

Realising Universal Maternity Entitlement through the Maternity Benefit (Amendment) Bill, 2016

PRESENTATION TO HON. MEMBERS OF PARLIAMENT
PARLIAMENTARY COMMITTEE ON WOMEN'S EMPOWERMENT,
LOK SABHA, 8 DECEMBER 2016

Concerns

- I. Only applicable for organized sector while 95% women are in the unorganized sector
- II. Dependence upon employer-employee relationship and existence of 'establishment'
- III. Do not address inequity between organised and unorganised sector, nor even *within* the organised sector.
- IV. Within the organized sector, types of employment vary
- V. Only employers' liability has lead to gross violations even in the limited current provisions, given different sizes and interest of employers
- VI. Weak redressal mechanisms
- VII. Plus all concerns raised by Rajya Sabha Members

Issues Raised in Rajya Sabha Debate

Only one hour provided to pass the Bill

- a. The importance of exclusive breastfeeding to fight malnutrition
- b. Unorganized Sector not covered
- c. Maternal deaths in India (1.3 lakhs per year)
- d. 9 months of maternity leave
- e. Crèches for 50 workers can be brought down to 10 workers
- f. Paternity leave
- g. Low implementation of the present MB Act demands strengthening implementation system
- h. Concerns over conflict on Small Factories' Act Bill
- i. What happens to the ME under NFSA

Rationales

Who need to be eligible?

All women.

Women in Organised Sector (around 5% as per NSSO)

Women in Unorganised Sector (around 95%, out of which 40% self employed)

Women not in organized or unorganized sector – considered as unpaid care workers – 75% (about 40% in poverty)

Note: Responsibilities and mechanisms to be worked out for women who are from families paying income tax and are not getting ME from any source. Self exclusion (as in LPG subsidy)

Why a Universal Entitlement

Maternity Entitlement is a human right

Maternity and child care is a societal function performed by women

Many women change/withdraw from occupation depending on family needs. Most have to continue to handle a triple burden

It is established in number of Government documents (including the Economic Survey 2016) women's work is mostly invisible and lacks recognition and counting

Simultaneously the child's rights to survival, development, protection, health and nutrition are protected (support to exclusive breastfeeding)

From Economic Survey 2016

“Relatively low-cost maternal and early-life health and nutrition programs offer very high returns on investment because:

*(i) the most rapid period of physical and cognitive development occurs in the womb, so **in utero and early-life health conditions** significantly affect outcomes in adulthood; and*

*(ii) the success of subsequent interventions—schooling and training—are influenced by early-life development. Despite recent progress, India generally **under-performs on maternal and child health indicators: pre-pregnancy weights and weight-gain during pregnancy are both low**”*

Relevant Constitutional Guarantees for Women in India (supporting universalisation)

- Article 21 – Right to Life and Livelihood that includes the right of employees in the unorganized sector to maternity leave
- Article 14 – Right to equal protection of laws and equality of laws includes the right of employees in the unorganized sector to be treated with par with their counter parts
- Article 42 – The State shall make provision for securing just and humane conditions of work and for maternity relief. This entails providing maternity benefits both for the organized and unorganized sector.

India is also legally obliged under International Commitments

- The Universal Declaration on Human Rights, 1948 recognizes the right to equality, privacy, family and motherhood and restricts arbitrary interference with such rights in Articles 12, 16, 25 and 29.
- The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 also recognizes the rights of equality regardless of marital status, reproduction, motherhood and family of a woman in Articles 1, 11, 12, and 16.
- The International Covenant on Civil and Political Rights, 1979 (ICCPR, 1976) recognizes the right to equality, privacy, family and restricts arbitrary interference with such rights in Articles 17, 23, 26.
- The International Covenant on Economic, Social and Cultural Rights, 1976 (ICESCR, 1976) recognizes the rights to motherhood and family in Article 10.

In practice

ME Provisions currently in law

Maternity Benefit Act, 1961 (for Establishments employing 10 or more workers)

ESI Act (for establishments)

Labour Laws like Building and Other Construction Workers' Act, Beedi Workers' Act etc (for employees with identifiable employers)

National Food Security Act (universal)

Unorganised Sector Social Security Act (no entitlements, only schemes)

Implementation....

