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A Comparative Analysis of Maternity Leave: Study of four Jurisprudence

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This research paper aims to study maternity benefits in India and other nations. Female employees are required to work during their maternity nowadays. They are dealing with a variety of challenges that are preventing them from overcoming health-related concerns. Various governments around the globe have introduced maternal welfare programs. However, a minimum number of days of employment is required and payment during her maternity leave is based on her daily earnings and real absence, this applies to both the public and private sectors. The state's incentives for working pregnant women are the same in both the public and private sectors. The “maternity benefits schemes” are truly helping to safeguard both the mother and her child's lives positively, as well as providing assistance for her upkeep in the form of leaves, pay, and incentives. She can work from home and it can be prolonged if necessary. It is a consensus reached by both employers and employees. This will assist her in caring for her baby both during and after childbirth. As a result, the purpose of this research is to learn more about how “maternity benefit schemes” give support to women and how they vary from those in other nations. This paper is written to study various maternity benefit schemes in different legal systems and analyse them independently.

Keywords: *environment, maternity leave, maternity, legal system.*

INTRODUCTION

Women are usually the only ones who could take maternity leave (“except in a few cases where part of the leave can be transferred to other carers under certain circumstances”). It is often recognised to become a health and wellbeing precaution done right prior, though, and shortly after delivery to safeguard the women's and newborn baby's health. It is the right of every woman to avail of maternity leave, which when paid, is advantageous in pregnancy and also acts as an “incentive” to join her job post-childbirth.

A legislative and recognised Maternity Leave right exists in 36 of 43 nations. In all of these countries, leave is paid at a significant level for some or all of the period of the absences although it must be highlighted that with this and other types of absences, an “earnings-related payment ceiling may be set”, resulting in higher-paid employees receiving comparatively less of their income. The notable exceptions are “Canada, Ireland, Slovakia, and South Africa”, in which no time of absence is compensated at a higher income rate, and “Greece (private sector)” and the United Kingdom, where less than 1/2 of the absence duration is compensated at a higher income rate.¹

The United States of America can be counted in the list of seven recognised countries that do not have a statutory, designated, and paid Maternity to leave entitlement that will facilitate entitlement of paid leaves from work for pregnant mothers and during the birth of a child. However, some provisions provide for unpaid family and medical leaves to mothers “working for employers with 50 or more employees.”² The list consists of other names of “six countries” lacking defined Maternal Leave - “Australia, Iceland, New Zealand, Norway, Portugal, and Sweden.” In these countries, paid leaves for women during and after delivery are given, however, this leave is referred to as “Parental leave” and can be taken by dads in only certain situations.³

¹ Antoine Boquen, ‘Understanding Maternity and Marriage Leave in China’ (*New Horizons*, 2019) <<https://nhglobalpartners.com/maternity-marriage-leave-in-china>> accessed 07 November 2021

² *Ibid*

³ Kerstin Pull and Dorothea Alewell, ‘An International Comparison and Assessment of Maternity Leave Legislation’ (*SSRN*, 2003) <<https://ssrn.com/abstract=365301>> accessed 07 November 2021

The duration of “post-natal Maternity leave” varies between the “public and private sectors in Brazil, Greece, and Uruguay,” whereas the province of Québec in Canada consists of a mechanism that is significantly different from the rest of the nations.⁴ The “average (mean) period of post-natal leave” in the other 31 nations is “4.1 months.” Six nations (including Greece's private sector and Brazil's public sector) have extremely extended durations of leave, ranging from six to twelve months. The UK and Bulgaria have the largest periods of leave, both at 12 months, which is either “paid at a low flat rate” or unpaid. Four nations, on the other hand, have fewer than “two months of post-natal maternity leave.”

