹¹ Which means the women at managerial or administrative sector are excluded from the definition of worker and the rights female workers generally have will not be counted for the workers of managerial level. Now, this is a matter to hold on where maternity benefit is genuinely treated as a privilege because here the discretion to provide maternity leave and benefits is on the employer's hand. The employers might or might not give them leave or benefit, they are treating it as an advantage of a particular group. Minimal legislation exists for women who are at managerial posts. This was discovered about three out of ten women of reproductive age, which is equivalent to 649 million women have insufficient maternal security that doesn't meet ILO's Maternity Protection convention of 2000.¹² Permanent government employees in Bangladesh are entitled to such a six-month maternity leave under the Rule 197(1) of part 1 of Bangladesh Service Rules¹³, whereas Bangladesh Labour Act grants a worker a 16-week

¹¹ Bangladesh Labour Code, 2006 sec 2(65)

¹² Monira Munni, 'Bangladeshi women lack protection in maternity-linked firing' *The Financial Express* (Dhaka , 08 March 2022) <<https://thefinancialexpress.com.bd/national/bangladeshi-women-lack-protection-in-maternity-linked-firing-1646708541>> accessed on 25 July 2022

¹³ Bangladesh Service Rules, Part I, rul 197(1)

maternity absence. In addition, the women who work in the private sector are given zero consideration as they are not given 6 months of maternity benefit. As a result, even if the Bangladesh Labour code guarantees maternity benefits as a right, private sector employees are not being given the same priority as the public sector women are given. Many women in Bangladesh simply have a statutory maternity leave clause. How could a pregnant woman preserve their rights?

A woman named Jasmine Sultana was allegedly fired for asking for maternity leave. She was the Field Organizer of the Rural Employment Support Scheme (ERESPO) for poor women of Gournadi Upazila Rural Development Board (BRDB) in Barisal. When physical problems occurred, the upazila in-charge rural development officer was verbally informed about maternity leave. He got angry and asked him to leave his job. If not, he threatened to fire him.¹⁴ At present, this is the situation of maternity benefits in Bangladesh. It can never be said to be considered a right. But it also cannot be said that it is being treated as a special privilege. Throughout Bangladesh and around the world, more women are working. Simultaneously, working mothers have increased. Few companies in Bangladesh offer on-site child care to female employees. Very few private daycares allow women to leave their kids and work. Without family support, it's harder for women to return to work.¹⁵ Many female workers leave their child with the servants finding no other option. For which many accidents, safety threats, improper upbringing take place and the only victims are the children. In this case private sector female workers are in a more vulnerable situation than the public sectors. Law is there, Provisions are there but no implication of these has not been seen for years and this is a right not privilege. But the rights are not being provided properly and where there is no provision relating to a particular fact, that fact is treated as a privilege.

In Bangladesh , many organizations give maternity benefits by fearing the foreign delegates. But here also their salary gets deducted. The Bangladeshi government emphasizes equality in

¹⁴ ‘□□□□□□□□□□ □□□□ □□□□□□ □□□□□□□□□□?’ *The Prothom Alo* (Barisal, 31 October 2017) accessed on 26 July 2022

¹⁵ Taslim Ahammad, ‘Maternity Leave Practices around the World and in Bangladesh’ *The Daily Asian Age* <<https://dailyasianage.com/news/286578/maternity-leave-practices-around-the-world-and-in-bangladesh?fbclid=IwAR0JIolvd2bKwJVuUCtyzUZf3JMFIAUgIXfXBTy1kCUjB--AhGKKOLqDC8>>(Dhaka , 21 May 2022) accessed on 25 July 2022

maternity leaves, and the subject is an international topic of debate. To empower women, they are advised to restructure basic family responsibilities and get politically active. United Nations SDG 5 mentions eradicating overall gender disparity and empowering women. ICESCR also guarantees women the right to work.¹⁶ There really should be a clear departure from perceiving maternity benefits like a privilege and more into viewing them as rights for mother soldiers.

