



CHILD-CARE LEAVE DISPARITY

Dr.Balwinder Kaur

Hidayatullah National Law University

Abstract

The law protects the rights of working women during the pregnancy period and after childbirth through Maternity Benefits Act,1961, (MB Act). The Act earlier prescribed 12 weeks of maternity leave. To encourage women’s participation in the labour force the Maternity Benefit Act was amended in 2017 and the Act has increased the maternity leave from 12 weeks to 26 weeks. The MB Act also included adoptive and surrogate mothers. The MB Act was introduced to guarantee that mothers are not stuck up to participate in the workforce because of their family responsibilities (childbearing and child-rearing). Child care plays an important role in children’s development and well-being. According to one study, almost 200 million children globally do not achieve their development potential because of various reasons such as poverty, poor health services, psychological care and nutrition. It is seen that these sections of children perform poorly in school and do not do well in life. Generally, women are responsible for childrearing. Child care needs a lot of time, many times a woman is prohibited from pursuing her career. Several studies focus on initial childhood fostering and their effects, an orderly review that recommends impacts on intellectual development, schooling and labour market outcomes. When we refer to child care it’s not only bathing, feeding and clothing of the child. Emotional support to a child is a part of child care, the word child-care is full of moral implications which include both love and duty. The paper has three separate sections. The first section justifies the approach related to child-care leave. The second part of the paper reviews prevailing laws and policies and their implementation related to child care leave. The third part will discuss the proposal for comprehensive policies for child-care leave.

Keywords: Child-Care Leave, Working Mother, Reproductive Rights.

Introduction

Child-Care means according to the dictionary that “the care of children, especially by a crèche, nursery, or childminder while parents are working.” According to Census 2011 data suggests that approximately 37% of India’s population is accounted for by children. It is estimated approximately 3,92,078 children were born around the world and surprisingly out of which 67,385 were taken birth in India. According to UNICEF. As far as Indian children are concerned, they are raised in a family with multiple interactions with a member from within and outside the family. India is famous for its cultural diversity. The family is considered an important social unit in India. We can see the effect of a family on the lives of its members. The people accepted where there is an involvement of grandparents and members of the immediate family in raising the child it is more helpful for the overall development of children. The children become family-oriented which helps them to stay rooted and grounded. But because of urbanisation, the increase of economic activity and participation of women in the workforce changed the structure and functioning of the families in India.

The earnings of both man and woman are considered as a vital forecaster of the gendered division of housework. According to relative resource theory, the man or woman with better relative earnings has the power to impact decisions within the household including the distribution of domestic labour. According to Wilson “many working women said that they worked because they needed the extra money and which they mentioned as specific material goods—an extra lesson, additional clothes, a vacation, furniture, owning a home, car or even just a television—arguing their work was bringing a rise in the family’s standard of living. Both men and women had material and emotional expectations for better standards of living and a working wife could add considerably to achieving those goals.” The concept of the working woman is so common in India today that working women have become the norm rather

1 Available at https://www.who.int/maternal\_child\_adolescent/documents/care\_child\_development/en/ last seen on 12.4.21

2 Tanner, J., T. Candland, and W. Odden (2015) ‘Later Impacts of Early Childhood Interventions: A Systematic Review’. Washington DC: IEG World Bank.

3 Esquivel, V. (2014) ‘What is a transformative approach to care, and why do we need it?’, Gender and Development 22(3): 423-439

4 Available at https://www.lexico.com/definition/childcare last seen on 12.4.21

5 Available at https://censusindia.gov.in/census\_and\_you/age\_structure\_and\_marital\_status.aspx last seen on 12.4.21

6 The Hindu ‘At 67,385, India records highest number of babies born globally on New Year’s Day: UNICEF’, by PTI, United Nations, January 02, 2020 10:22 IST

7 Bhatia 2006; Kakar and Kakar, 2007; Sharma 2003.

8 Brines, 1994; Kan 2008.

9 Wilson D. S. A New Look at the Affluent Worker: The Good Working Mother in Post-War Britain. [Accessed 20 April 2021]; Twentieth Century British History. 2006 17:206–299. Available at: http://tcbh.oxfordjournals.org/cgi/content/full/17/2/206. [Google Scholar]



than the exception. We had witnessed effective economic growth in India, with increased wages and educational achievements. Despite this, the participation of women in the labour workforce is the lowermost in the world.<sup>10</sup>

Various studies have shown various reasons for the low female labour force participation in India. One of the explanations points that "more women are now enrolled in educational institutions, which accounts for their unavailability for market work."<sup>11</sup> There is another theory "that bank on the "income effect", where women withdraw from the labour market as household income rises, especially in a culture where males are regarded as the main breadwinners."<sup>12</sup> If the jobs available to women are not according to their goals or their ambition; in other words, there are not enough "good jobs" then women would not accept it.<sup>13</sup> One of the important points is that demanding household responsibilities have somewhere forced women to let go her employment. It is not disputable in India the social standards are deep-rooted in such a situation it gives a little choice to a woman to continue with their employment. India is a country with rapid and constant growth. The population is massive, and huge consequently is the number of working-class people. It is quite challenging to balance working life and take care of the children. Now we have nuclear families in India the working mother has to face a challenge to take care of her child. One of the studies has claimed that the presence of young children in the house might be one of the reasons for low women participation in India.<sup>14</sup> According to India's National Family, Health survey-4 which was conducted in 2018b have shown that only 24% of married women (between 15 and 49) and 27% of men want a second child.<sup>15</sup>

### Law and Policies related to Child Care

"After analyzing data from Ruhm's sixteen European countries and the United States and Japan Sasiko Tanaka concluded that important changes were made in parental leave policies.<sup>16</sup> Tanaka found that an extension of ten-week in paid leave was associated with a 2.6 percent decrease in infant mortality rates and a 3.0 percent decrease in child mortality rates. He insisted that the Maternity leave without pays or a guarantee of a job at the end of the leave had no substantial effect on infant or child mortality rates."

