Maharashtra crèches bill, 2018 – Legal avishkar for governing effective functioning of crèches

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ABSTRACT

In India, women make up 24% of India’s workforce. But only 5% of them reach the top layer, compared to the global average of 20%. Within South Asia in 2013, India had the lowest rate of female employment after Pakistan. In over two decades preceding 2013, female labor force participation in India fell from 34.8% to 27%, according to an April 2017 World Bank report. A majority of them give up their jobs or fall behind on performance during their ‘start a family’ period in life. When we think of the reasons for this imbalance, one major point seen is children. Over the years the concept has been this: if the mother works, the grandparents take care of the child. However, nowadays due to nuclear families this concept has been relinquished and a new concept of Crèches is evolved which allows a woman to leave her child in Crèches and work for getting her dreams come true. In 2000, 24% of women left their children in Crèches. Though such was the statistics in 2014 the percentage fell to 14% and thus keeping millions of women away from the jobs. Hence, this research project aims to explore the reason behind the decreasing preference of women to Crèches. The researcher has adopted non doctrinaire method of research and after interviewing 50 women employed in various sectors and 50 housewives who left their job for their children has found that the basic reason behind not leaving the child in Crèches is inadequate laws governing Crèches due to which they had various bad experiences like safety of child at day care centre, non-availability of Crèches in rural areas, non-availability of trained staff, non-availability of Crèches at workplace for women working in public sectors, non-availability of facilities etc. Despite legal framework like Factories Act which mandates the establishment of Crèches in every Factory, Rajiv Gandhi National Crèches Scheme, and Guidelines laid down by Hon’ble SC, Maternity Benefit Act etc the problem has reached monstrous proportions.

The incidence in Kharghar, Mumbai in last November, where a 10-month-old girl was assaulted by a day care center employee itself is the evidence of the inadequacy of legal framework. The reason behind such a menace is the absence of laws governing Crèches. Thus, this research project aims to draft new legislation for governing Crèches, looking back into bad experiences in the past, assessing the hidden barriers of present times, legal framework in India, finding out the loopholes in the present framework and proposing a legal solution in form of a separate legislation as a legal Avishkar to systematically deal with these legal barriers and bring uniformity in the provisions of Crèches and to penalize the violation of the same so that the women having children less than 6 years can keep their children in the Crèches freely in safe hands and can enjoy their fundamental right to work guaranteed by Constitution to the fullest extent.

**Keywords:** Women in India, Crèches, Legal framework, Legal solution, Hidden barriers.

1. INTRODUCTION

In India, women make up 24% of India’s workforce. But only 5% of them reach the top layer, compared to the global average of 20%. Within South Asia in 2013, India had the lowest rate of female employment after Pakistan. In over two decades preceding 2013, female labor force participation in India fell from 34.8% to 27%, according to an April 2017 World Bank report. A majority of them give up their jobs or fall behind on performance during their ‘start a family’ period in life. When we think of the reasons for this imbalance, one major point seen is children. Over the years the concept has been this: if the mother works, the grandparents take care of the child. However, nowadays due to nuclear families this concept has been relinquished and a new concept of Crèches is evolved which allows a woman to leave her child in Crèches and work for getting her dreams come true. In 2000, 24% of women left their children in Crèches. Though such was the statistics in 2014 the percentage fell to 14% and thus keeping millions of women away from the jobs. Hence, this research project aims to explore the reason behind the decreasing preference of women to Crèches. The researcher has adopted non doctrinaire method of research and after interviewing 100 women employed in various sectors and 100 housewives who left their job for their children has found that the basic reason behind not leaving the child in Crèches is inadequate laws governing Crèches due to which they had various bad experiences like safety of child at day care centre, non-availability of Crèches in rural areas, non-availability of trained staff, non-availability of Crèches at workplace for women working in public sectors, non-availability of facilities etc. Despite legal framework like Factories Act which mandates the establishment of Crèches in every Factory, Rajiv Gandhi National Crèches Scheme, and Guidelines laid down by Hon’ble SC, Maternity Benefit Act etc the problem has reached monstrous proportions.

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2. REVIEW OF LITERATURE

A number of literature were studied in order to understand the level of research done on the facilities provided by crèches in India as well as outside India, the procedure of registration of Crèches and violence faced by children in crèches, laws on the same etc.