¹⁶ Shahana Huda Ranjana, 'Maternity Leave is a basic worker right' *The Daily Star* (Dhaka, 29 March 2021) <<https://www.thedailystar.net/lifestyle/news/maternity-leave-basic-worker-right-2068309>> accessed on 12 July 2022

Chapter 3

Is International Concept Consistent With Bangladesh's Legal View on Maternity Benefit ?

International Laws on Maternity Benefit

The ILO produced the very first international standards safeguarding working women during childbirth named Maternity Protection Convention 1919 ratified by 28 states.¹⁷ The guideline was amended in 1952 and required a 12-week leave with a 14-week recommendation. In nations with social security, a woman should be compensated two-thirds of her earlier covered earnings with full health benefits, according to ILO standards. Then, 119 states satisfy the ILO standard of 12 weeks, while 62 offer 14 weeks or above.¹⁸ The Convention Regarding Maternity Benefit of 2000 is the latest standard which is the most updated one. But the conventions of 1919 and 152 (Revised) are already in effect for certain states in other countries. Convention 183 gives women 14 weeks of maternity benefits. Women on maternity leave are eligible to a cash benefit equal to two thirds of their prior earnings or an equivalent proportion. The convention requires ratifying governments to safeguard pregnant women on pregnancy. The guideline additionally prevents employers from terminating a woman's employment throughout pregnancy, maternity leave, or after her going back to work, apart from irrelevant causes. Also gives women the right to regular rests or reduced hours for breastfeeding. Moreover, there is ILO Maternity Protection Recommendation, 2000 which enhances the 2000 convention of Maternity Benefit Supplementary Measures. Convention 183 expanded its minimal leave length from 12 to 14 weeks, whereas Recommendation 191 proposes 18 weeks. Convention No. 183 strengthens worker protections, includes steps to guarantee maternity doesn't engender discrimination, especially in access to employment. Besides, According to the convention, women have the right of break to breastfeed, and included as working time and compensated properly. Recommendation suggests that where possible, facilities for breastfeeding should indeed be

¹⁷Prof N. Valticos, 'International Labour Law' (Springer - Science Business Media, B.V. ,1979) p 172

¹⁸International Labour Organization News: 'More than 120 countries around the world provide paid maternity leave' <https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_008009/lang--en/index.htm> (Geneva, ILO News, 16 February 1998)

established at or around the working place. Study shows that existing law is moving towards a very recent maternity protection guidelines in respect of leave length, amount, and source of benefits. Since around January 2012, 65 ILO member countries were parties to at least one convention pertaining to maternity protection, and almost every nation had implemented some form of maternity protection. Relying on the revision of 167 nations' legal provisions, the 2010 ILO current estimates indicate how maternity protection legislation has seen appreciable advancements since 1994. Globally, 30% of the member states completely comply with all three conditions of Convention No. 183: they offer at least 14 weeks of leave that are compensated for with social security or public resources at a rate of at least two-thirds of prior wages.¹⁹

Leaders of the world have affirmed maternity benefit's significance. Numerous universal human rights treaties, instruments and conventions include maternal benefits. First of all, Article 25(2) of the Universal Declaration of Human Rights, 1948 says that childhood and motherhood necessitate special support.²⁰ International Covenant on Economic, Social and Cultural Rights, 1966 that secures Maternity Protection in Article 10(2), A suitable amount of time before and after childbirth should be given to mothers as special protection. Mothers who work must be given paid leave at this time or absence with sufficient welfare benefits.²¹ Convention on the Elimination of all Forms of Discrimination Against Women is a convention of United Nations that wanted to change the concept maternity benefit in a very positive way. Article 11, This prohibits maternity prejudice and maternity dismissals. 54,000 women lose their employment in the UK each year because of pregnancy discrimination, thus the government has more work to do to meet Article 11 commitments.²² Article 12 of this convention makes it clear that every woman has the right to maternity care.²³ As per the convention, Contracting States must make sure that women get the adequate care throughout childbirth, and the time after giving birth, including extra services when needed. They must also get enough food while pregnancy occurs and breastfeeding.

