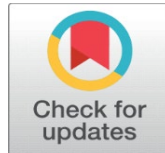
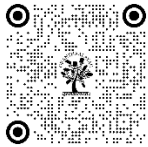


THE ROLE OF THE MATERNITY BENEFIT ACT IN INDIA

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ABSTRACT

While women's contributions to the economy are increasingly recognized, significant challenges remain. Gender-based wage gaps, limited access to education and employment opportunities, and societal biases continue to hinder women's economic empowerment. Addressing these issues is essential for achieving gender equality and sustainable economic growth. Recognizing the economic value of women's work is crucial for promoting gender equality and fostering a more equitable society. By challenging traditional gender roles and valuing women's contributions to the economy, we can create a more inclusive and prosperous future for all. Traditionally, domestic labour has been primarily assigned to women, including cooking, tailoring, and other household tasks. Despite their significant contributions, these tasks are often undervalued due to their unpaid nature, leading to the exclusion of women from the official workforce. This has resulted in a persistent undervaluation of women's labour and their role in economic development.

1. INTRODUCTION

BACKGROUND

Traditionally, women have been primarily associated with domestic responsibilities, while men have been linked to the public sphere. This convention has long perpetuated the notion that men bear the sole responsibility for economic production. The "Indian Factories Act" of 1948 reflects the convention by using the masculine term "man" to define "work." Women significantly contribute to the global economy through unpaid domestic and community work. Historically, the narrow definitions of "work" and "workplace" have often excluded these vital contributions, overlooking women's economic value. This led to a persistent undervaluation of women's labour and their role in economic development.

While women's contributions to the economy are increasingly recognized, significant challenges remain. Gender-based wage gaps, limited access to education and employment opportunities, and societal biases continue to hinder women's economic empowerment. Addressing these issues is essential for achieving gender equality and sustainable economic growth. Recognizing the economic value of women's work is crucial for promoting gender equality and fostering a more equitable society. By challenging traditional gender roles and valuing women's contributions to the economy, we can create a more inclusive and prosperous future for all. Traditionally, domestic labour has been primarily assigned to women, including cooking, tailoring, and other household tasks. Despite their significant contributions, these tasks are

often undervalued due to their unpaid nature, leading to the exclusion of women from the official workforce. This has resulted in a persistent undervaluation of women's labour and their role in economic development.

The growing economic pressures faced by families have increased the need for dual-income households. While this shift could have been accompanied by more egalitarian attitudes towards working women, traditional gender roles persist. Women continue to face challenges such as gender-based wage gaps, limited access to education and employment opportunities, and societal biases that hinder their economic empowerment. Furthermore, it is important to acknowledge that the division of labor within households is not always fixed and can vary depending on cultural, economic, and social factors. In some households, men may take on a greater share of domestic responsibilities, while in others, women may be the primary breadwinners. However, even in these cases, women often continue to bear a disproportionate burden of domestic labour, which can have negative consequences for their health, well-being, and economic opportunities.

2. GENDER INEQUALITY

To achieve true gender equality, it is necessary to challenge and dismantle traditional gender roles and expectations. This includes promoting education and awareness about gender equality, providing women with access to economic opportunities, and creating a supportive environment for women in the workplace. By working together, we can create a society where women are valued and empowered to reach their full potential. Women's contribution in economic commotion is influenced by a range of biological, economic, social, and cultural factors. These factors contribute to gender inequality within families and in broader economic and political systems.

Women's economic challenges are exacerbated by their primary responsibility for pregnancy, childbirth and childcare, coupled with a lack of employer support. Despite demanding careers, women often bear the primary burden of domestic responsibilities. Few employers offer childcare assistance, flexible work arrangements, or paid maternity leave. This issue disproportionately affects women in blue-collar and clerical roles, who face rigid schedules, low wages, and minimal employer support for family responsibilities. Even professional women encounter these challenges, albeit to a lesser extent.

