

“Comment on a Recent Legislation- Maternity Benefits under National Food Security Act- A Critique”

Itisha Awasthi
National Law University, Delhi

Anushka Sachdev
National Law University, Delhi

INTRODUCTION

The National Food Security bill was enacted on September 12, 2013. It is “An Act to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto.” The Act being one of the major social welfare legislations of the world has high expectations that come along with it. This paper mainly focuses on four aspects of the Act i.e. nutritional requirements of the pregnant or lactating mother with chief focus on take-home rations; accessibility of such rations; monetary entitlements as promised to the mothers under this Act; and transparency of such transactions.

Despite having high aims with regard to the provisions of the Act, the implementation has not been up to the mark. There are various loopholes in the provisions which have been provided with an alternative in this paper. Legislations should be drafted keeping in mind the beneficiaries of such an enactment when it is implemented. If the benefits are not able to reach them on time and in a proper manner, then the Act would remain virtuous and noble only on paper. Therefore, the provisions should be drafted keeping in mind the needs of the beneficiaries and their ability to access the benefits. For any legislation to successfully bring about a change in the society, it is required that it is covered from all the aspects. This paper provides certain criticisms regarding the loopholes in the maternity benefits under this Act and some constructive reforms pertaining to them.

The National Food Security Act recognises the right to food and aimed to provide food and nutritional security along with accessibility, affordability and transparency in the process. Section 4 of the Act states that, "Subject to such schemes as may be framed by the Central Government, every pregnant woman and lactating mother shall be entitled to—

(b) Maternity benefit of not less than rupees six thousand, in such instalments as may be prescribed by the Central Government:

Provided that all pregnant women and lactating mothers in regular employment with the Central Government or State Governments or Public Sector Undertakings or those who are in receipt of similar benefits under any law for the time being in force shall not be entitled to benefits specified in clause (b)."

Maternity Benefit, as mentioned in Section 4 of the Act, is a right enshrined in the Constitution of India¹ for the benefit of pregnant women. Given the high levels of maternal mortality², pregnant and lactating women require additional care and protection and therefore access to maternity rights of critical importance. For this, it is the Government's obligation to provide facilities to reduce the rate of maternal mortality. Often, due to poverty, a woman has to work during pregnancy and soon after childbirth. This is detrimental for the health of both the mother and the child. Too much exertion during pregnancy affects the health of the child and might lead to low infant weight.³ A woman working right after pregnancy would deprive the child of breastfeeding at required intervals. Hence, maternity benefits are vital and act as compensation for the lost days of work and enable a woman to feel secure and continue supporting her family even if she is not working.

Maternity protection as a form of social protection has different implications for women of different classes. Public provisions for maternity and childcare in the form of wage loss compensation during confinement, crèche facilities at the workplace and paternity leave for tending to young children are different forms of support that encourage women to seek employment, participate in active public life and achieve equality.⁴ The Directive Principles of State Policy also states that "The State shall make provision for securing just and humane conditions of work and for maternity relief."⁵ It is the responsibility of the government, being a welfare state,⁶ to make provisions for its citizens to live a decent life. Such provisions were included by the framers of the Constitution to ensure that maternity benefits are adequately provided.⁷

MATERNITY PROBLEMS IN INDIA-

Pregnancy has proved to be fatal for a lot of women. India accounts for the maximum number of maternal deaths in the world — 20 per cent or nearly 56,000 of the 2.89 lakh women who died as a result of complications due to pregnancy or childbearing in 2013.⁸ Maternal and

¹Bandhua Mukti Morcha v Union of India 1984 AIR 802: "It is the fundamental right of everyone under Article 21 to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life and breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include protection of the health and strength of workers, men and women, and children of tender age, against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief."

²"The death of a woman while pregnant or within 42 days of termination of pregnancy ... from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes": World Health Organization, *International Statistical Classification of Diseases and Related Health Problems*, 2 (2nd ed., 2004)

³ Charles J. Homer, Shirley A.A. Beresford, Sherman A. Jarnes, Earl Siegel and Steven Wilcox, *Work-related physical exertion and risk of preterm, low birthweight delivery*, Paediatric and Perinatal Epidemiology, 161 (1990)

⁴*Supra* note 2

⁵Consti of India 1950, Art 42

⁶William A. Robson, *India as a welfare state*, The Political Quarterly, 116 (1954)

⁷ Directive principles of state policy contained in Part IV of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country. Durga Das Basu, Introduction to the Constitution of India, 475-76 (15th ed.)