¹⁹ ILO: Maternity at work: A review of national legislation. Second Edition. Findings from the ILO Database of Conditions of Work and Employment Laws, (Geneva, 2010)

²⁰ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 25 (2)

²¹ International Covenant on Economic, Social and Cultural Rights, (Adopted on 16 December 1966, entry into force 3 January, 1976 United Nations, Treaty Series, vol. 993, p. 3) art 10 (2)

²² Convention on the Elimination of All Forms of Discrimination Against Women (adopted in 18 December, 1979 effective on 3 September 1981) art 11

²³(n 21) art 12

Finally, it can be said that all the International Standards, Laws, Provisions, Documents relating to maternity benefits should be designed like a weapon to the mother. So that she could use her weapon to save herself and her child as well as lead a happy and healthy life forever.

Overview of Bangladesh

Bangladesh is a country with a very high population density. Because of this, the fact that some women do not go back into the workforce after giving birth is just not a problem. There is never a shortage of enthusiastic newcomers among the new generation of women workers. There are certain factories that do not offer maternity leave for the whole twelve weeks. The vast majority of workplaces only provide unpaid maternity leave. It has been discovered that the majority of women are unaware of the maternity benefits that are available to them. Another issue is that the majority of private companies in Bangladesh, as well as employers in garment factories, do not abide by the clause of the country's labour law that governs the payment of maternity benefits.

Bangladesh Labour law is governed by the 2006 Labour Code. Workers in Bangladesh were initially granted Maternity Leave with full salary for 12 weeks, subsequently for 16 weeks, and now for 24 weeks which was reported by the Department of Finance in 2012. The Maternity Benefit Act of 1939, the Mines Maternity Benefit Act of 1941, and the Maternity Benefit (Tea Estate) Act of 1950 were all previous iterations of the Maternity Benefit Act, which were all repealed by the Labour Act of 2006, which also combined almost all of the provisions of these earlier Acts into Chapter IV.²⁴ Important alterations to the law were also made possible through the passage of the Labour Act of 2006. This piece of legislation clearly states a number of ambiguities in the various labour laws that are currently in effect and makes modifications to work-related safety concerns including such maternity benefits, cleanliness and wellness, injury compensation, and so on. Section 2(34) of the Bangladesh Labour Act, 2006 describes that maternity benefit must be paid as a sum of money to the female worker and Section 45(1) and (2) concurrently prohibits the working of women immediately after 8 weeks of delivery. In

²⁴ Tahmidur Rahman, 'Employee Rights & Labour Law in Bangladesh – All you need to know about Employment Law' (Dhaka, 2 Oct 2019) < <https://tahmidurrahman.com/employee-rights-labour-law-in-bangladesh/#:~:text=Bangladesh's%20employment%20law%20is%20regulated,%2C%20annual%20leave%2C%20medical%20leave.>> accessed on 31 July 2022

section 46 of the Act the maternity leave has been made 16 week.²⁵ Bangladesh's 2013 labour code grants women 16 weeks of paid maternity leave. However, there are no regulations that specifically apply to women who work in managerial positions. Section 47 deals with the procedure regarding the payment of maternity benefit and states that during any time during female pregnancy, the worker who is eligible taking maternity leave within this law may notify employer verbally or perhaps in written indicating she expects to be pregnant within eight weeks of the date of notification, and may also designate a beneficiary to receive her maternity leave benefits in the event of her death.²⁶ Any female who has given birth without giving notification must do so within seven days. Employers must allow women to take leave from work following the date of notice or from the day of delivery until eight weeks after delivery. Moreover, Section 48 and 49 of the Bangladesh Labour Act, 2006 states about the amount to be paid and payment in case of women's death. Divided by the amount of days obviously worked during the prior three months prior to taking leave, total pay earned during that time.²⁷ Whenever a woman qualified to maternal allowance under this act at the time of her delivery, dies or within eight months, the employer must pay the benefit to the person caring for the newborn, or if the child dies, towards the person chosen by her even when a woman dies before delivering birth, her employer is liable to pay only until her death. According to section 50 of the code states an employee is not deemed to be rejected the certain maternity benefit with which she might have been obligated under such a section if the employer provides her notification or an order of discharge, removal, rejection or termination of employment within six months prior to and 8 weeks after the delivery, provided that this order is given for no legitimate reason.

