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Gender Watch

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COVER STORY

Maternity Benefits Amendment Act: Limitations and Way Forward

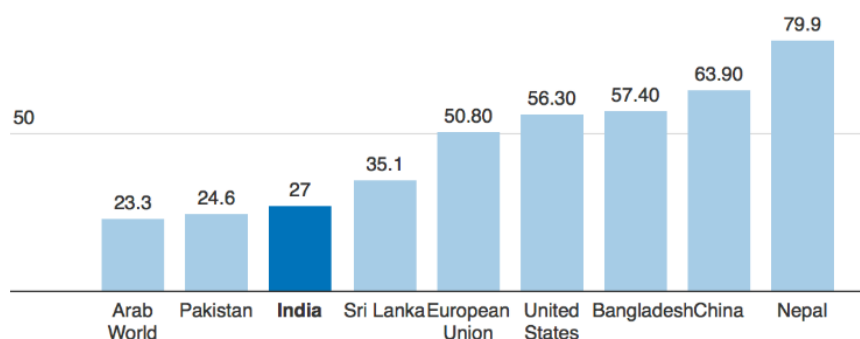
As per the World Population Prospects Report 2017, published by the UN Department of Economic and Social Affairs, India's population will surpass that of China by 2030 with approximately 1.53 billion people. The demographic trend suggests that over 50% of its population will be within the age bracket of 0-25 years apart from having the largest population within the working age group globally. However, investment in human capital is fraught with cultural and social constraints as women find themselves increasingly left out of the labour market. The World Bank in its India Development Report released in May 2017, stated that India had one of the lowest female participation in the workforce which has been gradually declining further over the years. This implied that over 65.2 crore women were unable to participate or contribute towards the economic growth of the country.¹ Between 2005-2012, 19 million women quit their jobs.² One of the recurring reasons cited by most studies on lack of women labour force is the absence of reliable caregivers and recommended that traditional gender roles have to be overcome to increase gender diversity in the labour force.

With an aim of addressing and remedying this situation, the government last year proposed an amendment to the Maternity Benefit Act of 1961– which entitles women to a 'maternity benefit' – i.e. full paid absence from work to care for her child. The amendment entitles women upto 26 weeks of maternity leave as against the earlier prescribed 12 weeks, of which 8 weeks can be availed before and 18-weeks post childbirth. While this move was expected to reverse the negative trend in women's employment and empower them by providing them with financial independence and decision making ability, its implementation has proven to be counterproductive as many employers are becoming increasingly reluctant to employ women because of the perceived costs associated with hiring women. It is interesting to note that a move specifically targeted at raising women's participation in the labour force has transformed into a deterrent for employing women, thus leading to questions of whether the new amendment has actually been successful in achieving its aims and objectives.

¹<https://thewire.in/health/amendment-maternity-act-tool-gender-diversity>

²<http://documents.worldbank.org/curated/en/559511491319990632/pdf/WPS8024.pdf>

Participation rates of women in economic activities



Source: World Bank

Shifts in patterns of unemployment among women

In 2011, the NSSO survey found that over a third of women in urban India and half in rural areas who engage mainly in housework want a paying job. However during 2004-05 to 2009- 10, when the size of the male labor force increased further by about 24.3 million, the size of the female labor force dropped by around 21.7 million. **During the entire decade spanning 1999-2000 to 2009-10, when male participation increased by 59.7 million, female participation increased by only 5 million. In the following period of 2009-10 to 2011-12, there was only a marginal addition of 2 million female workers, while the male labor force increased by 12.3 million.**

