

Maternity Benefit Amendment Act (2017): A ‘Humble Gift’ Causing Motherhood Penalty in India

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Abstract:

The twin goals of addressing gender inequality and improving child development has manifested itself in the proliferation of maternity leave policies across the world. While maternity leave has become a standard entitlement in several countries, variations exist in policy design and their gendered outcomes, suggesting that policies are influenced by factors such as cultural and social norms. In 2017, the Government of India enacted the Maternity Benefit Amendment Act to extend paid maternity leave from 12 to 26 weeks and to provide other non-monetary child benefits. The Government described it as a ‘humble gift’ to women, a day after the world celebrated International Women’s Day. While it has been recognised on some levels that certain policies entrench gender inequality, an area that remains unexplored is how enduring assumptions rooted in the traditional gendered division of domestic and non-domestic labour have underpinned maternity support, particularly in the context of the Global South. This piece intends to engage with this gap by exploring how maternity policy was created in India and how the Government has conceptualised gender. Challenges include the narrow construction of women and family, the limited coverage of the policy to biological mothers and formal workers, and the impact of employers’ economic decisions such as discriminatory recruiting practices against women in response to higher leave costs.

INTRODUCTION

The twin goals of addressing gender inequality and improving child development has manifested itself in the proliferation of maternity leave policies across the world, often combined with childcare benefits and paternity or partner leave. While maternity leave has become a standard entitlement in several countries, variations exist in policy design, offered benefits, and gendered outcomes, suggesting that policies are influenced by factors such as cultural and social values. As the welfare state and its policy mechanisms are often encoded with these cultural and social norms, this makes it necessary to critically analyse the assumptions integrated into policies to understand how they impact inequality.

India enacted the Maternity Benefit Amendment Act in 2017 to extend paid maternity leave from 12 to 26 weeks and to provide other non-monetary child benefits. The Government of India hailed it as a ‘historic step’ and as a ‘humble gift’ to women, a day after the world celebrated International Women’s Day. However, the idea that extending the period of maternity leave favours women should not be construed as meaning that the legislation is gender-neutral. While there is

considerable disagreement over the appropriate amount of maternity leave, there is some agreement on the detrimental impacts of excessive (and therefore expensive) maternity leave on working mothers.

While it has been recognised that certain policies entrench gender inequality, an area that remains unexplored is how enduring assumptions rooted in the traditional gendered division of domestic and non-domestic labour have underpinned these policies, particularly in the context of the Global South. For instance, with the emergence of the “adult worker model” in neoliberal welfare states, governments typically expect all adults to enter full-time paid employment without acknowledging the value of care and household work and without designing policies which allow women and men to better share the responsibilities for both earning and caring (Guillari and Lewis, 2005, p. vii). This piece intends to engage with this identified gap in the literature by exploring how maternity leave policy was created in India and how the Government has conceptualised gender in line with the adult worker model. Such an inquiry is essential at a time when recent studies have highlighted the growing gender disparity in job loss risk between women and men. One of the most significant factors that explains this crisis is the increasing ‘burden of care’ borne by women during the COVID-19 pandemic.

MATERNITY BENEFIT AMENDMENT ACT

In April 2017, India enacted the Maternity Benefit Amendment Act (hereafter referred to as the MBA Act), amending the Maternity Benefit Act of 1961. Working women now have access to paid maternity leave for a total of 26 weeks, up from the previous 12 weeks. Women with fewer than two surviving children are eligible for the 26-week extended benefit, which begins 8 weeks before and ends 18 weeks after their expected delivery date. For the first time, adoptive mothers of children under three months old and commissioning mothers (in surrogacy arrangements) are now entitled to 12 weeks of maternity leave from the date of adoption or commissioning. Working mothers are also entitled to various non-monetary advantages under the MBA Act. These include mandated crèche facilities in companies with more than 50 employees, and four daily visits for women to the crèche (including a resting period). After a working woman has taken maternity leave, her employer may allow her to work from home.

Furthermore, at the commencement of her employment, every employer is expected to inform every woman employee, in writing and electronically, about the advantages available to her. The employer is responsible for the entire financial burden of the MBA Act’s monetary and non-monetary benefits.

Goals of the Policy

The MBA Act was enacted in India with three goals. The fundamental goal of the Act was to offer “complete mother care to a new-born child throughout the most formative phase” (Government of India, 2016). The government was also driven by the twin goals of increasing women’s participation in the “organised sector” and improving women’s “work-life balance” (Government of India, 2016).

Length of the Leave

The MBA Act increased the period of paid maternity leave from 12 to 26 weeks, paving the path for India's adoption of the International Labour Organization's Maternity Protection Convention of 2000 (C183) (which requires at least a 14-week maternity leave entitlement). In comparison with many other nations, India provides relatively extensive paid maternity leave. For example, Australia provides up to 18 weeks, France provides 16 weeks, and Germany and Japan both provide 14 weeks (ILO, 2022. Mothers in OECD nations are entitled to little over 18 weeks of paid maternity leave on average (OECD, 2019).