Public workers follow different rules. In 2011, the government amended the Bangladesh Service Rules to give female employees up to 6 months of leave. Bangladesh's 2006 Labour Act got reformed in 2013. The amendments raised leave by a month to 16 weeks or 4 months. Certain private sector women's leave has been increased by a month. This change also excludes females in managerial posts. All these leave and monetary benefits should be enjoyed by the women in maternity period. Provisions including the workers with managerial level should be enacted as they are workers too and also entitled to have these maternity benefit rights.

²⁵ (n 11). sec 2(34), 45 (1), 45 (2), 46

²⁶ (n 11), sec 47

²⁷ (n 11), sec 48, 49

International law provides 14 weeks of maternity leave and has recommendations to convert it to 18 weeks . Also it does not bar the path of giving 6 months maternity leave. On the other hand in Bangladesh there is maternity leave of 16 weeks but there are different provisions for the government workers which is 24 weeks. Moreover, to get any benefit regarding maternity, one must have to fall in the definition of worker where Bangladesh Labour code does not include managerial level worker in the workers definition. Which means that the whole managerial post employees have to hang onto the decision of the employer and the private sector would get less leave than the government employees? Whereas, international law does not discriminate among the workers, as all the workers are equal inside the boundary of International Law. So, it can be said that there are laws in our national law which are not wholly compatible with the labour friendly International law which must be amended immediately to cope up with the international standards.

Chapter 4

Maternity Benefit in Different Sectors in Bangladesh

Maternity Benefit in RMG Sector

The Ready Made Garments industry is one of the biggest contributors of the Economy System of Bangladesh. This Ready-made garment industry employs the greatest number of women in our country. Mostly Ready-made garment workers are migrants from poor areas. Many are illiterate or undereducated and came for a good life. Their everyday work hours are eight or sometimes more. This is hard in pregnancy or for expectant mothers. Superiors often do not provide maternity leave. Maternity Benefit is an essential human right of female garment workers, however, The vast majority of the time, managers and owners of garment businesses refuse to reimburse employees during maternity leave. 7 percent of workers are given 8 weeks or less maternity leave, 33.1% get 12 weeks, 54.3% 16 weeks, and 6.6% none. While 3.2% of female workers aren't paid during maternity leave, 86.7% earn regular pay or a medically-based amount.²⁸ Pregnant workers face the same stress and intended pressure as others. Latest statistics suggest that 60% of RMG's 4.2 million employees are women. Section 45 of the Bangladesh Labour Act 2006 guarantees pregnant women 16 weeks of maternity pay. Only 28.7% of workers obtain four-month maternity leave, according to a recent research.²⁹ RMG Working women here within our nation are fighting for a maternity leave of four months, while on the other side of the world, advanced countries are implementing legislation to enhance the amount of time. Employers rarely offer pregnant women medical checkups or access to healthcare services for themselves or their unborn children. It is hazardous for a mother to be put to excessive stress in her place of employment while also being responsible for the care of her child and the upkeep of her family. BGMEA has submitted their view on maternity leave to the Labor Ministry and requested 12 weeks or 84 days of maternity leave for female garment workers. Employers are still focused on cost savings and profit maximization, but often fail to recognize

²⁸ A BILS Journal 'Labour' (16th Year , January-June 2013) 32

²⁹ Prof Dr Sadika Haque, 'Maternity leave: Crying need for RMG workers' *The Business Standard* (Dhaka, 13 April 2021) < <https://www.tbsnews.net/author/prof-dr-sadika-haque>> accessed on 17 July, 2022

the positive benefits of enhancing employee relationships on workplace productivity.³⁰ Employers frequently deny female employees by taking advantage of their ignorance about those workers. More particular, a substantial percentage among women engages in the ready-made garment industry, yet regrettably, several among them are uneducated. As a result, they frequently suffer and are denied their legal and constitutional rights. Study shows that three years before there was fraud and harassment in cent percent garments but in the last 3 years the scenario has improved a bit.³¹ Several unlawful employment procedures related maternity benefits in RMG breaching legal statute. The administration must enforce the country's labour law effectively.

