



Comparative Analysis: Maternity Benefit Laws in India with selected Countries.

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ABSTRACT:

Maternity benefits refer to the support provided to women during pregnancy and after childbirth, with the broader goal of promoting maternal and child well-being. This study explores the current landscape of maternity benefit provisions in India and evaluates their alignment with international standards. The objective of the paper is to provide a comprehensive overview of India's maternity benefit framework, including a comparison with key international conventions and practices in other countries like Singapore, Malaysia Thailand, Indonesia and Philippines. It consolidates relevant research on the subject, offering both factual insights and critical evaluations, along with personal observations. The paper is intended to foster a foundational understanding of the Maternity Benefit Act.

Keywords: maternity, benefits, legislation, leave, policy

Introduction:

In many developed nations today, women make up a substantial share of the workforce. In India, approximately 23.6% of women aged 18 and above are active participants in the Labour market. A significant portion of these working women are also mothers or caregivers to young children, working across both the formal and informal sectors of the economy. To support the needs of new parents—whether by birth or adoption—governments have introduced maternity and family leave policies. These frameworks are designed to help individuals manage their professional obligations alongside family responsibilities, ultimately aiming to enhance family well-being and promote continuous career progression. As women often assume primary caregiving roles during a child's early months, such policies particularly impact their ability to provide attentive care without jeopardizing their employment. Maternity benefits play a vital role in a woman's career, offering her the security and assistance needed to make family planning decisions. These laws are intended to support expectant and new mothers both during childbirth and throughout their recovery period, ensuring continued access to wages and job protection. They also provide reassurance to working women during a transformative stage of life. By 2015, over 80 countries had adopted paternity leave provisions in addition to maternity leave, signaling global recognition of parental support as a shared responsibility. India, with its long-standing legal provisions on maternity benefits, maintains a uniform national policy; however, many employers go beyond these minimum standards by offering extended leave or enhanced compensation.

International legal framework:

The International Labour Organization (ILO), a specialized agency under the United Nations, is committed to advancing social justice and ensuring decent working conditions worldwide. The ILO firmly recognizes maternity protection as a core Labour rights and has established multiple conventions to set international standards on this matter. These include conventions adopted in 1919, 1952, and most recently in 2000, the Maternity Protection Convention (Number: 183). These instruments provide comprehensive safeguards for expectant and new mothers, including protection against workplace health and safety risks, entitlement to paid maternity leave, access to maternal and child healthcare services, breaks for breastfeeding, and protection against discrimination or dismissal related to maternity. Additionally, they uphold a woman's right to resume work post-maternity leave.

Globally, the vast majority of nations have enacted some form of maternity leave legislation. These frameworks typically rest on four foundational elements:

- i. Duration of leave,
- ii. Compensation during the leave period,
- iii. Job security, and
- iv. Financial support.

This paper adopts these four pillars to structure the analysis, each of which is outlined briefly below.

1. Duration of Leave

Under Convention No. 183 (2000), the ILO mandates a minimum maternity leave of 14 weeks, an increase from the 12 weeks stipulated in previous

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conventions. Moreover, Recommendation No. 191 suggests extending this duration to at least 18 weeks to better support the health and recovery of the mother and care of the child. The length of leave is critical—insufficient leave may hinder recovery and caregiving, while overly extended leave can sometimes affect a woman's continuity in employment.

According to available global data, 98 countries have adopted maternity leave policies that meet or exceed the 14-week minimum standard. Of these, 42 countries comply with or surpass the recommended 18-week duration. Around 60 countries still offer 12–13 weeks of leave, which aligns with older ILO conventions but not the latest standard. Meanwhile, approximately 15% of countries offer less than 12 weeks of leave, falling short of international norms.

2. Remuneration During Leave

Convention No.183 also outlines provisions regarding financial benefits during maternity leave. Specifically, it states that if cash benefits are calculated based on previous earnings, they must be no less than two-thirds of the woman's former wages. This compensation ensures that mothers can maintain a reasonable standard of living and care adequately for their child during the maternity period without experiencing undue financial hardship.