ANALYSING THE NATURE OF LEAVE

This article uses an interpretative method to better understand what maternity leave means to working mothers in India and to delve into the normative underpinnings that drove this policy reform. A critical analysis of the Government's MBA Act reveals their erroneous perceptions of conventional family responsibilities and gender relations, as well as the resultant reinforcement and exacerbation of existing inequalities in India.

The Construction of Women and Family

Firstly, the MBA Act reveals the Government's prevailing conception of women as caregivers. The Government's implicit view of women as "conduit[s]" (Molyneux, 2006, p. 439) who are expected to increase the well-being of children and the family as a whole is reflected in their stated emphasis on maternal care for children. For example, one justification for extending the leave was to guarantee that new-borns receive "full maternal care" (Government of India, 2017). This aligns with the Government's understanding of women's roles as primarily domestic in nature. The tension revealed in this section of the Act demonstrates India's failure to view gender in a transformational sense.

Furthermore, as echoed in Daly and Bennet (2014) critique of "compulsory altruism" reinforcement, women are forced to carry out caring tasks. As a result, governments often overlook the distribution of care obligations because it is so deeply ingrained in daily life. It is also expected that women (but not men) will balance their work with caregiving responsibilities and other unpaid labour. The failure to recognise this double burden on women rests on an assumption that pervades Indian policy thought.

The MBA Act has fundamentally created women as major 'caregivers' and 'dependants,' with their realm of work as the "family," according to an examination of the structure of the leave. This contributes to the perpetuation of gender inequality and the social exclusion of the majority of working mothers. The explicit focus on mothers and the total exclusion of fathers from childcare has strengthened women's domesticity and widened the gap between paid and unpaid labour.

Furthermore, the MBA Act positions women first as mothers, then as employees. Both the availability of leave for adoptive mothers and biological mothers overlooks the father's role and their desire to bond with the child and vice versa. The omission of any reference to men or fathers within

the legal text is unambiguous proof of the Act's conceptualisation of gender which allocates care duties to mothers, thereby justifying men's withdrawal. This demonstrates how the MBA Act perpetuates conventional gendered norms by designating unpaid care labour as the sole realm of women, burdening them disproportionately.

It is the belief that the state is not required to engage with individuals as citizens with individual rights, but instead can engage with them as family members or community workers (Chhachhi, 2009). As a result, a closer examination of the MBA Act's goals reveals a lack of institutional and systematic commitment to addressing gender inequality in Indian society.

Although the MBA Act recognises women's involvement in the labour market, its emphasis on unpaid care work shows that the Act has established a priority hierarchy. With this in mind, it is critical to consider how the Government views gender roles and family. The MBA Act views maternity and childcare provisions as "benefits" given to working mothers. However, the use of the term "benefit[s]" is problematic, since it indicates that the Act does not position women as "right bearers" in any significant sense (Fraser, 1989, p.152). As a result, the term "benefit" represents the Government's understanding of women's roles as dependants rather than paid contributors in society.

Furthermore, the extended maternity leave period and the additional expenditures to be borne by businesses have solidified the employers' patriarchal worldview. The Act makes cultural attitudes and social conventions, as well as the social construction of mothers and mothering, essential in India. As a result, there are distinct expectations regarding how working mothers should behave at work. The prevalence of these stringent expectations of the responsibilities that mothers should play in the workplace creates settings in which the motherhood penalty thrives in India. This argues that the MBA Act demonstrates "gender awareness" (Molyneux, 2006) by including gender issues in the programme, but deeper examination reveals that it has failed to alleviate and has reinforced existing gender inequities.

Furthermore, the MBA Act understands women and parenthood within a heteronormative framework. The heterosexual family is built on one man as the breadwinner and one woman as the primary caregiver, ignoring the Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) community and their right to motherhood and parenthood. This may be related to the fact that sexual encounters between consenting adults were decriminalised in India in September 2018, over a year after the Act was enacted. However, no changes to the MBA Act have been made to make it more inclusive of the LGBTI population.

Coverage

Traditionally, all women's labour initiatives have centred on biological mothers. The advantages have now been extended to adoptive and commissioning mothers as well, thanks to the new amendment statute. However, adoptive mothers are only eligible for maternity leave if their children are under the age of three months. There is no known logical basis for restricting the extent of the entitlement, other than to create a synthetic illusion of parity with biological mothers' care of infants. This method ignores the notion that every adopted child, regardless of age, requires time to bond with their parents in order to be physically and emotionally secure. As a result, the Act may discourage the adoption of children of various ages.