NGO's and Maternity benefit

Maternity Benefit is a benefit for female employees that increase organizational engagement, productivity, and better performers, especially within non-profit organizations. In Bangladesh NGO's contribution in creation of employment of women has been significant. Higher education plays an important role in getting a job in a NGO of Bangladesh, especially for the female workers. A big part of them live in the urban area and their living standards are comparatively high from the rural ones and the cost is rapidly expanding. So, increasing the salary of female workers in NGO is also necessary for running their family and living standards properly. Additionally, the quality of the work performed by female employees is inadequate. There aren't many managers around. The majority, nevertheless, are experts with knowledge or experience. It is additionally noteworthy that as work pressure increases, fewer female employees are recruited. However, in this scenario, the woman will be eligible for the leave to which she would normally be entitled. In Bangladesh, the government clearly mandated maternity leave period, however no NGO actually adheres to this regulation. Additionally, a striking number of employees were terminated, discharged, or dismissed during their send-off time and did not receive any sort of reimbursement throughout their maternity leave. A significant positive association between an

³⁰ Islam (n 1)

³¹ Md. Manirul Islam, 'Workers Rights & Gender Based Violence in the RMG and TU capacity to Deal with These' (Bangladesh Institute of Labour Studies, 2018) 32

employee's age, education, and duration of service as well as between their monthly wage and length of service has been discovered.³²

According to the labour act of 2006 the maternity leave is for 16 weeks and the private sector female workers fall under this provision. Now when it is asked to implement it for 6 months for private bank female workers, the image of the situation of pregnant working women is still going to be the same if the enforcement of the provision is not satisfactory. Existing provisions were never implemented properly in the NGO sector till now. As a consequence, it is suggested that each non-governmental organization (NGO) should accurately implement statutory legislation of maternity benefits.

Tea State and maternal tale

In Bangladesh, tea is the second most widely consumed drink. Although it is a very potential manufacturing sector, the tea business is on the decline. Entrepreneurs of tea gardens use a labour restricted policy because the industry does not provide any monetary advantages. As a result, the problems faced by tea plantation workers go unsolved, worker frustration increases, and the industry as a whole has become hostile to workers, specifically female workers and the pregnant ones. Labour Code, 2006 is principal law that discusses tea garden worker rights. Sections 45-50 and 96 of the Labour Code of 2006 admit that an employer must give workers access to medical care, housing, sick pay, maternity pay, as well as other kinds of social protection.³³ Maternity benefits were made available to women who worked in tea gardens as a result of legislation passed in 2006. According to section 46 of Bangladesh Labour Act the total duration of eligibility is eight weeks prior to maternity, followed by another eight weeks after maternity, including the day the child is born.

Because of the Labour Act 2006, the employee is prohibited from working when the employee is pregnant. Even though the Act allows a pregnant tea garden worker to take light works as long as the medical practitioners certify that she is fit to work and she would get paid for the days she worked as a bonus stated by Labour Act section 45(3), this provision needs to be interpreted

³² Faroque (n 4)

