



# Maternity and Work

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## Abstract:

*The debate about 'working mothers' and their work-family responsibilities are here to stay. Both are inevitable roles between which women find it difficult to choose. Herein, the idea/policy of paid maternity (parental) leave might come to the rescue of many women in liberal welfare states. However, such laws and their provisions cannot be applauded altogether but there are many nooks and crevices that need to be acted upon for these laws to fulfill the purposes what they are truly meant for.*

**Keywords:** working mothers, parental leave, family and work dichotomy

## 1. Introduction

Working women have to work 'double-day' to earn for recognition and livelihood in the outside world. This problem has increased many-fold since women started working in institutional settings in developed liberal market societies. Women started suffering from depression, poor health, children of such working mothers also suffered from many mental and physical health problems. So, the governments realizing the dire need to save those children as well as let women be a part of workforce came up with the entire idea of maternity leave benefits.

India also made maternity act in 1961, which has got amended this year in March. The new policy more than doubles the time off for working Indian mothers, and means the country now has more generous maternity leave than the U.S., Japan and France.

## 2. Indian maternity law

This paper will be enlisting the salient features of the amended act. Thereafter, an attempt will be made to do a careful evaluation of its various provisions.

Leave provisions:

Under the new Law, maternity leave is raised from current 12 weeks to 26 weeks. The prenatal leave is also extended from six to eight weeks. However, a woman with already two or more children is entitled to 12 weeks' maternity leave. The prenatal leave in this case remains six weeks.

The Act also provides for adoption leave of 12 weeks for a woman who adopts a child under the age of three months. A commissioning mother is also entitled to a 12-week leave from the date the child is handed over to her. A commissioning mother is defined as "biological mother who uses her egg to create an embryo implanted in any other woman" (the woman who gives birth to the child is called host or surrogate mother).

The Act further requires an employer to inform a woman worker of her rights under the Act at the time of her appointment. The information must be given in writing and in electronic form (email).

Female civil servants are entitled to maternity leave for a period of 180 days for their first two live born children.

The amended law also mandates a company to have a creche if they have more than 50 women employees. Common facilitators to sustainment of breastfeeding included longer length of maternity leave as well as adequate time and space for the pumping of breast milk once the mother returned to the different countries. There is a lack of consistency globally on maternity leave length and workplace policy as determinants of sustained breastfeeding for employed mothers. A consistent approach is needed to achieve the goal of exclusive breastfeeding for infants. Workplace barriers included inconsistency in policy and the lack of enforcement of policies.

### **3. Before March 2017, the law provided following rights**

According to the Maternity Benefit Act female workers are entitled to a maximum of 12 weeks (84 days) of maternity leave. Out of these 12 weeks, six weeks leave is post-natal leave. In case of miscarriage or medical termination of pregnancy, a worker is entitled to six weeks of paid maternity leave. Employees are also entitled to one additional month of paid leave in case of complications arising due to pregnancy, delivery, premature birth, miscarriage, medical termination or a tubectomy operation (two weeks in this case).

*Source: §3-10 of the Maternity Benefits Act 1961, amended in 2017; §43 of the Central Civil Service (Leave) Rules 1972*

### **4. Financial provisions**

The maternity leave is awarded with full pay on completion of at least 80 days in an establishment in the 12 months prior to her expected date of delivery. The maternity benefit is awarded at the rate of the average daily wage for the period of a worker's actual absence from work. Apart from 12 weeks of salary, a female worker is entitled to a medical bonus of 3,500 Indian rupees.

Under the National Food Security Act 2013, pregnant women and lactating mothers are entitled to receive maternity benefit of at least Rs. 6,000. The Act further requires that subject to such schemes as may be framed by the Central Government, every pregnant woman and lactating mother will be entitled to free meals during pregnancy and six months after the child birth, through the local anganwadi, so as to meet their nutritional needs.

*Source: §5 of the Maternity Benefits Act 1961; §4 of the National Food Security Act 2013*

### **5. Free Medical Care**

A pregnant women worker is entitled to a maternity benefit (in the form of medical bonus) of one thousand rupees if no prenatal confinement and post-natal care is provided by the employer free of charge. It can be increased to a maximum limit of twenty thousand rupees. The Central Government is authorized to increase the basic amount every three years. In August 2008, the amount of medical bonus was 2500 Indian rupees which has been later raised in 2011 to 3500 Indian rupees.

*Source: § 8 of the Maternity Benefits Act 1961*

### **6. Work from Home option**

The MB Amendment Act has also introduced an enabling provision relating to "work from home" for women, which may be exercised after the expiry of the 26 weeks' leave period. Depending upon the nature of work, women employees may be able to avail this benefit on terms that are mutually agreed with the employer

### **7. Drawbacks**

There are certain limitations to the act which makes it actually do much less than it promises or intendeds to.

### **8. Narrow definition**

The scope of the act needs to be widened. In fact, the women who need the benefits for their survival are the ones who have been left out.