These factors contribute to gender inequality in the workplace and hinder women's economic advancement. To address these issues, it is essential that employers and policymakers implement policies that support women's ability to balance work and family responsibilities. This includes providing affordable childcare options, flexible work arrangements, and paid maternity leave. Career advancement to top-level positions often demands significant time commitment and uninterrupted work histories. This can be challenging for mothers, unless they have partners who prioritize family responsibilities or can afford to hire childcare, which is frequently provided by women at low wages. Research on high-level executives reveals a significant disparity between men and women in terms of parenthood. The majority of male executives have children, while a substantial proportion of female executives remain childless. Despite the desire of many women to have children, current economic structures often necessitate trade-offs between career advancement and family goals.

3. MATERNITY BENEFIT ACT

Historically, maternity has been viewed as a disability that prevents women from working during the pre-and post-natal periods. With the rise of industrialization, many employers terminated the employment of women who became pregnant, disrupting their careers and leaving them without income. To maintain employment, many women endured unpaid leave or continued working despite the health risks to themselves and their children. To alleviate the hardships faced by working women, the concept of maternity benefits was introduced. This measure aims to enable women to fulfill their maternal responsibilities without compromising their health or financial well-being. Maternity benefits provide paid leave and other support to women during and after pregnancy, ensuring their continued economic security and promoting maternal and child health.

Maternity protection is a fundamental component of women's rights and gender equality. Numerous international human rights instruments have recognized this essential provision, including the "International Covenant on Economic, Social and Cultural Rights" (1996) and several "international labor conventions" "(nos. 3, 102, 103, and 183)".

In 1975, the ILO established the "Declaration on Equality of Opportunity" for Women workers. Subsequently, in 2004, ILO member states adopted resolutions to expand access to "maternity protection" and promote "work-life balance". Both instances underscored the discriminatory nature of maternity and its detrimental impact on "equality of opportunity" and behavior for women. These international frameworks affirm the importance of maternity protection

in advancing gender equality and ensuring the “well-being” of working women. They guide states to implement policies and measures that support women's rights and promote a more equitable workplace environment.

The increasing participation of women in the labour market necessitates creating a more conducive work environment that addresses their specific needs. Understanding the gender dynamics of the workforce is crucial for achieving inclusive growth and ensuring decent working conditions for all. This requires a comprehensive analysis of the current and evolving “labour market” condition in India, addressing both overall employment growth and the specific challenges faced by women workers. While women's labour force participation rates have been rising, they remain relatively low due to various social and family constraints that often confine women to domestic responsibilities during their prime working years. This phenomenon is particularly evident in urban areas, where women may lack adequate social and family support systems.

Addressing the challenges faced by women in the workplace requires ongoing legislative intervention. India's Constitution and various related laws have recognized the need to address gender inequalities and promote women's welfare. The **Maternity Benefit Act of 1961** is a significant portion of legislation in this regard. The increasing partaking of women in the labour market, particularly in urban areas, highlights the need for a more gender-friendly work environment. India's commitment to creating such an environment necessitates a focus on providing conducive working conditions for women.

The significant participation of women in various occupational categories necessitated the enactment of protective labour laws by both central and state governments to safeguard their health and the well-being of their children. Before independence, women workers were frequently employed in all three shifts, including night shifts, and engaged in underground mining activities. There were no restrictions on the weight women could lift, potentially posing risks to their health. The first “Maternity Benefits Act” was enacted in 1929 by the Bombay Government followed by similar legislation in other Indian states based on the recommendations of the Royal Commission on Labour (1931). This reflects the growing awareness and advocacy of trade union movements, which played a crucial role in securing protective measures for women workers.

The Maternity Benefit Act of 1961 was subsequently enacted as a central law to apply uniformly across all states. However, variations in state-level rules persist, highlighting disparities in protection for women workers. The 1973 amendment to the “Maternity Benefit Act” aimed to address some of these anomalies. In addition to the “Maternity Benefit Act”, the “Employees State Insurance Act” provides maternity benefits to eligible women workers. However, a significant portion of women workers do not fall under the purview of either act, resulting in a lack of comprehensive protection. “The Mines Maternity Act” of 1911 and the “Plantation Maternity Benefit Act” of 1951 offer some protection to women workers in these specific industries. These legislative developments demonstrate a gradual improvement in maternity protection for women workers in India. However, challenges remain in ensuring consistent and comprehensive coverage for all women. Further efforts are needed to address disparities and gaps in existing legislation, ensuring that all women have access to adequate maternity benefits and protection.