Currently, the provisions of MBA(1961) are applicable to contract workers, plantation workers and mine workers and also through other legislations to construction workers, women workers in factories and establishments through ESCI. **Only a tiny proportion of even these actually get any entitlements at all (no data with ministry)**

Several of these acts require that women workers have worked continuously for 180-200 days before they can claim Maternity Entitlements under the MBA. However, it has been seen that most women workers are not registered as workers, neither do they work continuously, thus they are actively discriminated against during pregnancy.

No uniformity of maternity entitlements across sectors through laws – comparing, for eg, women in the IAS with a daily wage-worker question of equity

NFSA Provision of ME

- I. Only universal provision
- II. Mandates schemes that provide at least Rs. 6000
- III. No implementation yet
- IV. Can be linked to the MB Act 1961 and progressively lead to wage-linked entitlement

Recommendations

1. The amended Maternity Benefits Act must include progressive realisation of nine months of maternity leave (three months before childbirth to six months after) with full compensation of wages for all women, calculated at least according to minimum wages at prevalent rates.
2. This revision of the Maternity Benefits Act (1961) should recognise women's work in all spheres, markets, and domestic, for care and reproduction and subsistence; economic and non-economic and guarantee maternity entitlements to all pregnant women, adoptive parent(s), surrogate mothers etc. without discrimination.
3. Unorganised Sector Social Security Act should be amended and harmonised with the amended MBA
4. Gender neutral provisions of crèches at worksite and neighbourhoods for enabling breastfeeding

5. All women workers covered under respective boards under various acts should be able to avail their MBA benefits - Factories & Establishments act, Construction workers Act, etc from the day of registration. Rules under the various acts must be amended in line with the provisions and spirit of the MBA legislation

6. Comprehensive maternity entitlements must be provided for all women working under government programmes by issuing guidelines nationally including anganwadi workers and helpers, ASHA workers, mid-day meal cooks and helpers and women working under MGNREGS. [These have been already done by several states across the country and have shown to have positive impact]

7. MGNREGA workers who have worked for 10 days in the year of pregnancy should be able to avail of the Maternity Benefit Act

8. The legislation must include decentralised grievance redress mechanisms, a monitoring framework and clear penalties for non-implementation.
9. The legislation must also include stringent provisions against discrimination in employment of pregnant women and women with young children.
10. Paternity Leave of two weeks is to be paid to all biological fathers and adopting fathers as a standalone entitlement and not to be clubbed within women's entitlements.

Finances; some
calculations and models

Possible Sources to Draw Funds From

Tax base

ESI

Welfare Boards

NFSA : 15,000 Crores for universal application (2011)

Ministries

States

Cess upon consumer products

Women WF Participation (2011-12)

Age Group	Men	Women
15–24	50.3	20.0
25–34	97.3	34.9
35–44	98.9	41.4
45–54	97.5	38.6
55 plus	67.1	21.6
Total	79.7	30.7

Including Informal Sector

(based on NSSO, Demographic Data)

per year funding required	for 9 months (INR thousand crores)	for 6 months (INR thousand crores)
at MNREGA rates	22.9	15.2
at agricultural min wages	36.7	24.4
at min wages for unskilled persons	80.2	53.5

United Kingdom Practice of a Maternity Allowance Fund

Maternity Allowance is usually paid to women who don't qualify for Statutory Maternity Pay.

Maternity Allowance is paid every 2 or 4 weeks.

Maternity Allowance can be claimed by women who have been pregnant for 26 weeks.

Payments can start 11 weeks before the baby is due.

All benefits, pensions and allowances are usually paid into the bank A/c.

A woman can either get: £139.58 a week or 90% of average weekly earnings (whichever is less) for 39 weeks or £27 a week for 39 weeks or £27 a week for 14 weeks depending on how much National Class 2 Insurance has been paid by the woman or her husband

A woman may have worked with different employers

UK Practice can be tailored to Indian needs

- Fund where self-employed women, home-based workers, and women workers in the unorganized sector, who do not meet the statutory requirement can contribute monthly as per their capacity an amount may be prescribed by the Govt.
- Government can contribute to such fund for women who are BPL and identify and support more vulnerable groups
- On time of maternity claim – a consolidated amount with interest can be disbursed in favor of the woman as cash payment or transfer in bank account
- Simplified and flexible procedure that is accessible to all – overcomes requirements of mandatory period of continuous employment

Thank you