⁸Maternal deaths continue to decline but more progress needed – UN report, UN News Centre, accessed on June 20 2015 <http://www.un.org/apps/news/story.asp?NewsID=42013#.VZD4Ufmqgkp>

child mortality levels are considered to be vital indicators of the health status of the people.⁹ The Millennium Development Goals (MDGs) had set the target of reducing maternal deaths to 200 per 1,00,000 live births by 2007 and 109 per 1,00,000 live births by 2015.¹⁰ However, the maternal mortality rate (MMR) continues to be high at 254 maternal deaths per 1,00,000 deliveries (SRS 2004-06) and the infant mortality rate (IMR) is 57 deaths per 1,000 live births (NFHS-3, 2005-06).¹¹ Hence, it is essential to take the requisite measures to reduce maternal deaths. Due to lack of nutritious food arising due to abject poverty, women often die during childbirth or give birth to a still born child. The reason for the same is due to the inability to obtain nutritious food and in some cases, the inability to procure two square meals a day.¹²

This has been highlighted by the judiciary in the case of *People's Union for Civil Liberties v. Union of India & Ors* which relied on a report reflecting the 2001 orders and concluded that as per the ICDS Scheme guidelines, approximately 4% of the total population of the country consists of pregnant and lactating women. At present, only 81.05 lakh beneficiaries are covered under this scheme which is only 20% of the total population which should be covered under this scheme. Universalization of ICDS means providing ICDS services (Supplementary nutrition, growth monitoring, nutrition and health education, immunization, referral and pre-school education) to all children under the age of 6, pregnant and lactating mothers and all adolescent girls.”¹³

It is evident that most of the schemes and programmes implemented through central or state funds have not foregrounded women's work and maternity roles and there is a need to provide a supportive environment to the pregnant and lactating women in the country. There are at least 19 maternity benefit schemes across all states, run by the Department of Health and Family Welfare and Department of Labour. Studies related to these schemes have revealed that, except the Dr Muthulakshmi Reddy Maternity Assistance Scheme (DMMAS) of Tamil Nadu, other schemes have recorded a poor performance in terms of targeting the number of pregnant women.¹⁴

The intent of the legislature while framing this Section was to provide pregnant and lactating women with food for survival and sustenance especially at the time of pregnancy and lactation as this is the time when a woman requires maximum nutrition. A nutritious meal would ensure a healthy life for not only the mother but also the child. This in the long run will contribute towards reducing the Infant Mortality Rate and the Maternal Mortality Rate.

⁹World Health Statistics 2012 Ch.1, World Health Organisation, accessed on June 25 2015
http://www.who.int/gho/publications/world_health_statistics/EN_WHS2012_Full.pdf

¹⁰ Lakshmi Lingam and Vedehi Yelamanchili, *Reproductive Rights and Exclusionary Wrongs: Maternity Benefits*, 46 Economic and Political Weekly, 94 (2011)

¹¹ *Ibid*

¹² Aasha Kumar Mehta and Amita Shah, *Chronic Poverty in India: Overview Study*, Chronic Poverty Research Centre Working Paper 7, 19

¹³ Writ Petition (Civil) No. 96 of 2001

¹⁴ *Supra* note 3

MAJOR PROBLEMS IN THE ACT AND THEIR SOLUTIONS

Nutritional Requirements and Take-Home Rations-

The Act also talks about “meal” free of charge. It defines meal as “hot cooked or pre-cooked and heated before its service meal or take home ration, as may be prescribed by the Central Government.”¹⁵ The act does not define “take home ration” i.e. the meal provided for pregnant and lactating women. Moreover, how this “take home ration” has to be utilized by the people and the necessary instructions for the same has to be provided (does it need to be taken home and heated before consuming? Can it be consumed without heating?). Instructions need to be given as to how many days in a week a woman can avail this benefit. Food rich in nutrition should be provided to the pregnant and lactating women which has to be determined by a nutritionist appointed for every particular area. The food should be such that it can be consumed without heating, and in cases where the food is to be heated before consuming, it should be heated at the Anganwadi Centre (AWC) itself. This benefit should be made available to the women every day and the Anganwadi Helper (AWH) should be responsible for making an entry in the register.

