

MATERNITY LEGISLATIONS : A COMPARATIVE STUDY BETWEEN INDIA AND USA

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ABSTRACT

The changing status quo at the labour front, which envisages a world with continuous improvement and modernization in all spheres, vouches for participation of men and women alike. Thus, necessitated attention is to be given to the workforce involvement of the 'fairer gender' and ensure that the conditions and policies governing women employment are just and humane. The International Labour Organization (ILO) has set norms that segments the aspects that need to be considered while making policies and statements that serve as framework to ensure workforce-friendly policies and provide due considerations in maintaining the basic standards of life for the women workers. Most industrial and developing countries abide by the norms- except for the highly industrialized nations as Australia, New Zealand and the United States. Maternity relief is not only a basic right of any women, but also "an element of health and economic protection". This study seeks to review and compare the maternity provisions as practiced by USA and India. As per the ILO Reports, in the United States 55 per cent of working women comprise the main earners with respect to their family earnings. In India alone, an approximate of 60 million people live in households maintained only by women. The Maternity Protection Convention, 2000 (No. 183) of ILO provides for 14 weeks of maternity benefit. It provides for monetary benefit of the expecting mother that is not less than two third of her drawn wages. In USA, the provision of maternity falls under the Family and Medical Leave Act, 1993 (FMLA), only employers covered by the act provides for unpaid but job-protected leave up to 12 weeks per year to their female employees. In India, as per the Amendment 2017, The Maternity Benefit Act, requires the employers to mandate 26 weeks long paid maternity benefit to the women employee. If the employers do not provide for pre and post-natal care, then the employee is eligible for monetary relief. Hence, the legislatures governing maternity relief are viewed considering the current situation of the countries being studied.

Key Words : Women workers, Maternity, Women employment

INTRODUCTION

The dynamic nature of the labour market is characterized by dominant social culture and customs that exert its presence in the framework of the policies of the organization. In a developing country like India, the diversity seen in the workplace is an inheritance from centuries of practices and customs that may be deemed to be

a resultant of "acquired traits through corporate omissions and commissions". These are largely attributed to the competitiveness essential for managing the human resource as well as maintaining industrial relations. The changing status quo at the labour front, which envisages a world with continuous improvement and modernization in all spheres, vouches for

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participation of men and women alike. Thus, necessitated attention is to be given to the workforce involvement of the 'fairer gender' and ensure that the conditions and policies governing women employment are just and humane.

The Indian constitution (1950) strives to create an egalitarian society. It provides women equal rights in access to education as well as right to serve public office. The legislative provisions do not discriminate against women in any walk of life. However, the ratio of women to men is yet not commendable when it comes the organizational hierarchies. This may be attributed to a number of issues that frequent the reality. One of the major reasons to it is seen the compromising factors that influences the life of the women- maternity. The phase that brings in a lot of changes in a women. This often is found to adversely affect women and it could lead one to compromise their career. At this point, the maternity policies and provisions serve to support women in smoothly go through the phase and resume their career in case of Indian women.

Amongst the industrialized countries, the United States is the only one that has no policy at national level that provides women to paid leave for childcare and recovery (Addati, Cassirer, and Gilchrist 2014). In industrialized countries mostly, paid parental leave is provided to fathers too. As per the International Labour Organization (ILO) commendations women should be provided with 14 weeks of paid leave at least pre and post-partum. This standard is followed by 98 countries. However, in the United States the provisions remain for only unpaid leave of 12 weeks new parents.

As the norms set by the International Labour Organization (ILO) that segments the aspects that need to be considered while making policies and statements that serve as framework to ensure workforce-friendly policies and provide due considerations in maintaining the basic standards of life for the women workers. Most industrial and developing countries abide by the norms- except for the highly industrialized nations as Australia, New Zealand and the United States. Maternity relief is not only a basic right of any

women, but also "an element of health and economic protection".

RESEARCH METHODOLOGY

The study has been based on researches and data collected from authentic sources and several studies conducted in the field of maternity related legislature and policies have been considered for both India and the US. Data from surveys conducted by government departments have been studied in depth and understood to formulate the paper. The understanding of the authors' perspective helped in utilizing the findings in developing this comparative study.

REVIEW OF LITERATURE

USA is one of the countries that falls under high-income bracket- however without any provision for paid maternity leave. In some states of the USA, it is at the liberty and concern of the employer to provide maternity benefit to the female employee on monetary grounds. It is seen mostly that women return to work soon after delivery. In itself maternity is a complicated and a delicate position in life of a women. Often women undergo pre and post pregnancy medical conditions. It herein needs attention of the concerned legislatures to be framed to ensure that the women get their share of support at times of need. In the extensive studies conducted on working women in different countries, the ILO states that job protection during maternity for female employees contributes to their well-being and development. Maternity protection therefore needs to be viewed as a way to achieve the goal of reducing child mortality and improving the health of mothers. (NCW Maternity benefit Study).