“The Maternity Benefits Act” (MBA) provides a comprehensive package of benefits to working women during their maternity leave. These benefits are designed to support women's physical and emotional health, promote bonding with their newborns, and safeguard their employment.

- **PAID MATERNITY LEAVE:** Paid maternity leave is a fundamental component of the MBA, offering women a minimum of 26 weeks of paid time off to rest, recover, and nurture their bond with their newborns. This extended period enables women to prioritize their maternal responsibilities without financial strain.
- **PRE-DELIVERY AND POST-DELIVERY LEAVE:** The MBA includes pre-delivery and post-delivery leave in addition to paid maternity leave. This provision allows women to prepare for childbirth and provide essential care to their newborns during the crucial initial weeks. By allowing for sufficient time off before and after birth, the MBA helps women adjust to the demands of motherhood and prioritize the needs of their families. Women are entitled to up to eight weeks of leave following the date of delivery.
- **LACTATION BREAK:** To support working mothers who are breastfeeding or expressing milk, the MBA provides lactation breaks. These breaks enable women to nourish their infants and maintain their milk supply, fostering a healthy and nurturing environment for their children. By accommodating the needs of breastfeeding mothers, the MBA helps to promote and support maternal health and child development.
- **PROHIBITION OF DISMISSAL AND RETRENCHMENT DURING MATERNITY LEAVE:** To safeguard women's employment rights during their maternity leave, the MBA prohibits dismissal and retrenchment. These provisions ensure that women can prioritize their maternal responsibilities without the fear of job loss. By protecting

women's employment security, the MBA helps to alleviate financial stress and promote gender equality in the workplace.

- **PROTECTION AGAINST RETRENCHMENT:** Women are protected from retrenchment during their maternity leave and for six months following their return to work.

4. CHALLENGES IN THE IMPLEMENTATION OF “THE MATERNITY BENEFIT ACT”

- **LACK OF AWARENESS:** Despite the beneficial provisions of the Maternity Benefits Act (MBA), its implementation has been hampered by a lack of awareness among women employees regarding their rights under the Act. This lack of awareness can be attributed to limited access to information, cultural barriers, or fear of employer retaliation. As a result, many women may be unaware of the benefits available to them, leading to underutilization of the MBA's provisions.
- **NON-COMPLIANCE BY EMPLOYERS:** Non-compliance by employers is another challenge hindering the effective implementation of the MBA. Some employers may fail to comply with the Act's requirements due to ignorance or a deliberate attempt to avoid their obligations. This non-compliance can result in women being denied their rightful benefits, facing discrimination in the workplace, or being subjected to retaliation. Such actions not only violate women's legal rights but also create a hostile work environment.
- **INFORMAL SECTOR:** The applicability of the MBA to women working in the informal sector is a complex issue. Due to the informal nature of their employment, many women in this sector may not be covered by the Act or may face difficulties in enforcing their rights. This leaves a significant portion of the female workforce vulnerable to exploitation and discrimination. Women in the informal sector often lack the protection and security afforded to those in formal employment, making them more susceptible to abuse and mistreatment.
- **DISCRIMINATION AGAINST WOMEN:** Discrimination against women in the workplace, particularly after returning from maternity leave, remains a persistent challenge. Women may face bias, stereotyping, or unfair treatment, which can negatively impact their career advancement and overall well-being. Such discrimination can take various forms, including being denied promotions, assigned to less desirable tasks, or subjected to hostile work environments. Addressing this issue requires a comprehensive approach that includes both legal measures and cultural change.