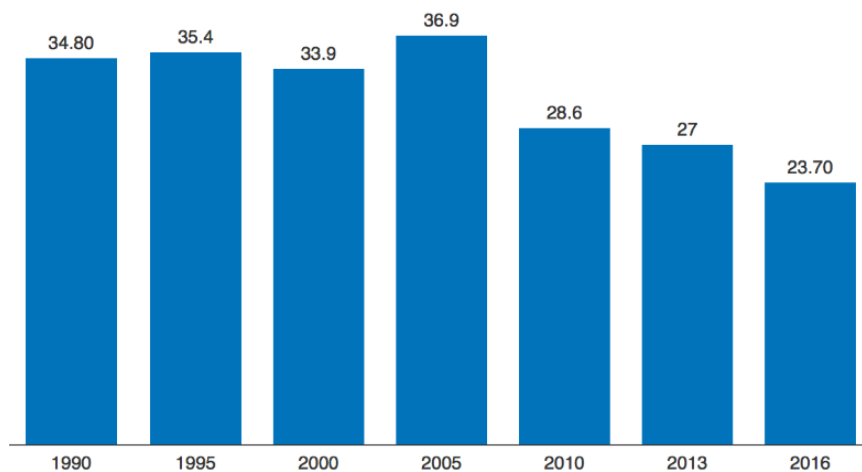
While jobs for men increased by 0.9 million, the market lost over 2.4 million women according to the Centre for Monitoring Indian Economy (CMIE).³ Government estimates show that in terms of rates, participation declined by 11.4 percentage points, from 42.6 to 31.2 percent during the period spanning 1993-94 to 2011-12. About 53 percent of this drop occurred in rural India, among the age group of 15 to 24 years old. Factors such as educational attainment, socio-economic status and household composition were largely attributed as the reason behind the drop.

Surprisingly, the logical link that education should lead to jobs does not necessarily hold true in India. In rural India, 67% of girls who are graduates do not work. In towns and cities, 68.3% of women who graduate don't have paid jobs, says a 2015 report by the United Nations Development Programme (UNDP). Social norms dominate a woman's decision to engage or not engage in economic activity. Appropriate social behaviour for

³<http://documents.worldbank.org/curated/en/559511491319990632/pdf/WPS8024.pdf>

women and the enforcement of these norms by parents, in-laws and husbands dictates their ability to seek employment. The 2011 Indian Human Development Survey finds that a sizeable number of women seeking paid employment refrained from taking up a job because of constraints from within the family and the responsibility of child care. After marriage, women typically take on the role of care-giver in the family, which significantly alters the allocation of their time. The social position of the woman is altered post marriage wherein a full time employment and focusing on duties and responsibilities outside the household are stigmatised and she only joins the labor force when it conforms with the family's needs and rules. The distribution of working age women by marital status suggests that the share of currently married women is higher in rural areas (at 71.2 percent in 2011-12) than in urban areas (66.6 percent in the same year) with 71.2 to 73.5 percent of women in rural areas being married, and 65.3 to 66.6 percent of women being married in urban areas.⁴

Rate of women participation in labour force



Source: ILO via World Bank, Government of India Ministry of Labour and Employment

Impact of the Amendment

The Maternity Benefit (Amendment) Act was hailed across the country as a progressive step towards making workplaces women-friendly when it was introduced last year. The amended law provided for 26 weeks paid leave that is available to women for her first two children, and upto 12 weeks of paid leave for any child beyond that. The Act has been expanded to include even commissioning and adopting mothers as part of the move, but the maternity leave period is capped at 12 weeks for them. The new legislation also mandates that all companies that have 50 employees or 30 women employees, whichever is lower, will have to not only facilitate “work from home” facility for new mothers, but also open creches. The woman will be allowed four visits to the

⁴<http://documents.worldbank.org/curated/en/559511491319990632/pdf/WPS8024.pdf>

creche a day which will include her interval for rest. The bill is expected to benefit around 1.8 million working women.