Maternity leave offers little leeway, and that in many nations, using all or portion of it is required. Workplace flexibility mostly assumes the form of certain discretion over when the mother may begin taking leave and how much of that time she may have before and after giving birth. If a woman has multiple deliveries, a complex cognitive birth, or a medical issue, she may be able to take additional time in some nations. Belgian women are allowed to use 2 weeks of maternal leave as “free days” beyond the duration of time.⁵

The “Czech Republic, Croatia, Israel, Spain, and the United Kingdom”, on the other hand, have added a new level of flexibility by allowing women to pass some of their Maternal leave to their dads as a matter of routine, without the need for extraordinary conditions such as severe sickness. This is likewise the situation in Bulgaria during the second half of the extremely lengthy “twelve-month postnatal maternity leave period.”⁶ In several other nations, parental leave can be passed to dads, but only in exceptional situations (such as “death or serious sickness”); the “Slovak Republic” is an exception, since only the maternal benefits can be passed to dads.⁷

⁴ *Ibid*

⁵ Jutta M Joesch, ‘Paid Leave and the Timing of Women’s Employment Before and After Birth’ (1997) 59 (4) *Journal of Marriage and the Family* 1008-1021

⁶ *Ibid*

⁷ Raquel Plotka & Nancy A Busch, ‘The role of length of maternity leave in supporting mother–child interactions and attachment security among American mothers and their infants’ (2018) *International Journal of Child Care and Education Policy*

Few countries' maternity leave schemes shall be analysed in detail in this paper, like India, Singapore, China, Belgium, and Australia.⁸

LITERATURE REVIEW

1. Vedavathy Nayak, et al., 'Pregnancy outcome in Working women with workplace stress' (2017) 6 (7) IJRCOG

This paper discusses maternal health and adverse outcomes that women confront throughout pregnancy as a result of a rise in female employees in the workplace and their commitment to their job during the gestation phase. The effects of risk variables for a mother's health during pregnancy, such as anemia, postpartum psychosis, reduced plasma volume, blood flow diversion away from the placental bed, and hormonal imbalance, are depicted in this work. It categorises the types of physical exercise that females should engage in during pregnancy to alleviate stress and avoid dangerous factors.

2. Dr. Rajeshri Randive Admane, 'A Study on Effectiveness and Impact of Maternity Benefit (Amendment) Act, 2017 on Employment in Unorganized Sector concerning Construction Company (West Nagpur, Maharashtra, India)' (2020) 29(3) IJAST

This paper assists in understanding the efficiency of maternal coverage and makes people aware of the rights of earning mothers. It enables people to comprehend the benefits of social safety and the safeguards that are accessible to them.

3. Shashi Bala, 'Implementation of Maternity Benefit Act 1961' (2012) V.V. Giri National Labour Institute NOIDA

This article discusses the establishment of maternal coverage and benefits, as well as other Post-Constitutional measures brought about to safeguard women and her kid.

⁸ *Ibid*

4. Anita Nath, et al., The prevalence and determinants of pregnancy-rated anxiety amongst pregnant women at less than 24 weeks of pregnancy (2019) 11 International Journal of Women's Health 241-248

This article examines the psychological changes and anxiety experienced by women who are pregnant in low-income and high-cost-of-living nations. It clarifies the prevalence of anxiety and despair during childbirth.⁹

RESEARCH METHODOLOGY

The methodology of research used in this paper is Doctrinal, but the approach of conducting the Doctrinal Research is by adopting a Comparative Legal Research. As Patrick Glenn pointed out that a Comparative Legal Research has many benefits, the first and the foremost being that Comparative law is a tool for gaining knowledge and learning (information on the law elsewhere and a better understanding thereof). Second, comparative law serves as a tool for historical and systematic research (common evolutions, diachronic changes, legal families). Thirdly, comparative legal studies or researches contributes to understating one's legal system better, as well as the evolution and resistance that hinder the growth of law and lastly, comparative legal research helps to harmonize laws in a country, making it a sound and robust system. The method of data collection used for this paper is Qualitative, wherein primary sources of data in the form of statutes, case precedents would be used, along with secondary sources of data in the form of journals, articles and websites will be referred to. This paper attempts to study and draw a comparison of the various maternity leave schemes in various countries. Since this paper will maintain a tone of comparison throughout various nations, it is like comparative research, based on the Doctrine of Comparative Analysis. This doctrine stipulates that extensive theoretical research is the essence of complying with the thesis of an article or for drawing a logical comparison between the subjects concerned. A parallel developmental comparison is drawn in comparative legal researches and for making that comparison, the concept of functionalism is utilised, whereby practical ways of dealing