The Act not only lacks with regard to defining “take home ration” but also limits itself with regard to the nutritional (average) intake for a pregnant or lactating woman. The nutritional standards for pregnant woman mentioned in Schedule II only determine calorie intake and protein content. The kind of food (which would fulfil the nutritional requirements) and its quantity seems to be arbitrary and should be determined by paediatricians and nutritionists. A Nutritional Counsellor cum Additional worker who is able to determine the amount and kind of food intake of a woman is required in every AWC. This should be decided on the basis of factors like her general health, number of months into the pregnancy etc. The Act only specifies the amount of calorie and proteins that a woman would get in her take home ration. But it fails to specify the kind of food intake that is required to fulfil the calorie and protein requirements.

In a Supreme Court case it was held that: “*Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.*”¹⁶ The State should also ensure an access to meal free of charge through the local AWC to such women. This right should also extend to women in custody.

Accessibility-

Regarding the accessibility of the benefit under Section 4(a) to all, the AWCs should make sure that the take home ration is delivered to the women in case she is unable to procure it herself.

A woman should be able to conveniently register herself as a pregnant or lactating woman¹⁷, at the nearest AWC so that she is able to avail the benefits without any difficulty. Surveys should be conducted once every six months, to ensure that women unaware of these

¹⁵National Food Security Act 2013, s 2(9)

¹⁶R.V. Upadhyay v. State of Andhra Pradesh and Ors AIR 2006 SC 1946

¹⁷She does not have to submit any medical certificate deeming her pregnant, for there may not be a health centre to certify the pregnancy. A woman's word that she is pregnant shall suffice.

entitlements, or those who have not registered for any reason, can be registered with the local AWC. Educational drives should be organised on a regular basis to educate women about their right to avail the benefits and facilities of the Anganwadis. The Anganwadi Helper (AWH) of the centre should carry out a survey of the families in their respective areas, especially mothers and children, every year. The AWH shall assist the woman in registration with the AWC. A register should be maintained by the AWC exclusively for the purpose of keeping a record of all pregnant women and lactating mothers.¹⁸ The register must contain her name, place of residence and the time period up to which she can avail the benefits provided under the Act.¹⁹ The AWH with the ASHA worker should be responsible for spreading awareness among the women regarding the availability of these entitlements.

Monetary Entitlements-

As per the National Food Security Act 2013, every pregnant and lactating woman is entitled to a cash entitlement upto Rs 6,000.²⁰ This entitlement is only available to the women who are working and will be received by the woman in instalments in accordance with Indira Gandhi Matritva Sahyog Yojana (IGMSY) for the entire duration of pregnancy and 6 months after childbirth.²¹ This will enable her to take time off for the purpose of taking adequate rest from productive and reproductive labour.²² Additionally, this entitlement must be available to the woman irrespective of whether the woman was getting paid for her labour or not. If the wage of the woman is already mentioned, then she should be paid, during her pregnancy, an amount equivalent to three months of her wages by the employer. In case where the woman is being paid for her work, it should be ensured that the woman is paid not less than Rs. 6000/- or the sum total of 9 months of minimum wage, whichever is higher.

The instalments of this entitlement also continue post- partum i.e. till 6 months after childbirth in order to ensure that the woman recuperates from the trauma of childbirth, has adequate nutrition and can exclusively breastfeed the child for six months.²³ Proper regard must be given to inflation indexing for determining the cash entitlement.²⁴ The cash entitlement of six thousand rupees for the entire duration has been extended to women through the Indira Gandhi Matritva Sahyog Yojana, initiated in 2010, five thousand rupees through the Mamata Scheme in Orissa, and twelve thousand rupees through the Dr. Muthulakshmi Reddy Maternity Benefit Scheme in Tamil Nadu.

¹⁸The list of various registers include survey register, Bal-bhog register, Shiro-Upama register, Masala register, school health register, visiting register, student register, pre children register and many others. Gaurav Desai, *Changing role of Anganwadi workers: A study conducted in Vadodara district*, 3 ISSN, 41 (2012)

¹⁹National Food Security Act 2013, s 4

²⁰*ibid*, s 4(b)

²¹ Ministry of Women and Child Development, 2013 <<http://wcd.nic.in/schemes/igmsy/nfsigmsydttd10012013.pdf>>

²² Reproductive labour or work performed within the domestic or private sphere and which helps to sustain a household (e.g. cleaning, cooking, child care and rearing, etc.), is also recognised as work. Reproductive labour enables the performance of the productive labour.