The Family and Medical Leave Act (FMLA) in USA covers about 60 percent of new parents because of the comparatively strict work record requirements and since small employers were exempted. Both these limitations worked against widespread acceptability and acceptance of the act. Employees working with small organizations were excluded under the assumption that such leave may not be conducive to their employers.

Public health studies suggest that the health of working mothers suffer a toss when they leave for too late for child birth or return to work too early post childbirth. This exerts quite a deep impact on their mental and physical health. Guendelman et al 2009 in a study conducted suggest that caesarean deliveries are for times higher in women who do not take maternity leave during the ninth month than those who do. In addition, studies highlight that employed women are often subjected to higher risk of gynaecologic problems. The study conducted in the US in 2005 on a sample of about 1760 women exemplified that the longer period of maternity leave is related to lesser probability of clinical depression. This study also suggested specifically that increasing the maternity leave by a week has resulted in around 7% decline in post-partum depression symptoms. (Chatterji & Markowitz 2005:16).

Professor of economics and public policy, Christopher Ruhm, through his study identified that an increase of ten week in paid leave predicted to reduce mortality rates of infants by 2.5 -3.4%. However, it is quite intriguing in the study of Prof. Ruhm that unpaid leave is unrelated to infant mortality. In addition, he found that a ten week extension reduced post-neonatal mortality by 3.7-4.5% and child mortality by 3.3-3.5%. A study conducted by Tanaka exemplifies that paid leave proved a decline in infant mortality rates.

The ILO Maternity Protection Convention (No. 103) recommended maternity leave of at least 12 weeks in 1952. Later in 2000, the ILO revised the leave period during maternity to be 14 weeks (Convention No 183). The accompanying Recommendation (No 191) proposes that countries should attempt to increase the leave period to 18 weeks. 17 countries have approved of the Convention No. 183. Survey data from studies conducted by government and authentic sources exemplify 51% of all countries in the world provide maternity leave for at least 14 weeks and some 20% of the countries provide it for at least 18 weeks. There

still remains 14% of countries that provide less than 12 weeks of maternity leave. As regions across the world vary in the percentage of countries that meet international standards, studies are conducted to trace general regional practices.

-ILO Database of Conditions of Work and Employment Laws, 2010

Over the last two decades researches have been conducted to specify that entitlements of paid leave are conducive to the workforce and it contributes in an affirmative way to their performance and ensures substantial labour market gains. Such gains are more evident in case of women employees. Instance maybe cited in California's first-in-the-nation paid leave program, that brought about augmented female employment after the maternity period leave (Baum and Ruhm 2016; Rossin-Slater, Ruhm, and Waldfogel 2013). Some insights are also available from nine European countries during the years 1969 to 1993 that indicated that right to a three month job increased ratio of women employment to population by around 3% (Ruhm 1998). Some researchers also testify that paid leaves also brings about increase in job continuity (Baker and Milligan 2008a for Canada) and the probability of occupation after the leave period (Kluge and Tamm 2013 for Germany). However, leave entitlements of more than one year could be related with lesser wages (Lalive and Zweimüller 2009; Schönberg and Ludsteck 2014).

The state policies can take up the initiative to bridge a portion of the gap of unpaid leave by framing policies for the female workforce in U.S. But it is unlikely that paid leave can be made available to all or U.S. workers. As far as the advocacy for paid leave is concerned, the report on Small Business Majority and Center for American Progress 2017 there has been a widespread support for it (Grodin 2016; Horowitz et al. 2017).

The United States the provisions remain 12 weeks of leave that are unpaid to some new parents, but the ability to take time off without

pay is limited for many workers, particularly those who fall in the division of the economically disadvantaged (Han, Ruhm, and Waldfogel 2009). By contrast, paid leave entitlements result in increased leave use among these employees (Rossin-Slater, Ruhm, and Waldfogel 2013). California's first-in-the-nation paid leave program increased maternal employment after the leave period (Baum and Ruhm 2016; Rossin-Slater, Ruhm, and Waldfogel 2013). Presently there are two more states that have devised a program of paid maternity - New Jersey, and Rhode Island. Some programs have been designed by New York and the District of Columbia to come to effect in 2018 and 2020, respectively, on paid maternity leave.