To effectively address these challenges, it is essential to implement strategies that promote awareness of the MBA, ensure compliance by employers, extend the Act's coverage to women in the informal sector, and combat discrimination against women in the workplace. This may involve increasing public awareness campaigns, strengthening enforcement mechanisms, providing training to employers, and promoting workplace diversity and inclusion initiatives.

5. COMPARISON WITH OTHER COUNTRIES

1. SINGAPUR

- Singapore's “maternity laws” are rigorous and vary based on the child's citizenship and the mother's marital status. To qualify for the full 16 weeks of paid maternity leave under the Ministry of Manpower, the child must be a “Singapore citizen”, the mother must be “legally married” to the child's father, and the mother must have been employed or self-employed for at least three months before the child's birth.
- A notice of at least one week must be provided to the employer before commencing maternity leave, with prompt notification of the child's delivery. Failure to comply with these notice requirements may result in a reduction of maternity benefits to half the total amount unless a valid reason for the delay is provided.
- Maternity leave applications in Singapore can be submitted through the Singapore Government website.

2. MALAYSIA

Under Malaysia's Employment Act of 1955, female employees who have worked for at least 90 days in the preceding four months are entitled to “60 days of paid maternity leave”. Employers must be notified at least four months before the expected date of delivery. In certain cases, expecting mothers may be eligible for extended maternity leave:

Employees in banks and some state government agencies may enjoy up to 90 days of maternity leave.

- Some multinational companies offer even longer maternity leave periods exceeding 90 days.
- While some companies may allow for extended maternity leave beyond 90 days, it is typically unpaid.
- Maternity benefits in Malaysia generally apply to the first five children. For subsequent children, maternity leave may

not be provided, and the specific benefits offered often depend on the employer and individual employment agreements.

3. THAILAND

In Thailand, expecting mothers are protected under the “Labour Protection Act” of 1988. Female employees in Thailand enjoy the following maternity benefits:

- “90 days of maternity leave”, including any holidays that fall within this period.
- Full pay for 45 days from the employer and 45 days from the social welfare fund.
- The option to request minor changes to their duties before or after childbirth with a doctor's certificate.
- Full protection against “termination of employment”.

Additional benefits available to “expectant mothers” include medical examinations, childbirth expenses, medical treatment expenses, confinement expenses, and other necessary expenses.

4. INDONESIA

In Indonesia, maternity benefits under the Social Security Law include healthcare during maternity and delivery. Employees receive cash benefits equivalent to their monthly wages for a 12-week period, consisting of six weeks before and six weeks after delivery.

- If a female employee “dies” during or after childbirth, the employer remains liable for the full 12-week maternity benefit payment.
- The current system does not have specific employment or contribution requirements for eligibility for maternity benefits. This is a significant drawback, as employers are obligated to pay benefits regardless of the employee's length of service.

5. PHILIPPINES

The “Maternity Benefits Act” in the Philippines has been protracted from 60 to 150 days through “Republic Act No. 11210”. This applies to all working mothers in both the “public and private sectors”, including those in the “informal economy”, regardless of the child's “legitimacy” or civil status, or in cases of “miscarriage”. Key benefits include:

- Paid maternity leave for all working mothers.
- Full payment within 30 days for private sector employees after “submitting the leave application”.
- An option to extend maternity leave by up to 30 days with 45 days' prior notice to the employer.

Compared to other countries, India's current maternity benefits legislation is generally more comprehensive. India offers a significantly longer maternity leave period of 26 weeks, exceeding the average of 12-14 weeks provided by other countries. Additionally, India's remuneration structure and processes are more robust than those in many other countries. However, a major drawback of the current system is the disproportionate burden placed on employers, with minimal government support. For example, Thailand's social welfare fund contributes to maternity leave payments. India is unique among the countries considered in this analysis for mandating crèche facilities. Before the 2017 amendments, India's maternity benefits were comparable to those offered by other countries. In recent years, India has made significant strides toward becoming a developed economy, implementing various measures to boost its workforce, including enhancements to existing labor laws. These efforts have positioned India as one of the top countries globally in terms of maternity benefits.