²³ The provision to the National Food Security Act 2013, s 5(1)(a): for children below the age of six months, exclusive breast feeding shall be promoted.

²⁴ C 183, Maternity Protection Recommendation, 2002, ILO: Provision should be made for an extension of the maternity leave in the event of multiple births.

The cash benefit is made available in two installments of equal value through IGMSY.²⁵ The first cash benefit is given eight to twelve weeks before delivery i.e. in the third trimester and the second cash benefit is given immediately after childbirth. The time period of availing this benefit should not be limited to six months and there should be an extended period of time of nine months after childbirth in which these cash benefits can be availed of in the favour of the beneficiary.

In case of multiparous pregnancies, the second instalment should be double the amount of instalment usually paid in case of twins and triple in case of triplets and so on in order to ensure that the woman can provide adequate care to each child. The second instalment must be given to the woman even if the child is still born, in order to allow her body to recuperate. In case the woman registers after childbirth, she shall still be entitled to the second instalment in order to ensure that she can recuperate and take care of her child/children.

A centralised portal, listing the names of those who have been paid, the number of instalments that have been paid etc. which is easily accessible to all AWC, must be set up to ensure transparency and accountability. The cash should be directly transferred to the woman's bank account. The bank account must be in the name of the woman and verified by the Anganwadi worker. In case the woman does not have a bank account in her name, the AWH must assist the woman in opening a zero balance bank account with a certified Bank. Considering the women in question are from the poorest segment of the society, assistance from the AWH is a must. Such assistance should be with regard to fulfilling all the formalities of opening the account, timely collection of the instalments that are transferred into the account etc. This approach is more effective than other methods that might be employed for transferring the money. This would ensure easy availability of money to her irrespective of where she is, and will further ensure that the woman has a bank account to herself, which can prove instrumental in providing her with financial stability. For this purpose, the banks must be instructed to open zero balance bank accounts for women on a priority basis, and not insist on proper documentation. As women residing in rural areas or migrant women rarely have identification papers, any form of identification can suffice for the opening of a bank account. This is to ensure that no woman is denied her right to cash entitlements due to lack of documentation and supply constraints. In case the woman does not have a bank account the money shall be sent through postal money order to the woman. In case of denial and non-availability of the maternity entitlements, women either themselves or through their representatives should be able to approach the internal grievance redressal mechanisms put in place through the Integrated Child Development Services Scheme ICDS, or file a complaint with the District Grievance Redressal Officer (DGRO). Complaints to this effect may also be filed with the State Food Commissions.

Reporting, Transparency-

The annual report filed by the state shall necessarily entail identification of the beneficiaries, the extent of beneficiaries covered, the number of cash transfers done, the measures incorporated to ensure transparency and accountability in the entire mechanism. As

²⁵Supranote 21

prescribed in the Act, records are maintained to ensure that the benefit is being availed by the women. Regular inspections should be conducted by the State Government to make sure that all the beneficiaries in a particular area are covered. It should also be sure that no false beneficiaries are added in the records to make the scheme look efficient on paper while accruing no actual benefit. Precise recording of information will ensure that women are provided meals regularly as a matter of their right. When this information is in the public domain, transparency is guaranteed as already prescribed in the Act.

CONCLUSION

The National Food Security Act, 2013 can be a game changer for national food security if the government is able to overcome the problems regarding its implementation in the country. Inadequate infrastructure with regard to the AWC and insufficient number of AWH in those centres has been one of the major reasons for the poor implementation of the Act. In addition to that, the Act has not been able to precisely define the method of distribution of Rs. 6,000 i.e. the monetary entitlement to be paid to pregnant and lactating women. Lack of any such method leads to non-availability of the resources and defeats the purpose of the Act.

Improper implementation of the provisions by authorities has caused more harm than good. The legislation makers have failed to consider the practical aspects of the Act and the Act has bare provisions that have no or minimal implementation in the society. Merely providing the rights and benefits to a pregnant or lactating woman under this Act is not enough if proper steps are not taken for their implementation and ensuring that these benefits reach all the women entitled to it. It is of utmost importance for the government's machinery to improve, so that the benefits of one of the largest social welfare legislations of the country reach the masses.