This move was intended towards retaining women in the workforce in a country where social traditions and family settings are not conducive for working mothers. It was perceived that while hiring and retaining a skilled workforce is one of the greatest challenges in the Indian marketplace, the fact that qualified female employees want to return to their jobs after an extended leave should be seen as a huge positive by employers. Several studies including a recent one in 2015 by McKinsey Global Institute revealed that if the Indian economy managed to retain its women labour force and ensure their participation in the economy at par with men, India's GDP could see an increase of 60%, or \$2.9 trillion, by 2025. At present, women contribute a mere 17% to the country's GDP, well below the global average of 37%.⁵ Hence, the legislation sought to mandate companies to continue to pro-actively plan for long absences, mitigating any negative impact on the organisation's overall business goals. This will also ensure smooth transitions for women returning after extended periods of absence.⁶ However, a survey conducted by TeamLease titled 'The Impact of Maternity Benefits on Business and Employment' projected that there could be 11-18 lakh job losses for women in 2018-19 over and above the usual attrition faced by industries. The survey further revealed that post-maternity retention could cost 80 percent to 90 percent of the annual salary for white collar employees, and up to 135 percent of annual salary for blue collar employees and without government assistance and adequate cost sharing, employers will find no incentive to effectively implement the Act.⁷

Loopholes in the law

The above mentioned survey proved that maternity leave and its associated clauses lead to employers viewing women not as an asset to the company but rather as a drain on the resources and hence such benefits elicit a negative reaction. In India, where barely 6.5 per cent of women are in the formal sector, it will be disastrous if extended maternity leave further deters employers from hiring women and the Amendment Act has no safeguards for this decline. One of the major drawbacks of the new legislation is that it does not take into account the complex societal structure and intricate socio-economic factors that lead to low female labour force participation. An ILO report on female labour force participation points out the complex interaction of these factors in India and highlights the most important drivers behind women's engagement in economic activity and state that these factors include educational attainment, fertility rates and the age of marriage, economic growth/cyclical effects, and urbanisation.

⁵<https://thewire.in/labour/indian-workplaces-losing-women-nationwide>

⁶<https://radford.aon.com/insights/articles/2017/What-India-Amended-Maternity-Benefit-Act-Means-for-Companies>

⁷<https://economictimes.indiatimes.com/small-biz/sme-sector/indias-maternity-law-may-cost-1-8-million-women-their-jobs/articleshow/64758044.cms>

In addition to these issues, social norms determining the role of women in the public domain continue to affect outcomes and the legislation does not create the space to address these issues. Moreover, it does not take into account that a large section of female workers are engaged in the unorganised sector and the 2017 Act does not apply to them, nor is it clear how it can realistically cover women working on family farms, doing home-based work, the urban self-employed, or casual workers on contract.⁸ Even in the formal sector, the child will need care after six months of maternity leave. The one measure that would benefit women across all sectors, formal and informal, is providing good crèches and childcare centres. In Japan, the government's expansion of high quality childcare centres has significantly increased women's work participation. In India, at the very least, childcare centres should be the joint responsibility of government and private employers.⁹

International standards

The ILO Maternity Convention No. 183 provides for 14 weeks of maternity benefit to women to whom the instrument applies and requires ratifying states to draft a legislation to incorporate this as a right for women. Women who are absent from work on maternity leave are entitled to a cash benefit of two-thirds of the previous earnings which ensures that they can take care of themselves and their child and not lack for basic amenities like health care and nutrition. The convention also requires ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obligated to perform work which can cause harm to her health or that of her child, and it also provides for protection from discrimination based on maternity. The standard also prohibits employers to terminate the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work, except on grounds unrelated to pregnancy, childbirth, nursing and its consequences. Women returning to work must be returned to the same position or an equivalent position paid at the same rate. Also provides a woman the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.¹⁰