A number of foreign journals like Sage Journal, International Journal on Child Care and Education Policy, The International Journal of Indian Psychology, American International Journal of Social Science, International Journal on Development Effectiveness gave an insight into the reasons for women leaving the jobs and the facilities provided by the day care centers in various countries. Economics Journal for Real India Time, Community Development Journal, and Journal on Commerce, Management, and Research discuss the problems of Indian Women, facilities at crèches and laws related to the same.

Besides this, various reports commissioned by Ministry of Women and Child Development, International Labour Organizations, Guidelines by Hon’ble Supreme Court are some other authorities studied by the Researcher.

Malvika Kapoor’s ‘Psychological Perspectives on Childcare in India which throws light on the psychological phase of children when they face violence. Women as a workforce in India, Women Status and Empowerment in India Dr. Spock’s ‘Child care’ are some books referred by the researcher.

Moreover, study of different researchers like Anushka Chandroshekhar on “The Influence of Affordable Day care Centers on Women Empowerment in India, P R Synce on “Research and Markets – India Preschool or Child Care Market Report 2016-2020 with Key Vendors, Driver, Challenges & Trends”, Sagar Deshmukh on “Work life Balance of Women in India” were also taken into account.

Amongst above studies some shed light on reasons of women leaving jobs, psychological effects of violence on children, facilities provided at crèches, some focused on policies for their betterment but none of it explored the laws and lacunas in those laws which plays an important role in increasing the percentage of women in workforce by hammering the basic issue of crèches.

3. OBJECTIVES OF THE STUDY

- To explore the facilities and quality of environment provided for the growth of children in crèches in Maharashtra with a factor wellness.
- To find out a legal solution to curb the menace of violence and other problems.

4. BASIC HYPOTHESIS

There is a decrease in preference for women to crèches and the reason behind the same is various bad experiences like violence, the safety of the child at crèches etc. Lack of proper crèches is, often, a deterrent for women to go out and work. Sustenance and Success to combat such menace in systematic ways is directly related to the legal framework.

5. RESEARCH METHODOLOGY

The researcher has chosen doctrinaire as well as a non-doctrinaire method for study. The researcher has referred to primary as well as secondary sources. Amongst primary sources Bare Acts, various judgments of the Judiciary, various commission reports and amongst secondary sources reference books, research articles from various journals, Newspaper Clippings and information available on various websites is referred for the study and the conclusion.

As the researcher has opted nondoctinaire research method, the researcher has interviewed 100 women employed in different sectors in rural and urban parts of Maharashtra and left their children in Creches and 100 women who left their jobs for from different rural and urban parts of Maharashtra. The researcher prepared structured and unstructured questionnaires for data collection for this study.

6. WOMEN WORKFORCE IN INDIA

India is the Second Most Populous Country in the World after China which tops the highest. As of May 26, 2017, India has a population of 1.34 billion (134 crores), where the female constitutes 652 million which is 48.65 percent of the entire population.
However, in India women makeup 27% of India’s workforce. But only 5% of them reach the top layer, compared to the global average of 20%. When we compare it with other countries the statistics is as below

<table>
<thead>
<tr>
<th>Sr No</th>
<th>Country</th>
<th>Percentage of women in the workforce</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Arab World</td>
<td>23.3</td>
</tr>
<tr>
<td>2.</td>
<td>Pakistan</td>
<td>24.6</td>
</tr>
<tr>
<td>3.</td>
<td>India</td>
<td>27</td>
</tr>
<tr>
<td>4.</td>
<td>Sri Lanka</td>
<td>35.1</td>
</tr>
<tr>
<td>5.</td>
<td>United States</td>
<td>56.30</td>
</tr>
<tr>
<td>6.</td>
<td>Bangladesh</td>
<td>57.40</td>
</tr>
<tr>
<td>7.</td>
<td>China</td>
<td>63.7</td>
</tr>
<tr>
<td>8.</td>
<td>Nepal</td>
<td>79.9</td>
</tr>
</tbody>
</table>

It is found that in India majority of them give up their jobs or fall behind on performance during their ‘start a family’ period in life. Hence, to know the reason researcher interviewed 200 women.

7. DATA ANALYSIS AND FINDINGS

This study is based on the women of Maharashtra state. The researcher used convenience sampling for the study. The researcher prepared structured questionnaires for data collection for this study. Primary data were collected through the questionnaire directly from the respondents and the secondary data were collected from government records, books, journals and the Internet.