In addition, the MBA Act only applies to a limited percentage of the organised sector's female employees. According to Rajagopalan and Tabarrok (2019), just around 1% of all working mothers in the workforce can make use of the maternity leave entitlement. The lack of protection for women in the informal or unorganised sector, as well as those from Scheduled Castes and Scheduled Tribes, risks reinforcing the vicious spirals that keep them trapped in poverty. This indicates that the Amendment Act may assist to make organized-sector women visible while making the bulk of unorganized-sector women invisible. The International Labour Organization (ILO) has emphasised the significance of providing maternity leave benefits to women in the unorganised sector (ILO, 2010). This is especially true in developing nations like India, where women make up the majority of workers in the informal sector (ILO, 2010; OECD 2012). Women in India have been segregated into certain jobs with poor occupational hierarchy, income, and prestige due to social, cultural, historical, and economic factors. As a result, it appears that not all working mothers are equal in the eyes of the Government, with those from low-income families being deemed unworthy of maternity and childcare benefits.

Employers' Economic Decisions

The Government portrayed maternity leave as a “humble gift to women”, but in reality, the entitlement has penalised women in the paid labour market. The Government's decision to extend statutory maternity leave gives the appearance that it wants to encourage women to stay in the workforce. The economics of maternity leave, on the other hand, cannot be overlooked since it has important gender consequences.

Employers have been given full responsibility for covering the cost of maternity benefits (National Minimum Guidelines, 2017), demonstrating the Government's failure to acknowledge care as a public obligation. The expense of maternity leave is shared by the state, employer, insurance agency, and/or other social security measures in other nations such as Singapore, Australia, Canada, France, and Brazil (Chakrabarty and Sabharwal, 2018). There is evidence that if the expense of monetary benefits is not paid entirely or substantially by public funds or mandatory social insurance, companies would associate greater costs with employing female workers, further marginalising working mothers (Olivier and Kaseke, 2007; Thévenon and Solaz, 2013, Cerise, Eliseeva, Francavilla, Mejia, Tuccio and Key, 2013).

As a result, the MBA Act has created a motherhood penalty, which has concrete impacts on working mothers in India. According to available research, only large firms can afford to cover the whole cost of paid maternity leave and childcare (Khattari, 2017; D'Cunha, 2018). On the other hand, start-ups and micro, small and medium enterprises (MSMEs), who employ around 40% of India's workforce, face the burden of higher operational costs (D'Cunha, 2018). The Federation of Small and Medium Enterprises (FISME) is concerned about employers' capacity to handle the expenditures of such a long period of paid maternity leave.

Employers' discriminatory recruiting practices against women have apparently grown after the MBA Act was enacted. For example, the Government's decision to increase maternity leave from three to six months resulted in 1.1 to 1.8 million women losing their employment in 2018-19 according to a study conducted by TeamLease Services Ltd. (The Indian Express, 2018). Despite the fact that

the Maternity Benefit Act of 1961 stipulates that no changes to women's employment conditions can be made while they are pregnant (Section 12), a study found that many companies have used reasons such as poor performance and downsizing, to fire employees who announced their pregnancy after the Act's enactment (Uma and Kamath, 2020).

Furthermore, according to a survey of 350 start-ups and small and medium companies (SMEs), 66% of respondents said the MBA Act has harmed the recruiting of women applicants (Bhalla, 2017). Despite the survey's limited sample size, it reveals discriminatory employment practices against women. This suggests that the lengthy maternity leave has instead led to easing women out of the workforce or has confined them to part-time work.

Furthermore, the fall in salaries connected with the implementation of the Act, which has had a negligible or non-positive impact on household earnings, has resulted in a decrease in women's involvement in the labour force (Khattri 2017). This has pushed them into the "mummy-track" (Lewis, 1997) of employment, undermining their ability to work full-time.

CONCLUSION

Overall, the Government of India's MBA Act is shallow and lacks a feminist perspective. Conventional family interactions and gender roles have been reinforced as a result of these underlying gendered preconceptions. The lack of financial support for childcare, as well as a lack of commitment to address the gendered familialism ingrained in the Indian context, has further entrenched the adult worker model. Furthermore, the MBA Act has jeopardised the precise purpose it was intended to achieve, namely, increased female involvement in the workforce. As a result, working mothers earn less than their male colleagues, resulting in a motherhood penalty. This posits a major hurdle in addressing the gender inequality crisis in the country.

While the methods in which the Government has conceptualised gender in the establishment of the maternity leave entitlement are likely to be nation and context specific, the ramifications are likely to be universal. This research emphasises the need to deliberately reflect on gender norms in a way which encourages policymakers to avoid reinforcing gender inequality. It also illuminates an issue that many thought had been handled with the rise of the adult worker model and the fall of the male breadwinner model. It demonstrates that the patriarchal system continues to thrive in society due to the prevalence of male-centric norms that guide policy development. Future research should also investigate how gender conceptions contained in maternity leave policy interact with social and cultural understandings of gendered interactions in a particular environment. This is critical for policy formation since disregarding social and cultural norms may fail to address a society's complexity. Furthermore, the function of power and politics in reinforcing disparities must be recognised (especially after the onset of the pandemic) as they play a critical role in shaping and controlling the essence and social circumstances through their interpretation of gender.

CONFLICT OF INTEREST STATEMENT

No conflict listed.

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