UK and Australia offer one of the longest paid maternity benefit in the world, which stands at 52 weeks. In UK, for first 6 weeks, 90 percent of average weekly earnings are paid. Thereafter, a flat rate or 90 percent (whichever is less) is paid for 7-39 weeks. However, in the remaining 40-52 weeks, women don't get any salary benefit. In Australia, women get 18 weeks as the federal minimum wage level. Canada, Brazil and South Africa offer 17 weeks of paid maternity leave. In percentage terms, women in Canada get 55 percent of their salary as paid benefit for 15 weeks. While in South Africa women get 60 percent of their wages, Brazil gives 100 percent of the wages to women during the leave period. Singapore and France both offer 16 weeks of paid leave to woman where the latter pays 100 percent wage, while 100 percent is paid for first and second child in Singapore. Iceland grants nine months of parental leave, of which three are reserved for the mother, three for

⁸<https://www.firstpost.com/india/amendment-to-maternity-benefits-act-is-a-case-of-good-intentions-backfiring-ends-up-disincentivising-hiring-of-women-4636421.html>

⁹<https://indianexpress.com/article/opinion/columns/maternity-benefits-or-jobs-leave-formal-sector-5255651/>

¹⁰<http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/maternity-protection/lang--en/index.htm>

the father, and three can be shared between them. In most of the Western European countries, it is believed that matching paternity and maternity leave would create a more level playing field for women and reduce potential employer discrimination and their corresponding Acts incorporate equal paternity leave.¹¹

Maternity Benefit Laws globally

Country	Maternity Leave	Paternity Leave	Percentage of wages	Source of Funding
India*	Act: 12 weeks Bill: 26 weeks	No provision	100%	Employer
UK	52 weeks	14 consecutive days	<ul style="list-style-type: none"> ▪ Women: 6 weeks paid at 90% of average weekly earnings; flat rate or 90% (whichever is less) for weeks 7-39; weeks 40-52 unpaid ▪ Men: Flat rate benefit or 90% of average weekly earnings, whichever is less 	Mixed (employers reimbursed up to 92% by public funds)
South Africa	17 weeks	3 days	<ul style="list-style-type: none"> ▪ Women: 60% ▪ Men: 100% 	<ul style="list-style-type: none"> ▪ Women: Mixed (contributions from employer, employee, government) ▪ Men: Employer Liability
Singapore	16 weeks	7 days	100% for first and second child	Mixed (8 weeks employer and 8 weeks public funds)
Brazil	17 weeks	5 days	100%	<ul style="list-style-type: none"> ▪ Women: Mixed (contributions from employer, employee, government) ▪ Men: Employer Liability
China	14 weeks	No provision	100%	Employer contribution via insurance scheme
France	16 weeks	11 days	100% up to a ceiling	Social insurance scheme
Australia	52 weeks	14 days	<ul style="list-style-type: none"> ▪ Women: 18 weeks at the federal minimum wage level ▪ Men: Federal minimum wage 	Public funds
Canada	17 weeks (federal)	No provision	55% for 15 weeks up to a ceiling	Public Funds
USA	12 weeks (federal)	No provision	Unpaid	No provision

Way Forward

The Maternity Benefit Amendment Act was a highly anticipated legislative action that promised to bring back women to the labour market and incentivise retention of women. While the intention of the Act is beneficial in the upliftment of women, its approach and implementation has been fraught with structural loopholes. There are few basic remedial measures that experts have been suggesting which can ensure better results. The first

¹¹<https://indianexpress.com/article/opinion/columns/maternity-benefits-or-jobs-leave-formal-sector-5255651/>

is the cost sharing arrangement between the government and the employers as highlighted in the Western European models. Companies are less likely to discriminate against women if the government pitches in. The 2018 ILO report on Care Work and Care Jobs emphasises the need for government support up to at least two-thirds of the costs of maternity benefits, as per the ILO Convention 183. The government could share the cost of maternity leave with employers which will reduce the burden on the employers to bear the entire expenditure alone and thus preventing the economics from being a deterrent from hiring women. The government can amplify tax rebates for maternity wages or set up an insurance scheme to pay maternity wages, sharing the premium with the employer. Another option that has been consistently brought up is the focus and shifting of traditional gender roles and including the father as a caregiver as well. This could be by breaking up the 26 weeks into 13 months of maternity and 13 months of paternity leave, to negate any possibility of gender bias and allowing the work to be shared equally between both parents. Most importantly, these interventions will require effective structural reform of formalisation, financialisation, urbanisation, industrialisation and human capital.¹²