The first and foremost in this list would be the acts inapplicability to the unorganized sector. For ex. construction site worker, Tiniben, worked through fever in the seventh month of her pregnancy in Vadodara, Gujarat. She returned home with her husband to their village in Dahod district to deliver her baby. She got no paid leave and could not hold on to the job. So, more than 2.5 crore of women like tiniben are left out. In 2007, a report prepared by the National Commission for Enterprises in Unorganised and Informal Sector said that 96% of the women work in the unorganised sector.

So, still such a large chunk is left out. Any woman working in agricultural, commercial or industrial establishments or shops with 10 persons or more is entitled to benefits under the Act. This leaves out many women who work from home – for instance, to roll bidis – or work at very small establishments, often without a fixed employer. “These women are left out and need the salary support,” said Jasodhara Dasgupta of Sahayog, a non-profit that works for the health rights of women in Lucknow. “They cannot keep the baby at home alone and go back to work.” If a woman does not have a fixed employer, it should not mean that the woman is not entitled to benefits.

Dipa Sinha, a right to food campaigner, who also looks at maternity rights and child nutrition: “The amendment should have expanded the definition of a working woman. Many working women do not even have an identified employer. Some women work on their own farms.” Sinha said the campaigners were trying to work out a system where both the State and employers would take more responsibility for these women. The employers could be made to possibly contribute to a welfare fund and women could be given cash entitlements, she said.

Secondly, it needs to be empathized with how much a woman goes through in bearing a child. A six weeks rest is required for her body to heal from the entire process of carrying and delivering the child. Again, a newborn needs the mother in multifarious ways. As health experts note, it is crucial for mothers to be close to their babies for at least the first 24 months. The World Health Organisation recommends that every child should be breastfed within an hour of birth and given only breast milk for their first six months of life. Breastfeeding should ideally continue up to the age of two, along with complementary food. In India, proper breastfeeding could reduce thousands of child deaths and episodes of diarrhoea and pneumonia annually.

The third facet to the act could be it being discriminatory in nature. As the amendment law has a peculiar rider. If a woman has two or more children, the maternity benefits remain just 12 weeks. This penalises women who have more children. Women who have more than two children do not necessarily choose to get pregnant, Many have no reproductive rights, or have no access to contraception.

Besides, it penalises the third child too, who would be deprived of nutritional benefits of breastfeeding. The next and the most important concern related to any act is the Implementation of the law

Currently, labour inspectors are supposed to hold regular checks to see if the law is being implemented. For instance, under the new Factory Act, any establishment with more than 50 workers is supposed to maintain a creche.

“In reality, if you go to the creche, they will not keep more than 15 children,” said KR Jayaram, from the Garment and Textile Workers Union in Bengaluru. “Many also refuse to keep children under one year. These are unwritten restrictions.”

Sengupta said the Alliance had done a small study with garment workers at Gurugram. “We could not find a single pregnant woman in the entire area,” she said. “It is an unwritten rule that the women have to leave the company before.

Various aspects of the MB Amendment Act need further clarity, for example, period up to which the crèche facility could be extended to the concerned woman as well as the aspect of availability, frequency and extent of nursing breaks. It is also unclear whether increased maternity benefits will apply to women who are presently undergoing maternity leave. Employers may have to wait until the rules are issued clarifying the position on the arrangements which could be made with third party service providers for crèche facilities with specific requirements in terms of distance from workplace, dimensions and other related aspects.

Moreover, the rationale for having separate effective date for implementing "work from home" option is also unclear, given the fact that work from home is an enabling provision to encourage the employers to provide such option to a woman depending upon nature of work being handled by her and not a statutory requirement under the MB Amendment Act. We expect the Ministry of Labour to shortly come out with rules clarifying these aspects. In fact, in this age of digital working ,with most work being done on computers and through net it is not a difficult task to achieve.

### **9. Concluding remarks**

The Indian government hopes to encourage more women , less than 30% of whom are employed to enter the workforce. But employers and recruitment experts fear it could have the opposite effect, particularly for small and medium-sized businesses.

"You will probably see a further decline in women being hired," Subramanyam Sreenivasaiah, CEO at human resources consulting firm Ascent HR, told CNN.

Here's the problem. The government has mandated 26 weeks of paid maternity leave, but it doesn't provide any financial support for employers.

That means companies must bear all the associated costs -- including training and hiring a temporary replacement. The law also says companies with more than 50 employees must set up daycare services for working mothers.

"The industry cannot afford to do this at all," Sreenivasaiah added.

Big Indian companies and multinationals should be able to cope with the change.

But smaller companies could struggle. Jubin Shaju, a human resources executive at digital payments firm Chillr, says hiring practices in India already tend to discriminate against women.

"This makes things even worse," he said.

Women aspiring to work in India's booming startup sector could be hit particularly hard.

There's no official data so far, but a survey of over 4,300 startups by social network LocalCircles found that 26% would rather hire male employees. Another 40% said they would hire women, but only if they're worth "the cost."

Around 35% of respondents said the new maternity leave requirements would negatively impact their profitability. The possibility of somebody not being able to contribute for six months at a stretch will be a huge deal breaker.

India is not yet there in terms of overall infrastructure, education, and healthcare. It is good to have the government thinking about it, but it is also a step in isolation.