



Indian Maternity Law: Painful or Pain free statute'? A Comparative insight on problems and prospects with the International standards

KEYWORDS

Maternity Benefits Act, 1961, International Maternity Laws, ILO Maternity Protection Convention, Maternity Leave and benefits

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ABSTRACT Equality for women represents progress for all. However this better half is customarily laid with responsibilities of home and childrearing. In addition, the economic pressure of modern day society has increased the need for families to have dual income. Among the various problems faced by women in the economic sphere of life, discrimination resulting from their biological role in nature of childbearing is one. To curb such problem and protect the economic rights of women the need for maternity law is a must. Moreover laws associated with maternity benefits are highly regarded since it gives a sense of how societies prioritize families. This paper aims at highlighting the various International laws related to maternity benefits and comparing it with the Indian Maternity Benefits Act of 1961 thereby identifying the lapses and scope for progression.

INTRODUCTION

"Any woman who understands the problems of running a home will be nearer to understanding the problems of running a country" – Margaret Thatcher

In the 21st century where woman are seen at the epitome of managing professional or even national affairs, one of the ways to acknowledge their talents and skills is to build a sound and sustainable women friendly law. The modern day life is defined by rapid economic, social and technological challenges. While managing the career fronts systematically this 'Superwoman' is also expected to meet her domestic requirements with utmost care and sincerity. Business Houses while they shoulder the responsibilities of their female workforce with friendly and flexible policies, the government too is eyed on to put in place stable policies in the form of laws to support and encourage women participation in the nation's GDP.

Woman, who is an integral part of the nation's workforce, is also the most vulnerable to exploitation and discrimination at workplace. Among the many problems faced by women in the economic sphere of life, the threat of being out of labour due to parenting is one. To curb such problems and protect the economic rights of women the need for maternity law is sought.

Maternity Law: The female companion

The first Convention on Maternity Protection (Convention No 3) was adopted in 1919 by the International Labour Organization (ILO) which was later followed by adoption of two more Maternity Protection Conventions: No.103 in 1952 and No. 183 in 2000. These standards subsequently got its place in the book of law in various countries with required level of customization.

Facts and Figures:

- As on January 2014, total 66 countries are members of at least one of the three Conventions introduced by ILO.
- ILO's Social Security Convention (No. 102), 1952 covers maternity health care and cash benefits under Part VIII, duly accepted by 35 countries.

- Over the years there has been a tremendous shift in terms of maternity leave period that meet or exceeds the ILO standards.
- More than 100 countries have social security or public funds to finance the expenses
- Almost 34% of the countries meet the requirements of Convention No 183 which claims for the duration of leave and cash benefits extended to female employees

Source (2014, ILO Report)

Insights to International Maternity and Parental Policies

1. Nordic Countries

The Nordic countries are attributed for their uniqueness with welfare state model and family friendly policies. The child care and parental policies of Nordic countries has become a model to be aspired for. While being the forerunner in designing family friendly policies, these countries have also succeeded in maintaining high rate of female force participation.

Table 1 shows the latest information on parental leave and benefits offered to employees

| | Denmark | Faroe Islands | Finland | Iceland | Norway | Sweden |
|--|-----------------|---------------|--------------------------------|---------|------------------------------|----------------|
| Gainfully employed (employees) | | | | | | |
| Maximum period (weeks) in which maternity benefit is payable | 50 ^a | 52 | 53 | 39 | 49/59 ^a | 69 |
| Maternity benefit to mothers before birth (weeks) ^b | 4 | 4-8 | 5-8 | 4 | 3 | 9 |
| Maternity benefits (weeks): | | | | | | |
| - Mother only | 18 | 14 | 18 | 13 | 10 | 8 |
| - Father only | -- | 4 | 9 | 13 | 10 | 8 |
| - Either mother or father | 32 ^c | 30 | 26 ^d | 13 | 26/36 | 52 |
| Additionally: | | | | | | |
| - Father and mother at the same time | 2 | 2 | 3 | -- | 2 ^e | 2 ^f |
| Benefits subject to tax? | Yes | Yes | Yes | Yes | Yes | Yes |
| Not gainfully employed | | | | | | |
| Maximum period (weeks) in which maternity benefit is payable | -- | -- | 53 | 39 | One time amount ^g | 69 |
| Benefits subject to tax? | -- | -- | Yes | Yes | No | Yes |
| Leave period shareable with father? | -- | -- | Yes, for a maximum of 26 weeks | Yes | + | Yes |