³³ Dr. Rehana Parvin, 'Health and Economic Conditions of Tea Garden Female Workers: A Study on Legal Rights' (2008) Vol 04 p 112 <https://green.edu.bd/wp-content/uploads/2019/09/Health-and-Economic-Conditions-of-Tea-Garden-Female-Workers_A-Study-on-Legal-Rights.pdf> accessed on 13 Aug 2022

broadly by the garden authorities. Because the work that a woman does in a tea garden is strenuous and difficult, the company that employs her ought to provide a longer and more adaptable maternity leave that takes into account how their bodies are doing. During the time leading up to and following delivery, they should be assigned tasks that are simple and undemanding. In terms of mother and child mortality, indigenous people are more likely to have bad health and social outcomes than nonindigenous people. Women tend to hide their pregnancies, and some don't even know they're expecting in garden communities. Since these women don't know how far along they are in their pregnancies, they often work at the tea garden right up until they give birth which is inconsistent with the existing laws. Tea garden residents don't know how to coordinate maternity and newborn health care needs or difficulties. They assume fate will handle their problems, so they do nothing. Non-registered pregnant tea garden workers lose wages and health services. Knowledge gaps include maternal ignorance about prenatal and postnatal care. Casual tea garden workers' access to health care is inequitable. Tea garden hospitals have a pharmaceutical deficit and can't serve casual employees well, yet pregnant women aren't interested in treatment.³⁴ In tea garden hospitals and clinics, female awareness is insufficient. Even traditional birth attendants said they need better delivery and referral care training. Enhancing the quality of service provided to moms through teagarden health facilities and the proper implementation of present laws can improve the problem. In August 9th 2022, the tea garden workers stated a strike for increasing their daily wage and in order to settle that the matter of extending maternity benefit in tea garden comes up. There the Prime Minister assured that medical treatment in maternal period will be provided to tea garden workers, the high and low hills of the tea garden have to be climbed by the female workers which is very dangerous, for that the maternal leave must be increased to six months for the tea garden workers.³⁵

Construction Sectors

A nation such as Bangladesh is able to explain much of its recent economic growth to the contributions made by the construction sector. However, construction employees in Bangladesh, particularly female pregnant construction workers, are subjected to dangerous working

³⁴ (n 11), sec 45(3)

³⁵ '□□ □□□□□□□□ □□□□□□□□' *Bangladesh Pratidin* (Dhaka, 04 September 2022) 7

circumstances on many building sites and suffer a number of difficulties, include poor salaries or wage discrimination; a lack of safety, abuse and most importantly doesn't get maternity benefits. Where they are supposed to enjoy 16 weeks or 4 months off according to Bangladesh Labour Code 2006 section 46, applicable to mother workers, they are breaking stones day and night. Unfortunately, construction workers in Bangladesh, particularly women employees, are put in dangerous situations because they are forced to work underground or underwater, both of which are against the law. This puts them at risk of being injured. Even though they perform the same kind of work as their male counterparts, they are paid a lower income than men in the same position. A significant number of working mothers bring their newborns and young children with them to the office, where they are subjected to hazardous levels of air pollution and run the danger of both serious and less serious mishaps. In a setting like this, having access to day-care facilities is indeed a luxury. The female workers also would not obtain maternity benefits. According to research conducted by the BILS in 2010 on RMG and the construction sector, employers don't provide any maternity leave for four months, and the majority of the companies only provide unpaid maternity leave to their employees. According to the findings of the poll, female employees frequently express an unwillingness to start a family out of concern that they would be dismissed or forced to take unpaid leave if they conceive a child. The large proportion of pregnant women are terminated by their employers or placed on unpaid leave.³⁶ In most cases, it even becomes more difficult to get it. So, it is now a must to put them in the boundary of a proper statutory legislation, which would ensure their rights during maternity period .

Public Sector vs Private Sector

Throughout Bangladesh, the implementation of this regulation seems to have been inconsistent, which has led to diverse methods being followed by various industry sectors. For instance, women who work in the public sector are eligible for a leave of absence lasting six months whereas private sector workers get sixteen weeks of leave. The Ministry of Education published guidance to non-government educational institutions in 2012 mandating that they give six months of paid maternity leave, which has been promptly put into effect. Within the same year, the Bangladesh Central Bank also suggested that other banking institutions, including

³⁶ Islam (n 1)

government-run banks, privately-owned banks, and others, expand maternity leave to a total of six months. Our government has ignored the private sector, which is where the majority of employment inconsistencies are found, whereas at the same time extending the maternity pay benefits for public servants to six months or twenty four weeks which clearly shows that the advantageous public sector is having much better opportunities than the ignorant private sector working pregnant mothers . Instead, it ought to be compulsory all across for working women in every industry. The maternity leave regulation needs to be re-evaluated, and it must not be an acceptable argument at only hiring women in temporary positions. In addition, all penalties against breaking the legislation should have been considerably improved because they are currently very minor.