Table 1 shows that amongst 200 interviews 100 were taken of women who worked and kept their children in crèches and 100 were of women who left their job for children. Amongst these 100, 30 worked in private sector, 50 in public sector, 11 in organized and 9 were from unorganized sector. Amongst them, 70 were from urban parts of Maharashtra and 30 from rural parts.

Table 2 consists of the questionnaires of women who left their jobs. It gives a clear picture of reasons of leaving job and interest of having a job in hand. Table 3 is about the facilities provided by crèches and the respondents were women who leave their children in crèches.

### Table 1 Demographic Profile

<table>
<thead>
<tr>
<th>OPTIONS</th>
<th>FREQUENCY</th>
<th>PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sectors</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Private</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>2. Public</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>3. Organized</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>4. Unorganized</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td><strong>Place of Work</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Urban</td>
<td>70</td>
<td>70</td>
</tr>
<tr>
<td>2. Rural</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td><strong>Unemployed women</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Rural</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>2. Urban</td>
<td>60</td>
<td>60</td>
</tr>
</tbody>
</table>

### Table 2 Data Analysis of Structured Questionnaires for women who left the job

<table>
<thead>
<tr>
<th>OPTIONS</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The reason for leaving the job</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Family Pressure</td>
<td>33</td>
<td>-</td>
</tr>
<tr>
<td>2. To look after the Children</td>
<td>52</td>
<td>-</td>
</tr>
<tr>
<td>3. Other</td>
<td>15</td>
<td>-</td>
</tr>
<tr>
<td><strong>Interest in Job</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>80</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Reasons for Not Preferring Crèches</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Nonavailability of creches</td>
<td>83</td>
<td></td>
</tr>
<tr>
<td>2. Nonavailability of facilities at crèches</td>
<td>78</td>
<td></td>
</tr>
<tr>
<td>3. Previous Bad Experience</td>
<td>57</td>
<td></td>
</tr>
</tbody>
</table>
Table 3 Data Analysis of Structured Questionnaires for women are working and keep their children in Crèches

<table>
<thead>
<tr>
<th>OPTIONS</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facilities provided at day care centers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Safe play area</td>
<td>78</td>
<td>22</td>
</tr>
<tr>
<td>2. Drinking Water</td>
<td>90</td>
<td>10</td>
</tr>
<tr>
<td>3. Clean Toilets</td>
<td>70</td>
<td>30</td>
</tr>
<tr>
<td>4. Learning material</td>
<td>54</td>
<td>46</td>
</tr>
<tr>
<td>Registration of creches</td>
<td>22</td>
<td>78</td>
</tr>
<tr>
<td>The need for Uniformity in facilities of creches</td>
<td>80</td>
<td>20</td>
</tr>
</tbody>
</table>

The unstructured questions included the suggestions for improvement of crèches, Importance of crèches, examples of previous bad experiences.

- Reasons Behind Decreasing Preference

Though the government has taken some initiatives by making rules and laying down guidelines discussed in this chapter, the women are leaving a job for children and do not prefer their children to keep in crèche. Instead, they leave the job and compromise their carrier. To know the reasons behind the same the researcher interviewed women and explored the following reasons for decreasing preference –

Nonavailability of crèches

After interviewing researcher came to know that the system of crèches is not available in many areas. Especially in rural areas no concept of crèches exist and thus women leave their job as they have no option.

In many cases, it was observed that crèches are not available near the workplace of that woman and it seems inconvenient for her to leave the baby far away from her workplace as when the baby needed her she was not able to reach.

When we come to public sector it is seen that the crèches are not available at their workplace. Whereas in many MNCs have crèches as Factories Act makes it mandatory.

Nonavailability of Basic Facilities at crèches

Many respondents were of the view that their crèche did not provide basic facilities like safe play area and learning material. They said that no developmental approach was adopted by the staff of crèche. Children were forced to sleep.

Violence in Creches

One of the repeated reasons given by respondents is violence in crèches. Their children were beaten by the staff of the crèche. Due to their tender age, many children were not even able to complain about the violence. A boy was even sexually abused as he was not following the instruction given by the staff.

Not only this all other child were abetted to tease a girl as she missed her mom and was not ready to sleep which resulted in depression.

Untrained staff

It was found by the researcher that the staff of the crèche was not trained. As per guidelines led down by Hon’ble SC the one who has completed particular training can open crèche. But this was not followed by the owner of the crèche. Any women who are a housewife and has free time has opened crèche in Maharashtra. Moreover, these crèches are opened at their residence because of which the care taker is not able to give full attention towards children which results in accidents.