6. CONCLUSIONS AND SUGGESTIONS

AREAS FOR IMPROVEMENT IN THE MATERNITY BENEFIT ACT

- **EXTENSION OF MATERNITY LEAVE:** To further enhance the effectiveness of the Maternity Benefits Act (MBA) and better protect the rights of working women, several areas for improvement can be identified. One such area is the extension of maternity leave, particularly for women who have given birth to twins or more. By providing a longer period of leave, the Act can better accommodate the unique needs of mothers with multiple children, allowing them to provide adequate care and support to their infants.
- **COVERAGE OF THE INFORMAL SECTOR:** Another important area for reform is the coverage of women working in the informal sector. Many women in this sector are not currently protected by the MBA, leaving them vulnerable to exploitation and discrimination. Extending the Act's provisions to cover women in the informal sector would ensure that a larger segment of the female workforce benefits from its protections and safeguards.
- **STRENGTHENMENT OF ENFORCEMENT:** To address the issue of non-compliance with the MBA, the government could strengthen enforcement mechanisms. This could involve increasing the frequency of inspections,

imposing stricter penalties for violations, and providing greater support to women who report non-compliance. By taking a more proactive approach to enforcement, the government can help to ensure that employers are adhering to the Act's requirements and that women are receiving their rightful benefits.

- **PROMOTION OF WORKPLACE FLEXIBILITY:** Promoting workplace flexibility can play a crucial role in supporting working mothers. By encouraging employers to adopt flexible work arrangements, such as part-time work, remote work, or flexible hours, we can help women balance their maternal responsibilities with their career aspirations. This can lead to greater job satisfaction, reduced stress, and improved outcomes for both women and their families.

By addressing these areas for improvement, the Maternity Benefits Act can be further strengthened to provide more comprehensive and effective protection for working women in India. These reforms can help to create a more equitable and supportive workplace environment for women, enabling them to thrive both personally and professionally. Recognizing the economic value of women's work is crucial for promoting a more equitable society. By challenging traditional gender roles and valuing women's contributions to the economy, we can create a more inclusive and prosperous future for all.

CONFLICT OF INTERESTS

None.

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REFERENCES

- Ahooja-Patel, K., 1995. Women and Sustainable Development: An International Dimension (No. 4). APH Publishing.
- Rudman, Lauria A. (2008), the Social Psychology of Gender, New York: The Guilford Press.
- Avasthi, Abha and AK Srivastava (2001), Modernity, Feminism and Women Empowerment, New Delhi: Rawat Publications
- Ferree, Myra Marx. 1987. "She works hard for a Living Gender and Class on the Job."Pp.322-347 in Beth B. Hess and Myra Marx Ferree (Eds.) Analyzing Gender: A Handbook of Social Science Research. Newbury Park, Calif: Sage.
- Stockard, J. and Johnson, M.M., 1992. Sex and gender in society. (No Title).
- Bala, S., 2012. Implementation of Maternity Benefit Act. NLI Research Studies Series, 99, p.2012.
- Bala, S., 2012. Implementation of Maternity Benefit Act. NLI Research Studies Series, 99, p.2012.
- Government of Singapore. (2013, May 01). Maternity Protection And Benefits, Adoption Leave, Childcare Leave, Extended Childcare Leave, Unpaid Infant Care Leave, Shared Parental Leave And Paternity Leave. Child Development Co-Savings Act, Part 3. Sec. 9 - 13.
- Government of Singapore. (n.d.). Maternity Protection And Benefits And Childcare Leave For Parent. Employment Act, Part IX. Sec. 76 - 87.
- Government of Malaysia. (n.d.). Maternity Protection. Malaysia Employment Act 1955, Part IX. Sec. 37 - 44.
- Bhumibhol, A. (1998, February 12). Labour Protection Act, B.E. 2541, 1998. Chapter 2 - 5.
- Republic Act No. 11210. (2018, July 23). Republic of Philippines. 17th Congress of the Philippines.