Chapter 5

Recommendations Regarding Maternity Benefit in Bangladesh

Recommendations

In terms of active engagement in the workforce, Bangladeshi women have made considerable progress. Nonetheless, it is really regrettable that a substantial proportion of employers in different institutions do not want to give maternity benefits. This is a delicate matter which requires the government, relevant parties, and businesses to pay considerable attention to it.

For a woman to qualify for maternity leave benefits under the Bangladesh Labour Act, 2006, she must be considered as a worker, which is defined in Chapter I, Section 2 as any person hired in any institution or industry, directly or through a contractor, to undertake any skilled, unskilled, manual, technical, trade promotional, or clerical labour for hire or reward, whether the terms of employment are expressed or implied, but it does not include a person employed as manager or in managerial post.³⁷ The Act does not put management level female employees within workers groups eligible for maternity pay. Provisions of maternity leave and other rewards to female management level employees are solely at the discretion of their employers.

The Labour Act of Bangladesh is quiet upon that issue, which ought to be handled decades ago. Reforms are required to improve the status of female employees of management level. In addition to paid Maternity leaves, female workers are entitled to maternity benefits stated in section 48 of Labour Act, 2006. These benefits are based on a woman's total wage during the three months before she informs her employer that she is pregnant, divided by the number of days she actually worked during that time.³⁸ One of the central issues with the Act of 2006 is this certain section 48. If we watch closely, we notice that, according to this part, an employee who worked fewer days throughout the three months phase will receive a greater reward than

³⁷ (n 11), sec 2

³⁸ (n 11),)sec 48(2)

someone who performed more days during that time. This portion has a serious flaw and is unjust because female employees are going to be present at work during the essential period.

Methods through which employers will supply maternity benefits to competent female employees is another area of the Labour Act, 2006 that requires modification. It is covered in further detail in Section 47 of the Act. There are three options laid out, and each one focuses on receiving maternity benefits either before or immediately following the birth of a child, so long as the conditions settled up in this section are met. Such as showing proof of her pregnancy and delivery of child for maternity leave, getting bar if failed to prove within three months and not getting benefit for miscarage these harsh prerequisites stated in section 47 of the Act.³⁹ This section must be amended for the good of female workers. Contrary to popular belief, however, many companies do not provide maternity benefits during these times.⁴⁰ A public board must be constituted to resolve these matters and punish the employers who break the statutory legislation. The Bangladesh Labour Act of 2006, was amended in January of 2019, and the change was recently made public in the gazette.⁴¹ The most important change it has brought about is that new mothers are guaranteed financial advantages after giving birth. Before the law was changed, if a woman didn't give notice before giving birth, she could take eight weeks off for maternity leave if she did so after giving birth. Changed Labour code makes it clear that a woman's time off after giving birth will be paid, in addition to other employee benefits.⁴²

The government overlooked the private sector, where the majority of inconsistencies are common, when extending the maternity leave provision for public workers to 6 months or 24 weeks. Instead, it should apply to all hired women across all industries. Government service holders can enjoy six months of paid maternity leave but here the private sector or other sector working women are getting deprived and having 16 weeks of leave. The private and other sectors, meaning the mother community as a whole should get 6 months maternity leave because they are entitled to it.