⁹ *Ibid*

with the absence of stringent laws providing for maternity leave, after comparing with various legal systems around the world, is suggested.

MATERNITY BENEFITS IN INDIA

The Maternity Benefit Act objectives were to ensure that women workers are provided with maternity coverage such as pay instead of pregnancy and an incentive, however, it is only relevant to businesses with ten or more workers. Following are covered under the “Maternity Benefit (Amendment) Act:

- Factories
- Mines
- Plantations
- Government establishments
- Shops
- Establishments under the relevant applicable legislation.

Some specified benefits¹⁰ of this act are:

1. **Central government notification of establishment:** A female who has worked as a worker in the above-mentioned industries for “at least 80 days” in the previous 12 months is eligible for maternity benefits,¹¹ according to the maternity benefit statute. They will be given pay based on their regular daytime earnings and their actual absence. On April 1st, 2017, this act has been enacted into law.
2. **Maternal leave for the mother and the child:** The state has raised the length of leave which pregnant women can take from 12 to 26 weeks; there can be two ways in which the leave can be availed: before the birth and the remainder after birth of the child. The leave taken after the birth is for the child’s upbringing. The mother would be able to avail of 12 weeks of leave; 6 weeks before the birth and 6 weeks after the birth. If a

¹⁰ Hariharan, ‘The need for maternity benefits for women employees’ (*Academike*, 2014) <<https://www.lawctopus.com/academike/the-need-for-maternity-benefits-for-women-employee>> accessed 07 November 2021

¹¹ *Ibid*

mother adopts an infant who is three months old, she would be eligible to get 12 weeks of leave. If a mother uses her egg for making an embryo to be implanted in another woman then also the mother would be eligible for a leave of 12 weeks.

3. **Work from Home:** Mothers who are unfit after childbirth are offered a choice of working from home. Mothers may “work from home” if they cannot join the office or get more leave, given the nature of their employment and safety. It occurs as a result of consensual understanding in the workplace.
4. **Child care-nursery:** This statute allows mothers to attend the nursery at regular intervals to care for their children. A mother who works at an institution can visit their children 4 times a day, including breaks.¹²

MATERNITY BENEFITS IN SINGAPORE

“In Singapore, a working woman who is claiming maternity benefits from employer and government should fulfill the following eligibility criteria:

- If the child is a citizen of Singapore, the employed mother should have been continually worked at least 3 months before pregnancy or self-employed for the past 3 months of her child’s birth.
- She should be a legally married woman to the child’s father.
- The employer should have been given notice regarding maternity level before 1 week by the employee.”¹³

Mothers employed in these categories are entitled to 16 weeks of paid maternity leave. The employer pays the wages for the first eight weeks of absence.¹⁴ After compensating the worker, the state will repay the business for another eight weeks of absence. About 12 weeks of absence are permitted if the infant is not a Singapore citizen. The real wage would be given during the initial 8 weeks of absence in this group. The remaining four weeks of absence

¹² *Ibid*

¹³ M Bartel and others, ‘Paid Family Leave, Fathers’ Leave-Taking, and Leave-Sharing in Dual-Earner Households’ (2015) 28(1) *Journal of Policy Analysis and Management* 29–54

