

COMPARATIVE ANALYSIS OF MATERNITY BENEFIT ACT IN INDIA WITH LEGISLATIONS OF OTHER COUNTRIES

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Abstract

In a capitalist society, economic factors are the underlying basis and governing force for all decision making. Unfortunately, even in a welfare state like India, the state fails to provide equality of opportunity to its citizens. And the fact that the vulnerable section of society is most disadvantaged in this matrix further makes it essential to legislate in favor of the vulnerable section to secure their rights from being impeached.

Women, since the beginning of time, have been a part of this vulnerable section since they have been allotted an unfair & disproportionate burden of work as compared to their male counterparts. History bears testimony to the fact, that women have performed unpaid labor since countless years. In households, the work balance is completely lopsided and is reflective of the deep-seated patriarchy embedded in our society. However, it is most unfortunate that our work spaces also imbibe the same culture of misogyny.

Despite the progress we have made in establishing an equal society, there remains a lot more to be done. Since, economic factors are the governing force for empowerment, therefore, any legislation that aims at providing equality of opportunity to women must address the imbalance of power and hindrances to progress of women at workplace from where they make a leap at achieving financial independence. In light of above, the maternity benefit act has the potential to be a game-changer in providing an egalitarian environment at work to the working females who choose to have a child.

This paper aims to make a comparative study of the laws on maternity benefits as they operate in various countries of the world with the legislation in India. To that end, a thorough examination has been done of secondary data with other resources available on the subject to enable the study and come to the right conclusions.

Keywords: Capitalist society, welfare, women, maternity benefit, legislations.

Maternity Benefit Act

Maternity Benefit refers to paid leave from work along with any other benefit provided to females who are about bear child or have just borne/ adopted a child to help them cope with the changes and additional responsibility in their lives. Since biologically only women are gifted with the ability to bear children and socially as well culturally women are made responsible for the rearing and upbringing of children, therefore, it is incumbent on the state that while the society slowly evolves to a more egalitarian setup, women are afforded the maternity benefits including but not limited to paid leave. This facilitates the women to return to work force

and keep their financial independence which is essential for a dignified life.

Maternity Benefit Amendment Act, 2017

India was one of the leading countries to extend maternity benefits to working women. India came up with the Maternity Benefit Act in 1961 which was thereafter amended. It is currently being governed by Maternity Benefit Amendment Act, 2017. The Maternity Benefits Amendment Act, 2017 provides following benefits to eligible female workforce. Firstly, under section 12 of the Act, it is stipulated that a pregnant employee can not be terminated or dismissed from

service during her pregnancy. It makes such an act unlawful and the employer can be penalized for the same. Secondly, the act has widened the scope for women who will be found “eligible” or “qualified” to be a beneficiary in the Act. As per Section 2 of the Act, all women who are working in “every establishment being a factory, mine or plantation including any such establishment belonging to the government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic & other performances” and to every shop and establishment in which ten or more than ten persons are employed. However, in all the above establishments, in order for a woman to be eligible, “She should have actually worked in that particular establishment for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery”. Thirdly, the amended Act has significantly increased the time period of paid maternity leave from 12 weeks to 26 weeks which is a great respite for working mothers. Fourthly, the Act mandates a “creche” facility at workplace for women who are employed at establishments with at least 50 or more women in the work force. They are allowed to visit the creche facility four times in a day. Furthermore, it has also introduced the option of working from home for those new mothers whose particular conditions will be aided by it and if the employer agrees that their work is can be done from home. However, in this instance, it is on the employer’s discretion whether the option will be available to eligible mothers or not. Also, it must be noted that work from home option shall become available after the expiry of 26 weeks of leave period to which the woman is eligible. Lastly, the act also puts the onus on the employer to educate the female employees of the provisions of the act, in writing, so that they can extract maximum benefit from it.