³⁹ (n 11), sec 47(4)

⁴⁰ Barrister Shah Ifran, 'Implementing labour laws to ensure maternity benefits', *The Daily Observer* (Dhaka, 19 October, 2019) Law Column accessed on 4 September 2022

⁴¹ Bangladesh Labour Act, (Amendment 2019)

⁴² Mondaq, 'Bangladesh: Amendment To Bangladesh Labour Law' (STA Law Firm, 18 December 2019) <<https://www.mondaq.com/employee-benefits-compensation/876568/amendment-to-bangladesh-labour-law>> accessed on 25.08.2022

Governing different working sectors by separate laws and giving diverse provisions and procedures produces a confusing circumstance therefore; female employees are confused about their maternity benefit benefits and processes. Because of a lack of uniformity, they face two primary issues: first, many are uninformed of their rights and are confused about leave length or paid leave. Secondly, many companies mistreat female workers by trying to take advantage of her ignorance. Enacting a standard maternity benefit law with consistent laws, circumstances, processes, and benefits for all employed women, regardless of rank and workplace, can solve this issue.

Moreover, the possible solutions for spreading awareness among tea garden female workers include raising knowledge, access to facility care, prenatal care, delivery care, and postnatal care as well as enacting statutory legislation compatible with the present situation. This will increase mother and baby health and minimize maternal and neonatal fatalities in Bangladesh's tea garden communities. For Tea Garden Workers, proper medical facilities should be increased immediately. Also 6 months maternity leave must be given as they have to climb up hills which is so risky in that condition.

Only a small number of corporations in Bangladesh have recently begun to provide onsite child care for their female employees, despite the fact that this is a legal necessity. Such extra welfare facilities could promote better equity and enhance employee engagement. Related organizations should be aware of the abnormalities in labour law practice, particularly maternal difficulties, in the lack of direct state action. Day-care centers must be increased under the government sponsorship or through the initiative of the private institutions.

One might claim that working women in our country aren't receiving the full financial advantages of the Labour Act due to flaws and inadequate enforcement. The government must ensure efficient reformations of regulations and endeavor to mitigate faults in the Labour law of Bangladesh regarding the maternity benefits to make it more beneficial for working women. To achieve greater equality in all sectors in terms of standards-based practice, there is a need for a single policy that ought to be more voice and equity centered. Therefore, maternity leave regulations need to be revised and should not be a justification for hiring women on a temporary

basis. Entering the court premises on their own initiative for the end of justice for them can be a provision in the laws relating to female labour.

A primary objective of maternity benefits seems to be to safeguard the dignity of motherhood, safeguard the well-being of mothers, and provide the entire protection of the children. There has been a clear increase in the amount of requirements for health and safety among the most important factories, in addition to a wide range of additional advantages, such as timely payment, appropriate overtime compensation, maternity leave, and so on. It has become important to provide maternity leave and other maternal benefits to working women due to the rising number of women in government and the private sector. So, It is the need of the time to provide maternity benefits on simple terms and give maternity allowance even when she miscarage for the betterment of workers physical and mental health.

Chapter 6

Concluding Remarks

The phenomenon of increasing the women workforce throughout the world is also present in Bangladesh, unlike any other country. It is a commonly held belief that in the current global environment, any state cannot prosper if they continue to keep half of its people out of the labor force. For a nation's social and economic growth, it is important to give women more power. But women are different from men because they have children. It is a natural trait of women that needs to be safeguarded for the sake of humankind. Women must have job security while they are pregnant, after they conceive a child, and before they give birth in order to make the best use of this tremendous working population. There should be zero discrimination of any kind against working women during her pregnancy. Modern times, maternal benefits are universally acknowledged as a right that women are entitled to on both a national and international basis. On the other hand, it has been noticed that the implementation of this reward is indeed not widespread in a lot of different countries. As an example, in Bangladesh, women who work in public sectors receive benefits, however in private sectors, whether or not they do so is contingent on whether or not their employer wants them to. Whereas eight million female workers are engaged in RMG manufacturing, which accounts for a handsome percent of our nation's yearly budget. The majority of the time, they are the ones that are subjected to this discrimination. There is no such thing as a public or private mother; there is only a mother. The legislation of the land ought to ensure this in order to make it possible for maternity benefits to be made available to all working women without discrimination. It is in our best interest as a society to foster the growth of this workforce, and it is imperative that we prioritize the health of both mothers and children in order to develop a powerful country.

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