The issue of maternity benefits thus needs a comprehensive approach and not just a one-sided Act. so that it provides a balanced approach and does not backfire on women's employability. The Act must ensure equivalent paternity leave, government sharing of costs with employers, high quality crèches and childcare centres, and serious efforts, including media campaigns to challenge the existing social and cultural norms which are prejudiced against working mothers and those seeking employment post childbirth.

¹²<https://economictimes.indiatimes.com/news/politics-and-nation/maternity-benefit-act-the-new-amendments-might-cause-some-pangs-in-the-short-run/articleshow/64809703.cms>

EQUALITY

Supreme Court on Sabarimala: Women have right to enter shrine

Amit Anand Choudhary, The Times of India, 19 July 2018

The Supreme Court on Wednesday stated that temples are public places and there can be no discrimination on the basis of gender, sex and age. The court further said that the right to worship is a constitutional right and all people are entitled to freedom of conscience. The petitioners contended that discrimination against women during the biological process of menstruation was being used in the name of religion and tradition to suppress women and deny them the right to practice their religion. This classification and exclusion of menstruating women have been contended to be unconstitutional and illegal

Read more:

http://timesofindia.indiatimes.com/articleshow/65042610.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Date Accessed: 24 .07.2018

ACCESS TO EDUCATION

Kerala govt to reserve two seats per course for transgender students in all universities, affiliated colleges

Firstpost, 4 July 2018

The Kerala state government has issued a notification reserving two seats per course for transgender students in universities and affiliated arts and science colleges in the state. The objective of the move is to provide the marginalised group better opportunities for higher education and bring them to the forefront of society. The CPI(M)-led LDF government had recently decided to provide shelter homes for transgenders who would join the continuing education programme of the state's Literacy Mission.

Read more: <https://www.firstpost.com/india/kerala-govt-to-reserve-two-seats-per-course-for-transgender-students-in-all-universities-affiliated-colleges-4664071.html>

Date Accessed: 24.07.2018

HEALTH AND SANITATION

India scraps controversial tax on sanitary pads

(Rishi Iyengar, CNN, July 21, 2018)

The Indian government has scrapped the existing 12% tax on the feminine hygiene products: sanitary pads as part of the round of tax cuts on several items under India's new GST introduced in July last year. These products were previously been taxed differently in different states, leading to long delays and several addition. As a result, according to India's National Family Health Survey, more than 40% of Indian women aged 15 to 24 did not have access to sanitary products during their period while the lack of proper menstrual hygiene and sanitation has been linked to girls dropping out of school and lower productivity in the workplace. "[The country's] sisters and mothers will be happy to hear that sanitary pads have been given a 100% exemption and brought down to a tax rate of zero," the country's acting finance minister Piyush Goyal told reporters. "Now there will be no [tax] on sanitary pads."

Read More: <https://edition.cnn.com/2018/07/22/health/india-tampon-tax-intl/index.html>

Date Accessed: 24.07.2018

Gender bias in sterilization

(Debraj Mitra, The Telegraph, July 24, 2018)

According to the findings of the National Family Health Survey 2015-16 (NFHS-4), female sterilization is the most preferred birth control measure in Bengal at almost 30% in comparison to male sterilization which stands at 0.1%. The state's low rate of male sterilization implies that men in Bengal lag in family planning and birth control. As a response to the results, public health activists in Bengal have blamed lack of awareness for the low rate of male sterilization. "There are myths that lead men to believe sterilization would make them impotent or at least reduce their virility," said Archana Sharma, who works with Global Health Strategies, a consulting company for ensuring development and worldwide delivery of health products, technologies and information.