The amended Act also gives 12 weeks of paid maternity leave to women pregnant with the third child. There were no benefits available for women pregnant with third child in the previous Act of 1961. For extending the coverage, the amended Act also includes adoptive and commissioning mothers and enables them to avail 12 weeks of paid maternity leave. For expectant mothers, it has extended the leave due before delivery from 6 weeks to 8 weeks which is bound to make significant positive difference in the health of mother and child.

Having listed the positive aspects of the Maternity Benefit Amendment Act, 2017, the limitations and shortfalls must also be examined. A major lapse in the drafting of the Act is that it does not provide any

parental paid leave. It is the leave that comes with the option that either of the two parents can avail it. It further perpetuates patriarchal roles for women. It limits the role of women as care givers for whom paid work can only be in addition of unpaid care giving, which is seen as the primary responsibility for women. Certain ambiguities also appear in the Act. It is silent on the time allowed to mothers per visit in creche. Whether males are allowed to visit the creche. Is the four visit per day rule applicable to nursing mothers or all mothers. The maximum age of child permissible in creche is also not defined in the Act. It is also required that some provisions be made for small businesses, co-operatives, SHGs and other economically weak enterprises to enable them to extend these benefits without becoming financially unviable since they operate with meagre profits and act mandates the employer to bear all costs.

Comparison of Indian law with other countries

There are certain international standards to guide the countries and establish the benchmark for bare minimum that needs to be done in order to guarantee the basic rights to working pregnant females. For instance, World Health Organization mandates for a 24 weeks of paid leave for expecting mothers whereas the International Labor Organization states the same to be 14 weeks.

This paper delved into the provision for maternity benefits in developed countries such as USA, Canada, Netherlands, Sweden and developing countries like Thailand, Malaysia, Philippines and Indonesia amongst others.

USA is the only developed country in the world that does not have a legislation on maternity benefits. The establishments can by and large adopt the rules they deem fit. According to a study conducted by the Bureau of Statistics in USA, a meagre 11% of women at private companies get access to paid leave during maternity. The only stipulation laid out by the state is that 12 weeks of unpaid maternity leave must be given and they cannot be fired during this period. However, even for this small benefit most women find themselves in eligible. Almost 40% of the working females are in eligible for this benefit. The absence of laws in United States of America is a clear indicator of the naked thirst in a capitalist society which is run solely on instant profit-making principle with no regard for basic human values. A comparison of India with USA shows India in much better light since pregnant, adoptive and commissioning mothers are given a lot more opportunities and benefits in India to help them keep their financial independence, dignity and ensure good health for themselves and their new born.

However, the other developed nations offer far more opportunities and benefits to working pregnant mothers than Indian laws do. For instance, Netherlands provides all new parents with maternity care package which includes knitted hat, sleeping bag, toys, snowsuit and other essentials required by newborn babies. In addition, it also provides hygienic, safe and standardized public day care for all children up to the age of seven so that females can go to work without stress and their careers and financial independence is not hampered. As has already been noted, there is a lot of ambiguity in the concept of crèche as incorporated in Indian laws. Also, the Indian government does not take responsibility for setting up crèche facilities in India, the sole responsibility of for the same is with the employer and the provisions are not clearly defined therefore Netherlands has a much better law and it is easier to enforce and India can take example of Netherlands and set up public day care centers to enable working pregnant women.

Another developing country, Sweden offers new parents a lot of options which can help the new parents raise their child while ensuring their career or financial freedom does not take a setback. The refreshing and unique attribute of the law in Sweden is that it is mandatory for each of the parent to take eight weeks of leave and the subsequent 61 weeks of leave can be taken by either of the two parents that is the mother or the father. It does not make it the sole responsibility of the mother to raise the child and it is assumed that both the parents are responsible for raising the child. It is a great step in the right direction to challenge the gender norms and gender roles which have no scientific founding. India has no such attribute of parental leave. Though paternity leave of 15 days is allowed in certain few establishments. Therefore, Sweden sets a great example that can be emulated by India to fill the lacuna that exists in its laws relating to maternal benefits.