¹⁴ *Ibid*

would be unpaid and will be determined by the signed agreement by the business and the worker. This is valid for only the first two children; as from the third baby onwards, the employer makes no payment, and the employer reimburses the state for the wage provided during the 12 weeks.¹⁵

There are a few exceptions which are as follows:

- If the infant dies shortly after birth or is born dead, the “mother is eligible to receive whole of maternity leave,” which is not counted when seeking absences for the following child.
- If the woman has twins, the advantages are the same as if she just has one kid.
- If the pregnancy is terminated or the baby is lost after 20 weeks, the working mother may be entitled to unpaid medical leave. It is not covered by the maternal benefits programme.¹⁶

MATERNITY BENEFITS IN CHINA

A woman who is a Chinese citizen and pregnant is entitled to 90 days of leave following the delivery of the baby under the Labour Legislation of the People's Republic of China Act 1995, which was designed and implemented to protect her rights. Several programmes for female employees exist in other locations throughout China. Mothers who give birth in Shanghai are offered 98 days of leave, with the option of taking 15 days off before birth. If there is a problem with the delivery, an extra 15 days of leave might be granted. If the lady has twins, she will be offered an extra 15 days of leave.

If the unborn child is accidentally terminated during the first 4 months, the mother is entitled to 15 days of leave to recuperate. She is entitled to 42 days of leave if the fetus is terminated after the first 4 months. A few of the incentives can be provided if the company and the worker reach an agreement. In the event of a complicated birth, the woman can take lactation leave

¹⁵ Neil Borate, ‘The benefits women are entitled to and the rights they can claim under maternity’ (*Live Mint*, 2019) <<https://www.livemint.com/money/personalfinance/the-benefits-women-are-entitled-to-and-the-rights-they-can-claim-under-maternity-15576556>> accessed 07 November 2021

¹⁶ *Ibid*

with her employer's consent, depending on the type and circumstances of her job. 6.5 months of leave will be granted due to the flexibility of employment. An hour of relaxation throughout work time is an added advantage of postpartum. Depending on the length of the travel route and the schedule of the vehicle trip, two 30-minute stops can be taken after birth to breastfeed the freshly born infant. The newborn baby's father may be permitted to take 15 days off.¹⁷ In the permitted 98 days of leave, all national holidays are excluded; the rejoining date will be postponed based on the national holidays in between the pregnant leave term. The mother's usual salary is determined by her employer and if she asked for insurance, the insurance agency.¹⁸

MATERNITY BENEFITS IN BELGIUM

Both jobless and working pregnant women in Belgium are eligible for maternity coverage. It could vary depending on the employee's work performance and average income. The father of the infant is entitled to ten days of paternal or birth leave. The individual must meet the qualifying requirements to get benefits which are as follows:¹⁹

- To be eligible for parental leave, the worker must have been employed for such firm for at least 120 days and must contribute to social security, even if it is a small sum of money. However, the individual never should have gone on holiday for more than 30 days before that. She is eligible for 15 weeks of maternity benefits if she meets the requirements. It's divided into two sections: "prenatal and postnatal leave". Prenatal leave is time off used before the birth of a baby, while postnatal leave is time off given post the birth of a baby, usually for no more than six months. The minimum period of postpartum leave is nine weeks. A self-employed individual can take three weeks of prenatal leave and nine weeks of post-natal leave. Self-employed women have the option of doing part-time employment throughout their 9-week maternity leave.