1. The total number of reimbursable weeks includes the number for which mothers are entitled to benefits prior to giving birth.
2. The standard leave period of 32 weeks may be extended by 8 or 14 weeks to 40 or 46 weeks, making the total 58 or 64 weeks.
3. In the event of multiple births, the maternity-benefit period is extended by 60 days for the second child and each subsequent child.
4. 49 weeks at a compensation level of 100 per cent, or 59 weeks at a compensation level of 80 per cent.
5. Fathers are entitled to two weeks' unpaid leave at childbirth.
6. The one-time amount of NOK 38 750 is tax free. The father is entitled to a one off payment if the mother is deceased and/or he has sole parental responsibility.

Nordic Social Statistical Committee (NOSOSCO) 60:2015

1. Saudi Arabia

Maternity Law in Saudi Arabia is governed under its Labour and Workmen's Law. Under Article 151.1 and 151.2 (2015 amendment) a female employee is entitled to at least 10 weeks of fully paid maternity leave which can be divided as the employee desires. In addition, this leave can be further extended to one additional unpaid month as well. Article 152 after being revoked, provides female employees with fully paid maternity leave along with fully paid annual vacation leave which too was conditional earlier.

2. Vietnam

Vietnam, a developing country is still on par with many developed nations in terms of Labour legislations. With just 8 weeks of paid leave in 1960, the nation has raised its standards to 26 weeks leave paid through the Social Insurance Fund. (2012, Amended Labour Code). Unfortunately this provision only covers nearly 30% of the female workforce and predominantly ignores the informal sectors. The gratification of maternity leave in Vietnam however lies in the payment of Social Insurance Premiums for at least full six months within 12 months before giving birth.

3. Australia

Parental Leave Schemes in Australia can include both Government funded and employer funded. Australian Government Paid Parental Leave Scheme is for the eligible working parents consisting of full time, part time, casual, seasonal, contract and self-employed who may get government funded pay when they take time off from work to care the new born or recently adopted child (Department of Social Service- Australia). Under DSS working mother is eligible to get up to 18 weeks' payable at National Minimum Wage Rate which is \$657 per week before tax. This amount is government funded usually channeled through the employer.

Employer Funded paid parental Leave works through a contract of employment or workforce policy where the employer may provide paid parental leave to his employees.

4. Canada

The Canada Labour Code, sets out the Minimum standards to be followed by both employees and employers. However these legislations fall under different provincial jurisdiction in Canada. Female employees seeking maternity leave are entitled for 17 weeks of paid (55%) time off work. In addition they can also avail 35 weeks of parental leave with wages subject to provincial legislation. Moreover some jurisdictions provide employees on maternity leave with the right to wage increase or promotion which they would have otherwise received if on job. Also in other cases employees on leave enjoy accrued seniority and employer provided benefits.

5. India

India is one of the proud nations to be in the list of 16 countries to have the longest maternity leave period. The Maternity Benefit Act, 1961 grants a pregnant woman with 12 weeks of fully paid maternity leave. The Ministry of Women and Child Development in consensus with the Union Ministry of Labour

has now raised this bar to 26 weeks following meetings with other stakeholders. However amendments to the Act are still awaited.

The Central Civil Services (CCS) Leave Rule- 43(1) grants maternity leave to a female government servant (Apprentice inclusive) with less than two surviving children, for a maximum of 180 days (DOPT O.M. No. 13018/1/2008-Estt.(L), dated 11/09/2008). The women employee availing maternity leave is entitled to full salary and other benefits which she would have received otherwise on duty. In addition she is also eligible to claim a medical bonus of Rs3,500 (vide notification No. S.O. 2016(E).

Child care leaves(CCL)

Under CCS Leave Rules, 1972 (Fourth amendment, 2011) section 43—C(I), a female government employee may avail CCL for a maximum period of 730 days during her entire services till the child attains a maximum age of 18 years. The CCS Leave Rule- 43A grants a male government employee (Apprentice inclusive) paternity leave of continuous 15 days for maximum two children.