Canada, another developed country, provides maternity benefits through its federal government (except in Québec). There are two types of benefits that that it provides maternity leave and paternity leave. While comparing the same with India, the eligibility condition or the coverage under maternity benefit of women is of special importance. It is not very difficult to be eligible for benefit in Canada which is quite similar to India. The eligibility criteria in Canada is that the parent/the pregnant working woman must be employed in insurable employment, secondly, the normal weekly earnings should be reduced by more than 40% during the period and lastly the woman must have accumulated at least 600 hours of insurable employment. However, the

protection offered to the parents of the child is far more than what exists in India. For instance, maternity leave can be taken for a maximum period of 15 weeks and it is to be claimed through employment insurance. Paid maternity leave unlike India does not mean full pay that was being taken by the pregnant woman it means only 55% of the normal salary or \$573 a week whichever is lesser. Apart from maternity leave the women in Canada can also avail parental benefits which include standard leave and extended leave. The standard leave is of 40 weeks where in five weeks are reserved for each of the parent and the remaining 35 weeks can be shared between both of the parents as per their choice. During this period only 55% of the normal salary is given out or \$573 per week whichever is lesser. In extended maternity leave a parent can take leave for 69 weeks and one parent can take leave for a maximum of 61 weeks the remaining eight weeks must be taken by the other parent and it pays lesser than the standard maternity leave. In extended leave the parent is eligible to take 33% of the normal salary or \$344 per week whichever is lesser. Along with these maternity leave, paternity leave and parental leave (including standard leave and extended leave) other benefits are also available to parents in Canada in case their child gets sick. As can be seen the leave pattern and the benefits are far more progressive and well-tuned to meet the needs of the new parents and new born child as compared to the law that exists in India. The parents are given an opportunity to choose based on their beliefs and values systems and their circumstances whether they want to choose a standard leave pattern or an extended leave pattern. It is also assumed that it is not the responsibility of only females to raise children. Parental leave quotas for both the sexes are defined and must be taken in the proportion as legislated. The absence of choice with the Indian parents in the maternal benefit act and lack of parental leave puts Indian working pregnant women in a place of great disadvantage and threatens their health and financial independence along with the health and well-being of their child and family.

Another important comparison between the maternity benefits in Canada and India is that the benefits are sponsored federally that is by the state in Canada where as in India it is the responsibility of the employer to extend these benefits. Thus, it is fair to conclude that the laws must be getting implemented far more efficiently in Canada than in India since the responsibility of fulfilling them lies with the state and not the employer and the literacy levels are much higher in Canada.

Among the developing countries Malaysia, provides 90 days of maternity leave with full pay for both public and

private sector female employees who are eligible. Before 2021, the public sector was giving 90 days of leave and private sector was giving 60 days of leave but after the amendment in 2021 both public and private sector are required to give fully paid leave of 90 days to pregnant working women. The eligibility criteria to avail maternity benefit is that the woman must have worked with the present employer for at least 90 days in the past four months. The maternity leave can also be availed 14 to 30 days before delivery of the baby based on doctor's prescription. There is no provision for paternity leave in Malaysia. However, the private companies can make their own rules regarding paternity leave. On comparing the laws in Malaysia with India we find that India extends more benefits to working women who become pregnant and offers more number of days as fully paid leave. Indian legislation ensures security of jobs more effectively for working pregnant women as compared to Malaysia. However, the eligibility criteria is quite relaxed in Malaysia even more so than in India.

Thailand recently made an amendment in its laws regarding maternity benefit. The national legislative assembly of Thailand in December 2018 amended the Labor Protection Act and it introduced a maternity leave of 98 days instead of the 90 days being previously offered. There is no provision for paternity leave in Thailand. However, the labor laws make it compulsory that the personal leave must be extended by public and private sector to all the workforce. On making the comparison with India, it can be said that while the number of days offered as fully paid leave is substantial in Thailand still the benefits in India outweigh those in Thailand.