3. Job Protection

The ILO further mandates robust job protection measures for pregnant employees and new mothers. It prohibits termination of employment on the grounds of pregnancy, maternity leave, or related conditions. Employers are not permitted to dismiss a woman during this period unless for reasons unrelated to her maternity status. Additionally, women must be guaranteed the right to return to their previous position—or one that is equivalent—upon completion of their leave, with the same level of pay and benefits as prior to their absence.

4. Financial Benefits

The International Labour Organization (ILO) does not require employers to bear the full cost of maternity benefits. Instead, the responsibility for funding such benefits typically lies with social security systems or public assistance programs. The ILO recommends that maternity-related financial support be sourced from national welfare schemes rather than being a direct obligation of the employer. Additionally, medical benefits covering prenatal, childbirth, and postnatal care for both mother and child should be provided in alignment with a country's existing healthcare laws and infrastructure.

ILO conventions primarily serve as guiding frameworks, and their implementation varies significantly depending on the economic strength and policy priorities of each nation. In wealthier countries such as Japan and several Eastern European nations, maternity benefits often exceed the minimum standards established by the ILO, contributing to a more inclusive and supportive work environment for women. In contrast, some countries in the Middle East offer maternity leave benefits that fall below international benchmarks. India, however, has historically maintained a progressive stance on maternity protection, which is further explored in the following section.

History of maternity benefits in India:

India's formal recognition of maternity benefits can be traced back to 1928 in the Bombay Presidency under British rule. During this period, Dr. B.R. Ambedkar emerged as a key advocate for maternity protection, passionately defending the cause in the Bombay Legislative Council. His contributions to the development of social justice policies laid the foundation for future legislative measures in this area.

Initially, India's legislative efforts focused on safeguarding women employed in factories, reflecting a narrow interpretation of maternity protection limited to the formal sector. Women working in agriculture or informal employment were largely excluded, based on the flawed assumption that their roles did not expose them to significant health risks. The early legislation prioritized prenatal care and maternal health during pregnancy, with limited attention to postnatal care or the well-being of the newborn in the crucial early months.

Importantly, the original framework placed the financial burden of maternity benefits on the state, not on individual employers. The rationale was rooted in the belief that ensuring citizens' welfare is a public responsibility, and the government should therefore play a central role in funding maternity support.

Maternity benefits act 1961:

The Maternity Benefit Act was enacted by the Government of India on December 12, 1961, in the post-independence era. This legislation introduced a structured framework for providing maternity-related benefits, including leave and allowances for pregnancy, childbirth, and associated medical conditions. It aligned with the prevailing international norms of the time, reflecting India's commitment to ensuring social welfare. Despite being a young and developing nation—only 14 years into independence—India enacted this law with considerable detail, addressing various aspects and implications of maternity care with careful consideration.

The Maternity Benefit Act, 1961 serves as the primary legislation regulating maternity benefits for women employees in India. It applies to all establishments employing ten or more individuals. Under this Act, any woman who has been employed with an organization for a minimum of 80 days is entitled to maternity benefits. The purpose of the Act is to ensure that women are provided with adequate support and dignity during pregnancy and childbirth. The Supreme Court, in the landmark judgment *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* (2000), emphasized the importance of this legislation, stating that it is designed to allow women to embrace motherhood without fear or anxiety over job security or discrimination due to necessary absences during pre- and postnatal periods.

Under the Maternity Benefit Act, 1961, if a woman employee does not receive pre-natal or post-natal medical care from her employer, she is entitled to a medical bonus. Initially set at ₹1,000, this amount has since been revised by the Central Government to ₹25,000. In cases of miscarriage or pregnancy-related complications, the Act allows the woman to take paid leave. Additionally, if she suffers from any health issues arising from pregnancy, childbirth, premature birth, or miscarriage, she can avail an extra 30 days of paid leave, subject to medical certification.

Once the employee resumes work, she is entitled to two nursing breaks each day to feed her child until the child reaches 15 months of age. Furthermore, the law requires establishments with 50 or more female employees to provide crèche facilities at easily accessible locations for working mothers. The Act also permits paid leave for women who undergo a tubectomy procedure, provided appropriate medical documentation is submitted.