Read More: <https://www.telegraphindia.com/calcutta/gender-bias-in-sterilisation-244306>

Date Accessed: 24.07.2018

VIOLENCE AND SAFETY

Violence against India's Dalit women on the increase

(Shazia Nigar, Asia Times, July 23, 2018)

As per the latest National Crime Records Bureau data, there were around 20.3 crimes per 100,000 Dalits in 2016 up from 2.4 rates in 2006. In 2014 alone, there was a 19% year-on-year increase in offences against Dalits, with a total of 47,064 crimes recorded. Further, among the highest number of crimes against Scheduled Castes were assaults on women with the intent to outrage modesty; of 3,172 crimes recorded 2,541 were cases of rape against Dalits while the conviction rate of only 25% in cases of offences implies that the problem for females of the lowest caste in Hindu society is a cause for concern. As per a recent report titled, "Voices Against Caste Impunity: Narratives of Dalit Women", 33.2% of all women from the Scheduled Castes experience physical violence after the age of 15 based on the latest NHFS. The report also states that "The number of cases registered is a fraction of the actual number of crimes that take place. In many instances, these crimes don't get reported due to non-cooperative police and judicial machinery, shame and social stigma, and the fear of retaliation by the dominant caste groups."

Read More: <http://www.atimes.com/article/violence-against-indias-dalit-women-rises-as-perpetrators-go-scot-free/>

Date Accessed: 24.07.2018

LEGAL DEVELOPMENT

India moves closer to having gender-neutral law on child sex abuse

(India Today, July 22, 2018)

The Union Women and Child Development (WCD) Ministry has put forward a proposal before the Cabinet for enhanced punishment in cases of sexual assault of male children and amend the Protection of Children from Sexual Offences (POCSO) Act, 2012. The Act deals with sexual offences against those below 18 years of age. "Amendments to the POCSO Act for enhanced punishment for sexual assaults of young boys have been approved by the Law Ministry. It will be sent to the Cabinet in two-three days," the WCD Ministry official said. The move is being seen to bring in a gender-neutral law while dealing with cases of sexual assaults.

Read More: <https://www.indiatoday.in/india/story/india-moves-closer-to-having-gender-neutral-law-on-child-sex-abuse-1292723-2018-07-22>

Date Accessed: 24.07.2018

ECONOMIC OPPORTUNITY

Kerala HC Rejects Petition to Allow Adult Trans Woman Into Mother's Custody

Shreya Ila Anasuya, The Wire

Concurring with the landmark NALSA judgment recognising the fundamental rights of transgender people and their right to the self-determination of gender, the Kerala High Court held that an adult trans woman has the right to self identify her gender and will not be put under the custody of her mother. The Court's approach has come under criticism however for ordering a medical and psychological evaluation of the trans woman based on her mother's petition claiming her daughter is mentally ill, with activists stating that it is a breach of her fundamental rights.

Read more: <https://thewire.in/lgbtqia/kerala-hc-rejects-petition-to-allow-adult-trans-woman-into-mothers-custody>
Date Accessed: 26.06.2018

Reversing women's decline in the Indian labour force

(LiveMint, Ajit Ranade, 27 June 2018)

While multiple studies suggest that India's GDP would drastically increase if women are included in the workforce, the share of women in India's workforce has been steadily declining- from about 35% to 25% since 2004 while the global average is 40%. For female wage workers, the participation rate is even lower as compared to self employed women or casual workers. This decrease is surprising especially since employment under MNREGA recorded 50% female workforce participation. Recent policies like the amendment to Maternity Benefit Act and the proposal to reserve 15% of the intake for women in the Indo-Tibetan Border Forces have been met with opposition with employers refusing to hire women and the border forces hardly employing even 2% women. This lack of participation is not limited to workforce but is also conspicuous in legislatures, judiciary. Thus there is a need for radical measures to curb women from exiting the labour force.

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