Family and Medical Leave (FMLA) Act of 1993

In the US, companies provide suitable employees at least 12 weeks of annual unpaid leave owing to certain family-related or medical reasons. The law applies to companies with employee strength of 50 or more. These employees must have completed at least 1,250 hours of work in the last one year. Certain family-related or medical reasons are maybe for care of a new-born, adopting child, placement of a foster child with the employee and to care for his or her child, if he or she has a serious health condition. This leave is also applicable to look after ailing family members. In any of the conditions however, the employers usually do not provide any monetary relief. Along with the Family and Medical Leave Act, most states have some type of laws provisioning parental-leave. If the state laws provide greater protections or benefits to workers than the FMLA, the state laws will govern. If a state law, however, provides inferior protections to its workers, the federal law applies.

In India, as per the Maternity Benefit Act, female employees are provided eight weeks maternity leave before and eighteen weeks maternity leave after the date of childbirth, provided she has worked for an employer 80

days or more in the 12 months preceding her delivery. She should be paid maternity benefit at the rate of her average daily wage. She too has the right to 3500 rupees as medical bonus. She has the right to two nursing breaks until her child attains the age of 15 months.

The health and economic security of the workforce is a chief consideration of any organization. The Family and Medical Leave Act (FMLA), 1993, talks of 12 weeks of unpaid leave for staffs irrespective of gender to avail the facility around the year to care during time of child birth and adoption. This facility is available in firms employing atleast 50 employees who meet the minimum working hours and days of service mandates. United States is one of the four countries that falls under high-income country that has no mandated provision for paid maternity leave. Some states the decision to provide leaves is vested with the employer to decide upon providing parental leave. According to FMLA Survey, during the year 2012, 35% of the workforce of the country work for organizations that offers paid maternity leave, and 20% work with employers who provide paid paternity leave. The National Compensation Survey Report highlights that 12% of employees in the US have right to paid leave on grounds of FMLA Act. However, employees with lesser pay are likely to have restricted access to paid leave.

Under the Family and Medical Leave Act (FMLA), 1993, job security of the employee is secured for leaves availed for the employee's own illness or incapacity. It is also applicable for leaves taken during pregnancy and childbirth as well as for care of the newly born child of the employee and adopted or foster child. The leave also or to care for any immediate family member in grounds of severe illness.

The FMLA Act is applicable to only employees who worked at least 1,250 hours in a year, for their current employer, and who work for a public agency or a private firm employing at least 50 workers within 75 miles. This policy confirms that eligible employees who are expecting or new parents obtain:

- Up to 12 weeks of unpaid leave annually that may be taken all at once or intermittently and for part or all of a day for family members of an injured service member may take up to 26 weeks unpaid leave annually
- Continued health insurance benefits (if ordinarily provided by the employer); and
- A guarantee of return to the same or an equivalent job

The FMLA's leave rights for bonding with the child applies for both parents, and include employees who are parents to adopted children or anyone else acting in "loco parentis" for the child.

- U.S. Department of Labour 2013

SOCIAL PROTECTION AND WELFARE IN INDIA

The Indian government has enacted specific rules and devised schemes that provide the workforce with security in terms their job as well social wellbeing. These schemes and rules are categorized under three broad divisions:

- Social Insurance (SI),
- Social Assistance (SA) and
- Labour Market Programs (LMP)

Social Insurance provides for matters relating to pensions, health insurance and unemployment insurance. Social Assistance has been categorised in six constituents as social transfers in cash or kind, conditional or unconditional; in-kind transfers such as food subsidies targeting the poor, subsidies for rural family construction programs, child welfare programs that includes school lunch programs, scholarships, especially for children belonging to poor household and orphans; disaster relief programs particularly for persons displaced by flood, earthquakes, and disability programs cyclones and the like; health assistance, e.g. to infants and expecting and new mothers; assistance to the elderly (Jha, 2014).

THE INDIAN SCENARIO

The initial part of post-Independence era witnessed women participation in the workforce.

However, their participation was more concentrated in professions teaching and nursing. Subsequently the participation of women started being more prominent in other occupations of the services sector. Diversification in women employment and encouraging their entry into fields that have been so long ventured by the men is mandatory to provide an egalitarian ground as to increase women participation in management, banking and administration at decision making levels.

One point that cannot be overlooked in this regard are the basic aspects of women-hood-maternity- that forms one of the most crucial part of a women's life. At this point, women mostly compromise with their professional life. Hence, to ease the time and support the women workforce, the Maternity Benefit Act was introduced in 1961 and is subjected to revision and amendments to provide the necessary support much needed at this time. With the recent amendment of the act, provides for much relief to the women workforce. It is mandatory for the organizations to implement the act and act in its favour to ensure that the law is complied with.