Comparison of Maternity Leaves Across the world:

According to the ILO report around 178 countries provide paid maternity leave for working mothers and more than 50 countries offer parental benefits to would-be fathers. However it was surprising to note that United States (excluding two states) along with Papua New Guinea, Swaziland, Liberia and Lesotho are the only ones who do not provide paid maternity leave. Nevertheless, this lapse has been taken care by the organizations in US with their individual company policies. Moreover the Family Medical Leave Act of 1993 of United States ensures job guarantee to women employees availing maternity leave.

Figure 1 gives a brief indication of Maternity leave and benefits across the world:

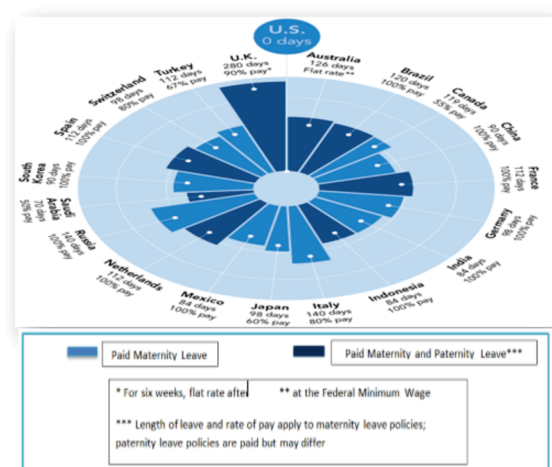


Figure 1: Maternity Leave and Benefits worldwide

Source: International Labour Report, 2013

Conclusion

The Indian Maternity Benefit Act, 1961 is virtually a boon to female employees since it provides job guarantee while on absence from work. However there are certain shortcomings which need to be addressed. One of them is the discrimination and non-compliance on the part of employer which can be curtailed by shifting the burden of maternity compensation on government. According to ILO Rec191, discrimination can be

reduced to a great extent by allocating public funds to cover maternity leave which is already in practice in few of the developed countries.

Secondly the period of maternity leave fixed should be such that it helps the mother recover fully and recuperate self and the new born child. This provision is however partly implemented in most of the private and government sectors.

Thirdly, India being a male dominated country the responsibility of child rearing is solely put on the mother. This culture can be transformed by giving a share of parenting leave to the new father as well. Provision for paternity leave in the national law can bring the change in the family as well as workplace environment thereby resulting in an egalitarian approach.

References

1. Addati, Laura, Cassirer, Naomi, Gilchrist, Katherine (2014). Maternity and paternity at work: law and practice across the world. International Labour Office – Geneva (ISBN 978-92-2-128631-8).
2. Adrienne E. (2007, April). Three essays on maternity and parental leave policy in Canada.
3. Amendments to the Saudi Arabian Labour and Workmen's Law – Summary of Key Changes. (2015, Oct 7). Saudi Arabia Labour Law amendments. Retrieved from http://www.dentons.com/en/insights/alerts/2015/october/7/saudi-arabia-labour-law-amend-ments?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original
4. Best Practice Guide Parental leave. (u.d.). Fair Work Ombudsman. Retrieved from <https://www.fairwork.gov.au/>
5. Despite long maternity leave, Viet Nam is left behind in paternity protection. (2014, May 13). International Labour Organization Report.
6. Maternity and paternity leave. (2006, May). Labour Market Trends, 114, 5; ABI/INFORM Global (pg. 140).
7. Maternity Benefit Act, 1961 (No. 53 of 1961).
8. Maternity leave for private sector to increase to 26 weeks from 12 weeks: WCD minister. (2015, Dec 29). Retrieved from <http://www.ibtimes.co.in/maternity-leave-private-sector-increase-26-weeks-12-weeks-wcd-minister-661254>
9. Nabanita D G, Nina S, Mette V. (2006, March). Child Care and Parental Leave in the Nordic Countries: A Model to Aspire to? Discussion Paper Series, No. 2014.
10. Ronsen, Marit, Sundstrom, Marianne (2002). Family Policy and After-Birth Employment among new mothers - A Comparison of Finland, Norway and Sweden. European Journal of Population 18: (12-152).
11. Social Protection in the Nordic Countries 2013/2014. (2015) Nordic Social Statistical Committee (NOSOSCO) ISBN 978-87-90248-68-0