The Maternity Benefit Act strictly prohibits employers from terminating the employment of a woman due to her pregnancy or while she is on maternity

leave. It is also unlawful to issue a termination notice during her leave period if that notice is set to expire while she is still away. Furthermore, any alteration in the terms and conditions of her employment that negatively affects her during this time is considered illegal. The Act makes it clear that assigning lighter duties to pregnant employees or allowing breaks for nursing are not valid reasons for reducing their wages.

This legislation extends to a wide range of establishments, including both public and private sector enterprises. It also encompasses workplaces where individuals are employed in performance-related roles such as equestrian, acrobatic, and other similar shows, as well as workers in factories, mines, and plantations. Additionally, it applies to shops and commercial establishments that have ten or more employees.

Maternity benefits Amendment act 2017:

The Maternity Benefit (Amendment) Bill was approved by the Rajya Sabha on August 11, 2016, and passed in the Lok Sabha on March 9, 2017. It received the President's assent on March 27, 2017, and officially came into effect from April 1, 2017. However, the specific provision regarding the crèche facility (as per Section 11) became enforceable from July 1, 2017.

Although the core framework of the original Act remains unchanged, the 2017 amendment enhanced several key provisions to promote better maternal and child welfare. Based on our analysis, four major areas of the law have been impacted as follows

i. Duration of Leave

The amendment increased the maternity leave entitlement to 26 weeks, of which up to 8 weeks can be availed before the expected delivery date. However, for women who already have two or more living children, the leave is limited. This change reflects a 117% increase in leave duration from the earlier law and aligns with ILO's recommendations of a minimum 18-week leave. The aim of this provision is to support the mother's recovery and ensure proper care for the newborn, potentially reducing infant mortality. For adoptive mothers adopting a child under three months old, and for commissioning mothers, the Act provides 12 weeks of leave.

ii. Remuneration During Leave

There have been no modifications to the payment structure under this amendment; the rules regarding paid maternity leave remain consistent with the original Act.

iii. Job Security

The provisions protecting women from dismissal or termination due to maternity remain unchanged.

iv. Financial and Workplace Support

Although no new direct cash benefits have been introduced, the amendment permits women to work from home post-delivery if their job responsibilities allow it and both the employee and employer are in agreement. Additionally, establishments with 50 or more employees are now required to provide crèche facilities, either within their premises or as a shared facility. Women employees are allowed up to four daily visits to the crèche, including the time allotted for nursing.

The most notable reform brought by this amendment is the increase in paid maternity leave from 12 to 26 weeks, reflecting WHO guidelines that advocate for exclusive breastfeeding for the first 24 weeks to lower infant mortality rates. This extended leave is also expected to encourage more women to remain in the workforce after childbirth. Moreover, by acknowledging the needs of adoptive and commissioning mothers, the amendment broadens the scope of maternity support and affirms respect for all forms of motherhood. As a result, India now ranks third globally—after Canada and Norway—in terms of the extent of maternity benefits offered.

Additionally, existing literature has been reviewed to assess how these reforms have been perceived across various sectors and their actual impact on organizations and working women.

Comparative Analysis with South Asian countries:

Singapore

Maternity laws in Singapore are quite detailed and depend significantly on the child's citizenship status and the mother's marital status. Women do not receive the full scope of maternity benefits if their child is not a Singaporean citizen.

- i. To be eligible for 16 weeks of paid maternity leave, the Ministry of Manpower outlines the following conditions:
- ii. The child must be a Singaporean citizen.
- iii. The mother must be legally married to the child's father.
- iv. The mother must have been employed or self-employed for at least three months before giving birth.
- v. The employer must be notified at least one week before maternity leave begins, and the mother must inform them of the delivery date as soon as possible. Failure to provide timely notice without a valid reason may result in only half the salary being paid.
- vi. Applications for maternity leave can be submitted online through the Singapore Government portal.

Malaysia

According to Malaysia's Employment Act of 1955, a woman is eligible for 60 days of fully paid maternity leave if she has worked for her employer for at least 90 days within the four months preceding her maternity leave. Employers must be informed of the pregnancy at least four months in advance.