MATERNITY BENEFIT ACT, 1961

According to the Maternity Benefit Act female employees are entitled to a maximum of 26 weeks of maternity leave. Out of the twenty-six weeks, eight weeks leave is pre-natal leave and 14 weeks are post-natal leave.

APPLICABILITY OF THE ACT

It extends throughout India and is applicable to every establishment that can be a factory, mine or plantation including any such establishment belonging to Government and to every establishment where people work for the exhibition of equestrian, acrobatic and other performances; to shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in any state that has or had previously ten or more people employed, on any day of the preceding twelve months.

ENTITLEMENT AND MONETARY ALLOWANCE

In order to be eligible for maternity leave with full pay, the employee has to complete at least 80 days in an establishment in 12 months before expected date of her delivery. The maternity benefit is awarded at the rate of the average daily wage for the period of an employees' absence from work. Apart from 12 weeks of salary, a female worker is allowed to a medical bonus of Rs. 3,500.

Under the National Food Security Act 2013, expecting and lactating mothers are entitled to maternity benefit of at least Rs. 6,000. The Act further necessitates to such schemes as may be

framed by the Central Government wherein every expecting and lactating mother will be entitled to free meals during pregnancy and six months after the birth of the child, through the local anganwadi, to cater to their nutritional needs.

FREE MEDICAL CARE

A women employee is entitled to a medical bonus of Rs. 1000 during her pregnancy on occasion if medical care is not provided by the employer free of charge prenatal and post-natal. This be increased to a maximum limit of Rs. 20,000. The Central Government is authorized to increase the basic amount every three years.

Table 1 : Analysis-Family and Medical Leave (FMLA) Act and Maternity Benefit Act

Points to Consider	Family and Medical Leave	Maternity Benefit Act (FMLA) Act
Applicability and Eligibility	applies to companies with at least 50 employees within 75 miles. employee should have worked for atleast 1250 hrs	extends throughout India and applies to establishments in any state that has or had previously ten or more people employed, on any day of the preceding twelve months. 80 days in an establishment in 12 months before expected delivery
Leave period and Availability	12 weeks leave for child birth, placement of child for adoption or foster care, care for ailing family member, for health issues faced by self	26 weeks of leave upto 2 children (for further deliveries 12 weeks) – 8 weeks pre and 14 weeks post-partum. child birth, miscarriage (6 weeks), adoption (12 weeks) work from home option (depending on the nature of work)
Entitlements	no monetary aid leave period is unpaid only job is protected both male and female employee can avail it	paid leave expecting and lactating mothers entitled to Rs. 6000 maternity benefit through the local anganwadi, to cater to their nutritional needs entitlement of medical bonus of Rs. 1000 during her pregnancy on occasion if medical care is not provided by the employer which is extendable till Rs. 20000.

Enforcement	it is applicable to the whole of USA some states have their individual maternity related relief e.g. California	to every establishment that can be a factory, mine or plantation including any such establishment belonging to Government and to every establishment where people work for the exhibition of equestrian, acrobatic and other performances; to shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments
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As per Table 1, it is noticeable that the FMLA Act takes into purview 'maternity' but doesn't provide for the required support to the female employee. A glaring point that is noticeable here is that the provision of leave provided is unpaid. Whereas, as is understood, maternity is the most crucial period in a women's life and essential support needs to be provided. At this point, remaining unpaid for an earning member curbs her financial independence for quite some period and the financial part is mostly burdened on the other working member. Although certain benefits are provided by the US Government to women, yet being unpaid for 12 weeks mandates the women to return to work soon after delivery, even on grounds they may be suffering from pregnancy related illness. Even it may affect proper caring of the new born, as the mother has to be away soon after birth. On the other hand, India being a developing country provides for a 26 week long maternity leave that is paid. Although there are lesser facilities provided to women for child birth in India, yet the working mothers enjoy monetary relief as well as get additional 1 month leave to recover from post-partum illness if any. The Maternity Benefit Act also provides 2 nursing breaks in a day for working mothers. Such an arrangement encourages female participation in workforce.

LIMITATIONS

This paper is based on secondary research, specifically developed on several papers published by authors. Some of the information highlights the situation prior to the latest amendments of the legislature. In case of the

results from USA, the specific policies may have been devised by specific organization in case of maternity provisions that are uncovered by this paper at individual level. This study doesn't provide an overall idea about the implementation of the legislatures completely. It highlights the provisions that are in place.

