Maternity Benefit Legislation
Reinforcing Patriarchy, Excluding Intersectionality

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The amendment to the Maternity Benefit Act of 1961 has paved the way for what is clearly a great benefit for mothers. However, it appears to ignore the need to recognise parenting as a shared responsibility, and reinforces patriarchal norms around parenting. It also fails to account for intersectionality by disregarding the needs of women in the unorganised sector. In addition, it fails to account for implementation and safeguards for subtle exclusionism.

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That nature has inherently intended that bearing the child will be the function of the biological female is a given. Seeking an understanding of the roots of the notions for maternity care and support for women requires an assessment of the origins of patriarchy and the creation of the basis on which this need emanated.

One way to trace the origins of patriarchy is to look for defining events that can suggest a before-and-after transition of society. However, as Robert Strozier (2002) explained, there hasn’t been any official “founding event” discovered as being the origin of patriarchy (p. 46). Some evidence from anthropology suggests egalitarian social structures in the prehistoric era, when society comprised hunters and gatherers. One theory suggests that patriarchy in society did not develop until many years after the Pleistocene era ended (Hughes & Hughes, 2001, pp.118-119), where there were considerable developments in society with agriculture and rearing livestock forming the core areas of socio-economic engagement.

The historical origins of patriarchy have been explained through different theories. There is no certainty as to which one is accurate, or which one fully informs the creation or the origin of patriarchy. One theory grounds the origin of patriarchy in the biological asymmetry of the sexes. According to the traditionalist viewpoint, the inequality in genders was a result of the inequalities in the sexes – in that they were not “created” equal (Eagly & Wood, 1999). Consequently, assigning specific roles to each gender was considered natural (Erdal & Whiten, 1996). An anthropological approach attempted to

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fill the gaps in the explanation of the traditionalist theory. The domination of men was attributed to their roles as hunters and fighters, replete with the brute force, strength and tools required to do these things. Their roles as hunters and fighters required that women be nurturers and ones who kept home (Kimmel, 2001).

While there is no singular defining point to ascertain the birth of patriarchy or the gender-based division that we see around us, it stands true that the discrimination remains real. When women began to go beyond the ascribed role of keeping home or raising and nurturing a family, it became imperative for workspaces to accommodate the needs of women – one manifestation of which is the world of maternity benefits.

Snapshots from around the world

Maternity benefit legislation and policies around the world have centred on the recognition of the fundamental rights of new mothers. Most policies globally involve offering a temporary period of absence from employment, for expectant or new mothers, during the months immediately before and after their pregnancy. For instance, in the US, there is no paid maternity or parental leave given to employees. However, they are welcome to use their sick days or vacation days, saved up or accumulated. Only 11 per cent of people in the US employed by the private sector can access some sort of paid family leave. For State and government employees, 16 per cent of the total working population can take paid family leave. In the UK, maternity leave is offered for 52 weeks, while eligible employees are paid for up to 39 weeks. In Australia, there is no maternity leave, but ‘parental leave’, where either parent is allowed to take government-paid leave for up to 18 weeks, or, they can both share the leave in any proportion. Further, jobs are protected for up to a year after the birth of the child. In Denmark, mothers are allowed a total of 18 weeks of maternity leave, four weeks before birth and fourteen weeks after, all at full pay. In Sweden, couples are entitled to 480 days of parental leave, which is the longest maternity leave offered in the world. Of these days of leave, 90 days are reserved for the father, but parents receive only 80 per cent of their normal pay during their leave (Maternity leave and benefits, 2017).

Contemporary legislative framework in India

In principle, the Maternity Benefit Act of 1961 is applicable to every factory, mine or plantation, and every shop or establishment where ten or more people are employed. Among the main objectives of the legislation, one remains the goal of maintaining the health of a pregnant female employee and her unborn child. In order for one to be eligible to receive maternity benefit, a pregnant female employee must have worked for at least 80 days within 12 months immediately preceding her date of delivery. Pregnant employees were originally eligible to receive payment at the rate of average daily wage of up to six weeks of leave before delivery, and payment of up to six weeks of leave after delivery. The maximum period for which any women was entitled to maternity benefit was 12 weeks of which not more than six weeks was to precede the date of her expected delivery. In addition to maternity benefit, an eligible woman employee was also entitled to receive from the establishment, a medical bonus if no pre-natal,
confinement and post-natal care is provided for by the establishment, free of charge. The medical bonus is payable with the second installment of the maternity benefit.