It is observed that these women are not trained. This resulted in a monstrous incidence in Nagpur. A child aged 6 years was having a stomach ache and he was given medicine of adults which resulted in the reaction and the child was admitted for 5 days.

Rules not followed

As discussed earlier the Hon’ble SC has led down some guidelines for facilities to be made available at crèches, training of staff etc. but as these guidelines are not penalized they are not followed in any part of Maharashtra thus resulting in various incidences like Kharghar.

No law providing the facilities

There are some laws and schemes dealing with the concept of crèches. These laws and schemes can be listed as follows –

a. Constitution of India
b. Factories Act
c. Maternity Benefit Act  
d. Rajiv Gandhi National Creche Scheme  
e. Guidelines for SC  
f. Rules framed by Ministry of Labour

However, there is no uniform law providing the basic facilities or penalizing the violence. Only laying down guidelines is not a solution to the incidences like Kharghar. But penalizing the same, making provisions for mandating some basic facilities can take us one step forward for curbing the menace at creches. However, in India, there is no uniform law providing the same. When we look into the laws of countries like the US and South Africa they have a separate law for Creches which we, unfortunately, don’t have.

8. CONCLUSION AND RECOMMENDATIONS

It is fact that woman plays an important role in economic growth of the country and needs to be a part of the workforce of the country. However, it is seen that woman has to leave the workforce as she has to balance her family interest as well. And during her start-up family period though she is willing to work but is not able to work because of her children. Due to the nuclear family, no one is there to look after children at home. She is not willing to keep the child at crèches due to various reasons and hence chooses to stay home. Thus, the overall objective of this paper is to explore the reasons behind the decreasing preference of women to crèches and to give a legal solution in form of a bill to remove the reasons of decreasing preference so that women can keep the child in crèche and can join the workforce and work efficiently.

In an effort to provide guidance to policymakers and other agents of change addressing the representation challenge, the researcher concludes by highlighting some suggestions that would guide future reform efforts.

1) A Special Law

Special laws entitled “Maharashtra Creches Bill, 2018” shall be introduced in Maharashtra Legislative Assembly to provide basic facilities and penalize the non-providence of the same. It shall define creches and shall be applicable to whole part of Maharashtra.

2) Registration of the creches

This law shall make registration mandatory to every crèche and shall lay down the procedure of registration. Crèche shall be registered in the name of the person who has completed the training given by NIPCCD. It shall consist provisions of registration for existing creches as well.

3) Basic Facilities

It shall be mandatory to every crèche to provide following basic facilities –

a) Teaching and Play Material  
   (1) Essential play material and teaching/learning material prescribed in rules which can be directly manipulated by children must be made available to meet the needs of pre-school children.  
   (2) Equipment, furniture, and toys should be available which are age appropriate and help to create an accessible and stimulating environment.

b) Food Facility and Cooking Facility  
   (3) Food provided to the children must have adequate nutritional value.  
   (4) If the child stays in crèches more than 7 hours three meals i.e. one-morning snack/breakfast, one-noon meal (hot cooked) and one afternoon snack may be provided.  
   (5) The center must have adequate cooking facilities, cooking utensils, utensils to feed the children – which should be cleaned regularly before and after use.  
   (6) The cooking area must be located at the place which is away from the activity area of the children to avoid accidents.  
   (7) Basic cooking equipment like a stove, a gas cylinder or traditional chullhas; feeding equipment; storage bins and boxes must be available and safely placed.

c) Linkages to Government Hospitals  
   (8) The crèche may link there crèche to a government hospital for providing polio drops and another medical facility in case of emergency.

I) Supervision

It will also consist the provisions of supervision. It shall consist some provisions for establishing Local Creches Committee and District Level Committee and will lay down constitution and powers of these committees.

II) Penalties

1) Whoever fails to maintain record and registers shall be punishable with imprisonment of 6 months or fine up to 10,000 or both.
2) Whoever is guilty of not providing the basic facilities shall be punishable with imprisonment of a term which may extend to 2 years or fine of 50,000 or both.

3) Whoever fraudulently avails or attempts to avail any benefit meant for children shall be punishable with imprisonment for a term which may extend to one year with fine which may extend to Ten thousand rupees or both.

9. REFERENCES

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