¹⁷ *Ibid*

¹⁸ Hongyan Liu and others, 'A review of the development of maternity leave policy in China over the past 70 years' (*Springer Link*, 2019) <<https://link.springer.com/article/10.1007>> accessed 07 November 2021

¹⁹ D Keating & C Hertzman, 'Developmental Health and the Wealth of Nations' [2000] Guilford Press

- Depending upon the pay, they might collect 75 percent to 85 percent of their compensation during parental leave.
- “There is a specific maternity benefits plan for jobless pregnant women, with full-time self-employed women receiving 484.90 euros per week and part-time self-employed women receiving 242.45 euros per week.”²⁰

MATERNITY BENEFITS IN AUSTRALIA

In Australia, a woman can take up to 18 weeks of paid maternity leave to ensure the child’s wellbeing and of oneself. The following are among the requirements for obtaining maternity leave:²¹

- It can be applied for by a woman who is expecting a child or a parent of an adopted kid.
- The personal income must be less than \$150000 based on the previous financial year.
- A woman is not permitted to work throughout her maternity leave after filing for it.
- A woman should have Australian citizenship and a permanent special category visa to live in Australia.
- If she has just moved to Australia or is a new resident, she cannot collect maternity benefits until she has lived in Australia for two years, with few exceptions.
- Irrespective of the nature of delivery, that is, even if the child is born dead or dies soon after birth, she is entitled to maternity coverage. Before 13 months after the date of delivery, a mother must take an employment test.
- In addition, the child's dad is eligible for 2 weeks of paid leave, while the mom is eligible for 18 weeks. Overall, the couples are eligible for 20 weeks of paid leave to look after the child.
- A job keeper is someone who works at an organization as a part-time or full-time employee. If the individual is qualified and the conditions are met, she can get the job keeper's salary.²²

²⁰ *Ibid*

²¹ Gregg Waldfogel and others, ‘Symposium on parental leave, early maternal employment and child outcomes: Introduction’ (2005) 115 (501) *The Economic Journal* F1-F6

- She should have worked for a minimum of two years in a firm without having permanent employee power.
- The couple receiving maternity coverage must not be receiving any other compensation simultaneously at that time, such as Australian compensation legislation, partner pay, father pay, government paternal leave, and so on.
- It is not possible to get both parental and job keeper payments at the same time.
- Simultaneously, the woman can shift her leave entitlement to some other individual who is caring for her child, and Father and spouse leave can be taken for the same infant.
- It is only feasible if you maintain in touch with your employer, and it is contingent on the work environment and depends on the workplace situation.²³

CONCLUSION

Every woman pregnant with a child working in any establishment asks this question to herself whether she should continue working or leave. The issue is that she is forced to choose between her work and home life. As a result, maternity schemes were developed to aid mothers and their children throughout their maternity, lowering stress and unpleasant sentiments in the woman and enhancing her overall wellbeing. Encourage the father to take a few days off so that he may give proper parental care for the infant while also giving the mother a suitable environment in which to feed the baby. Paid maternity leave prevents the mother from abandoning her job and prevents the infant from acquiring an isolated emotion, which is a terrible sensation that a newborn may acquire if it does not receive parental assistance at an early age. When compared to other nations, India provides 27-47 times more incentives and leave.

The author studied and researched “Singapore, Australia, China, Belgium, and India” to learn about the maternal advantages and incentives that women receive throughout their maternity. According to the results, Singapore provides 16 weeks of maternity leave as well as other

²² *Ibid*

²³ Rebel Wylie, ‘A Guide to Maternity Leave in Australia (*Bounty PARENTS*, 2019)

<<https://www.bountyparents.com.au/expert-advice/maternity-leave-australia>> accessed 07 November 2021

incentives. Working mothers in Australia are entitled to 18 weeks of maternity leave as well as various perks. China provides a total of 98 days of maternity leave. In Belgium, maternity leave is 15 weeks long with perks. In India, maternity leave is granted for 26 weeks, with a salary depending on regular pay and qualifications.

Work from home is a possibility, as is nursing during work hours, higher pay during maternity leave, and additional leave in the event of twins at the time of birth. All of these advantages are available if the company and the employee reach an agreement. If the organization fails to provide maternity leave and perks, there is a possibility to file a complaint against them. Lastly, incentives like maternity leave are provided to ease the strain on working mothers during pregnancy, allowing them to feel confident and comfortable during this time. It is an endeavour to provide personal and professional assistance to female employees.