On March 9, 2017, the Lok Sabha passed the Maternity Benefit (Amendment) Bill, 2016 – increasing maternity leave from 12 weeks (under the Maternity Benefit Act, 1961) to 26 weeks, for up to two surviving children. The Bill was originally passed by the Rajya Sabha and received Presidential assent on March 27, 2017. The Maternity Benefit (Amendment) Act, 2017 came into effect on April 1, 2017. The Act also provides maternity benefits of 12 weeks to a commissioning mother (in case of surrogacy) and an adoptive mother (if the child adopted is under three months). A woman, who gives birth after already having had two or more children, gets to have 12 weeks of maternity leave.

Aside of this, the Act opened up an avenue that can successfully facilitate a work-from-home option through an enabling provision, which came into force on July 1, 2017. The Act makes it mandatory for any establishment with 50 or more employees to have crèches, either individually or as a shared common facility with other similar establishments that are situated within a 500 metre radius. The Act also allows the mother four daily visits to the crèche, including an interval for rest during the day. It is mandatory for every establishment to intimate in writing and electronically to every woman at the time of her initial appointment about the benefits available under the Act.

The origins of the Maternity Benefit Act return to 1961, when the original legislation was passed with the intent of regulating the employment of women for a period of time before and after childbirth, and provides maternity benefits. The legislation specifically covers women employees in factories, in mines, the circus industry, in plantations and shops and establishments that employ ten or more people. The Act specifically does not cover employees who are covered under the Employees’ State Insurance Act, 1948. Historically, the Indian Labour Conference (ILC) in its 44th Session, in 2012, recommended expanding on maternity leave from 12 to 24 weeks. The recommendation was reiterated in the 45th and 46th sessions of the ILC – and has culminated in the current development.

**Impact on the ground**

While it is definitely true that the legislation has paved the way for what is clearly a great benefit for mothers, it is important to understand that this is only one part of the solution. A large part of the success of the legislation remains dependent on implementation – and one often does hear of instances where women are treated with discrimination that’s sometimes sophisticated and subtle, or sometimes, overt and crude. By refusing to give them promotions that are deserved, or taking them off assignments on the ground of ‘pregnancy’ or ‘maternity needs’ and in some cases, bypassing them for promotions while allowing someone far junior to rise up the ladder.

In some instances, the cloak of work-from-home can be used to cut out a woman from the relevant workforce conversation and even knowing about opportunities that are available to her. These behaviours constitute a form of micro-aggression that can be counterintuitive and nullify the impact of a 26-week leave.
There are also instances where women do come from backgrounds where they have a suitable support system and go back to work in person before the end of the 12-weeks, and where the isolation was just as palpable through micro-aggressions.

The law is missing a mention of a non-discriminatory and unbiased reintegration of the woman postpartum. There are several companies that offer seamless transitions into the workforce following maternity leave, but the law not mandating it with an implementing body to watch over it only encourages a loophole that can continue to keep women out of the workforce.

Further, the new legislation is also missing the component of paternity leave. Offering up a system for paternity leave would create a breaking down of gender-specific roles, and ease out the burden of meeting the demands and needs of a regular life, and help make parenting a form of shared work. It is essential that both parents have a fundamental role to play in addressing the upbringing of their children. A cursory snapshot of most nations in the world, there has been a deviation in the trend – transitioning from maternity benefits to parental benefits – wherein there is what can be construed clearly as a formal recognition of the state of parenting as a shared responsibility regardless of the gender of the parents.

Finally, there are no specific attempts at addressing the needs of women in the informal and unorganised sectors. According to the Ministry of Labour and Employment of India and the International Labour Organization in 2012, only four per cent Indian female workers in the age group of 15-49 years are found to be working in the formal sector (“DC Debate,” 2016). The current framework of maternity benefits appears to address only the women in the formal sector. With 96 per cent of the country’s women in the unorganised sector, there is a desperate need to cater to their needs.

References