SCOPE OF FURTHER STUDY

Further researches may be conducted on the implementation of the maternity laws and policies adopted by the organizations to ensure effective working conditions of the female workforce. There exists still more legislatures that guarantees equal pay, protection of the women employees. These topics maybe further dealt in future researches.

CONCLUSION

Favourable association with the workforce requires a work environment that spells security for the employees. The intersections between traditions both at social and cultural norms and obligations and the professional field creates several demands from the female workforce. This tussle is quite evident in the life of any working women employee. And this situation is common issue at the global level. The ILO standards calls for a minimum of 14 weeks of leave to the expecting mothers and provisions for several ideals for their up-keeping. The pasts proclaims the social legislatures that takes into purview wage and hour laws to the FMLA that applies to the state. This act takes into its applicability the various leave policies that are applicable in case of family needs that concerns the benefit of all

family members. It also undertakes the leave policy for expecting women. However, the challenge remains that this crucial phase entitles the female employees to take leave without pay. There is substantial need to modify the provisions of the FMLA Act as done by California and some other states in the US.

The reforms in the developing country India has devised its maternity legislature with the latest amendment that provides 26 weeks of paid maternity relief to the working women. Not providing for socio-economic security will be unjust for women managing responsibilities both at home and work place.

Reforms in labour policy are needed to provide security at three levels to women- economic, employment regulation and system flexibility. It also puts equal accountability for growth on labour and management. The proposed ideas demand considerable rearrangement of the employee relations systems and modification of the prevailing legislatures. Therefore, the policy makers at the organizational level require change to adhere to the set legislatures and devise provisions to make it comfortable for the expecting women employees to cope with the crucial point in their life both personally and professionally.

The increasing globalization and economic growth patterns are creating space for equal participation of women in workforce in both the developing and developed countries. Therefore, to ensure complete participation of women the onus lies on the states to adhere to the global set standards to provide them with quality relief during the crucial period of maternity- thereby laying the foundation of a strong economy.

REFERENCES

- "Working Class Women And Working Class Families In Bombay", *Economic And*
- Anjula Gurtoo, (2008), "A Framework For Labour Policy Reforms In India", *International Journal Of Sociology And Social Policy*, Vol. 28 Iss 11/12 Pp. 472 – 484
- Appelbaum, Eileen, and Ruth Milkman. (2011). *Leaves That Pay: Employer and Worker Experiences with Paid Leave In California*. Washington DC: Center For Economic And Policy R
- Bassanini, Andrea and Danielle Venn. (2008). "The Impact of Labour Market Policies on Productivity in OECD Countries." *International Productivity Monitor* No 17 (Fall): 3-15.
- C.S. VenkataRatnam V. Chandra, (1996), "Sources Of Diversity And The Challenge Before Human Resource Management In India", *International Journal Of Manpower*, Vol. 17 Iss 4/5 Pp. 76 – 108
- Candace SaariKovacic-Fleischer (2008) *Maternity Leave Laws in the United States in the Light of European Legislation* Springer Science+Business Media B.V.
- Christopher J. Ruhm (2017) *Analysis on Effectiveness of The Implementation Of The Maternity Benefit Act, 1961*, Study Supported By The National Commission For Women, Govt. Of India, 2014
- Eric H. Shaw, William Lazer, Stephen F. Pirog III, (2007), "Wroe Alderson: Father Of Modern Marketing", *European Business Review*, Vol. 19 Iss: 6 Pp. 440 – 451
- Gordon B. Dahl_ Katrine V. Løkeny Magne Mogstadz Kari Veia Salvanesx, April 20, (2015), *What Is The Case For Paid Maternity Leave?*
- Joshi, (1976), *Surplus Labour And The City - A Study Of Bombay*, (O.U.P., Delhi), P. 105
- *Maternity, Paternity, And Adoption Leave In The United States* May 2013
- Meena Gupta, (1988), "Women In The Industries and Service Sectors In India", *Equal Opportunities International*, Vol. 7 Iss 4/5 Pp. 26 – 35
- *Paid Family And Medical Leave, AN ISSUE WHOSE TIME HAS COME*, MAY (2017), AEI-Brookings Working Group On Paid Family Leave
- *Paid Parental Leave In The United States*, Barbara Gault, Institute For Women's Policy Research *Political Weekly*, 22.7.78, P. 1172
- RaghendraJha , (2014), "Welfare Schemes And Social Protection In India", *International Journal Of Sociology And Social Policy*, Vol. 34 Iss 3/4 Pp. 214 – 231
- Rana Haq, (2013), "Intersectionality Of Gender And Other Forms Of Identity", *Gender In Management: An International Journal*, Vol. 28 Iss 3 Pp. 171 – 184