Additional maternity leave provisions include:

Employees in banks and certain state government departments may be entitled to up to 90 days of leave. Some multinational companies offer extended maternity leave beyond the statutory requirement. In certain cases, unpaid leave exceeding 90 days may be granted at the employer's discretion.

In many countries, maternity benefits are influenced by individual employment contracts and the employer's internal policies. A noteworthy point is that maternity leave is generally only granted for up to five children; any subsequent births typically do not qualify for paid maternity leave.

Thailand

Under Thailand's Labour Protection Act of 1988, female employees are entitled to several protections and benefits during maternity:

- i. 90 days of maternity leave, which includes public holidays falling within the leave period.
- ii. 45 days' salary is paid by the employer, while the remaining 45 days are covered by the social security fund.
- iii. With a medical certificate, an employee may request temporary adjustments in work responsibilities, either before or after childbirth.
- iv. Women are granted full job security during their pregnancy and cannot be dismissed due to maternity.
- v. Additional benefits include coverage for medical examinations, delivery costs, postnatal care, and other essential expenses related to childbirth.

Indonesia

In Indonesia, maternity protection is governed by the Social Security Law, which provides health and financial support for pregnant employees:

- i. Women are entitled to 12 weeks of maternity leave, split into six weeks before childbirth and six weeks after.
- ii. During this period, the employer must pay the employee a cash benefit equal to her monthly salary.
- iii. If an employee passes away during or after childbirth, the employer is still obligated to pay maternity benefits for the full 12-week duration.
- iv. Notably, there are no minimum contribution or employment duration requirements, meaning even newly hired workers are entitled to full benefits—something seen as a potential challenge for employers.

Philippines

The Republic Act No. 11210, a relatively recent law in the Philippines, extended paid maternity leave from 60 to 105 days, and in some cases up to 150 days:

- i. The law applies across public and private sectors, as well as to women in the informal economy, regardless of the child's legitimacy, marital status of the mother, or even in the case of miscarriage.
- ii. All working mothers are eligible for paid maternity leave, with private sector employees receiving their payment within 30 days of submitting their leave application.
- iii. Maternity leave can be extended by an additional 30 days, provided the employee gives 45 days' advance notice to the employer before the end of the initial leave period.
- iv. In comparison with the countries discussed, India's current maternity benefit legislation stands out in several key areas. The duration of paid maternity leave in India significantly exceeds international standards—by nearly 85% more than the average outlined in global conventions, where most nations offer around 12 to 14 weeks. India also maintains a more structured and defined remuneration process for maternity benefits.

However, a critical shortcoming of India's legislation lies in the uneven distribution of financial responsibility, where the entire cost burden falls on the employer, unlike systems in countries such as Thailand, which shares the burden through a social security fund that covers part of the maternity compensation. Notably, India is the only country among those examined that mandates the provision of crèche facilities for establishments with a specified number of employees.

Before the 2017 amendment to the Maternity Benefit Act, India's provisions were mostly on par with other South and Southeast Asian nations. Post-amendment, India has made significant strides in strengthening employee welfare, aligning with its broader goals of economic development and Labour reform. These advancements have propelled India to third place globally in terms of maternity-related provisions.

Conclusion:

Maternity leave policies play a crucial role in supporting new parents—particularly mothers—as they balance the demands of work and childcare following childbirth. This comparative review offers insight into leave utilization patterns, impact on women's participation in the workforce, child health outcomes, and employer implications.

India's maternity leave framework is largely in sync with international guidelines, not only in the context of Labour rights but also child welfare. However, such policies require a careful balance—insufficient leave can jeopardize a mother's health and workforce participation, while overly generous leave could potentially hinder long-term career progression.

A key concern is the lack of government contribution to maternity benefits, which places the entire burden on employers. Unlike countries with state-supported systems, India's employer-funded model may present challenges, especially for small enterprises.

Looking ahead, several important questions remain unanswered. The long-term effects of the 2017 amendments on both small businesses and large corporations have yet to be thoroughly evaluated. Moreover, the impact on health indicators such as infant mortality and maternal well-being requires further study. Finally, a comprehensive examination of how these provisions influence women in the informal sector is essential to understand the broader implications and ensure inclusive policy development.

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