Indonesia provides maternity benefits to women under the provisions of its social security law. The pregnant working women are given fully paid 12 weeks of leave. The noteworthy aspect of maternity benefits being extended in Indonesia is that even if the woman dies during or after delivery of the newborn the family is still entitled for 12 weeks of full pay. This ensures that the upkeep of the newborn is done properly and the family gets time to cope with the crisis.

Philippines has recently adjudicated a new law called the Republic act number 11210 which has extended fully paid maternity leave from 60 to 150 days and it is applicable to women working in public as well as private sectors including women working in informal economy. The unique aspect of the law as it exists in Philippines is that the benefits are extended irrespective of the legitimate citizenship of the female and irrespective of whether she is married or unmarried and they are also extended in case of a miscarriage. The rules regarding

timely payment of benefit is also included within the act. On comparison of these benefits with the benefits being extended in India it can be fairly concluded that there is far more detail and time bound provisions in Philippines laws than in India. Better clarity and detailed law will facilitate beneficiaries in ensuring that their claims are duly settled by the employers.

Critical Analysis

Maternity benefit legislations not only provide financial security to females it has a far wider purpose in society. It allows and enables mothers to breastfeed their child which is very essential for prevention of disease in the mother and the child. After the delivery, both the mother and the child are vulnerable and in need of rest and care to ensure their continued good health. The provisions of maternity benefit act ensure the same. It helps in achieving gender parity. More females are encouraged to be a part of workforce by extending Maternity benefits. It helps in decreasing the infant and maternal mortality rate. It also leads to better mental and physical development of the child and lesser stress levels for the mother. It also makes economic sense as when women are given paid maternity leave then there is much more likelihood of them returning to workforce and it serves as an effective employee retention tool and avoids expenditure on training.

According to a study conducted by the World Bank it was found that the number of women in labor force in India is on the decline whereas the participation of females in the workforce in a developed country like Sweden is 88%. India lags far behind and is in fact ranked 11th from the bottom in the 131 participating countries in the study conducted by World Bank.

On multi-dimensional comparison of India with other countries with respect to maternity benefits a number of facts emerge. While India offers a reasonable number of days to eligible women as paid maternity leave, it does not fare well on other markers. For instance, even in a developing country like Thailand, out of the total 90 days of maternity leave, 45 days are funded by the government and 45 days by the employer. However, in India the entire financial burden is on the employer. This being economically unviable for most small businesses is often not implemented and even in bigger businesses it is sparsely implemented. Moreover, India has not concept of parental leave or parental support package. The legislation in India is parochial and dated and does not have a progressive element as it does not account for the need of father to participate in the process of rearing the child.

Unlike Canada, it does not offer any choice to the parents to avail a longer leave in lieu of limited benefits.

It is strait jacketed and not made to suit a wide variety of persons. It also does not have any special provisions for parents with special needs child. The Act is not detailed and leaves a lot of scope for discretion of employees which leads to abuse of its provisions. The creche facility has to be maintained by the employer unlike the practice in Sweden where it is offered by the government. The Act does not mention the time per visit in creche, age limit, permission to males in creches. There is need for more clarity.

Conclusion

While India was a leading nation to enact the legislation for providing maternity benefits, there remains a lot to be achieved in this sphere. A comparison with the developed countries of the world, except USA, shows that India has lagged far behind. This fact is further substantiated by the decline in number of females in the workforce. It also seriously lacks the mechanism for implementation of the Act. The Act mandates appointment of inspectors to ensure its implementation, however, its implementation in the informal sector leaves a lot to be desired. It places the responsibility of raising the awareness regarding the Act on the employers which is not in the interest of the employer since it will lead to an economic cost on him. It is required that the state helps and shares the burden of the cost as India is a welfare state and the maternal and infant mortality rate is very high in India. While the amended act of 2017 is an improvement on the act of 1961, it is hoped the much-needed further improvements will be made in the near future. Since, the improvements are paramount to realize the dream of social justice as incorporated in the Preamble to the constitution of India.