Childrearing or childbearing is a prized goal for many people. For working women and their family's pregnancy and maternity are challenging time. Pregnant and nursing mothers need a safeguard to stop harm to their and their child's health, sufficient time to deliver the baby and take care of the baby's health. At the same time, a working woman has apprehensions that she shall not lose her job during pregnancy and she needs protection. Such protection guarantees equal access of women to equal employment. It was the International Labour Organization along with the other governing body which decided to revise the Maternity Protection Convention (revised), 1952, and the Recommendation on the Maternity Protection.

Based on the provisions of the Universal Declaration of Human Rights (1948),<sup>17</sup> which provides that motherhood and childhood need extra care. Another important instrument was the International Labour Organization's Declaration on Equality of Opportunity and Treatment for Women Workers (1975) which mention child-care in Article 5 of the convention.<sup>18</sup> The next instrument was The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979) it's also talked about child-care and motherhood,<sup>19</sup> the Beijing Declaration and Platform for Action (1995) protects the 'Woman and Health'. The

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<sup>11</sup>Himanshu 2011; Rangarajan et al. 2011

<sup>12</sup>Klasen, S., and J. Pieters. 2015. "What Explains the Stagnation of Female Labor Force Participation in Urban India?" Policy Research Working Paper 7222, World Bank, Washington, DC.

<sup>13</sup>Chatterjee, U., Murgai, R., and M. Rama, M. 2015. "Job Opportunities along the Rural-Urban Gradation and Female Labor Force Participation in India." World Bank Policy Research Working Paper 7412, World Bank, Washington, DC.

<sup>14</sup>Das, M. B. 2005. "Structural Reasons for Muslim Women's Low Workforce Participation in India" in *In a Minority: Essays on Muslim Women in India* (Ritu Menon and Zoya Hasan, eds) Oxford University Press

Bhalla, S. S., and R. Kaur. 2011. "Labour Force Participation of Women in India: Some Facts, Some Queries." Working Paper 40, Asia Research Centre, London School of Economics and Political Science, London.

<sup>15</sup>Rani, U., and J. Unni. 2009. "Do Economic Reforms Influence Home-Based Work? Evidence from India." *Feminist Economics* 15 (3): 191-225.

<sup>16</sup>Sasiko Tanaka, "Parental Leave and Child Health across OECD Countries," *Economic Journal* 115, no. 501 (2005): F7-F28

<sup>17</sup>As far as Children are concerned it is mentioned in paragraph (2) of Article 25 of the Universal Declaration of Human Rights, which is as under: "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

<sup>18</sup>Article 5 International Labour Organization's Declaration on Equality of Opportunity and Treatment for Women Workers (1975) states that "All measures compatible with national conditions and possibilities shall further be taken — (a) to take account of the needs of workers with family responsibilities in community planning; and (b) to develop or promote community services, public or private, such as child-care and family services and facilities".

<sup>19</sup>Later in the year 1979, there was the "Convention on the Elimination of Discrimination Against Women" (from hereinafter referred to as CEDAW). This convention acknowledges the rights related to women. Article 11 of the Convention provides as under: "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment to ensure, on a basis of equality of men and women, the same rights, in particular:



International Labour Organization's Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), based on the above-mentioned international instruments the Maternity Protection Convention was framed. This Convention was aimed at guaranteeing the fairness of opportunity for both gender men and women workers. based on these proposals ILO Conventions on Maternity Protections was adopted On the 15<sup>th</sup> day of June of the year 2000.<sup>20</sup>

The Maternity Protection Convention offers 14 weeks of maternity leave to every working woman. To keep the health of mother and child in good conditions women on maternity leave can claim cash benefits. It is further mentioned that the states who are ratified Convention No-183 to enact a law in line with the Convention which provides that pregnant or nursing women shall not perform such a work that has been injurious to health. The Convention prescribes that when a woman is on maternity leave or during pregnancy her employment shall be protected and it forbids employers to dismiss the employment of a woman. In case of other grounds which are not related to pregnancy, the employer can take action against the woman. The Convention not only offers maternity benefits it also provides breaks to a working woman to breastfeed her child.

The ILO Maternity Protection Resource Package provides various direction and mechanisms to toughen and extend maternity protection to all women. (including concerning maternal health, maternity leave and benefits, employment protection and non-discrimination, breastfeeding).” Another important instrument on maternity is **Maternity and paternity at work: Law and practice across the world (2014)**—It recommends the national law and policies on both maternity and paternity at work in 185 countries and territories. The law and policies include leave, benefits, employment protection, health protection, breastfeeding arrangements at work, and childcare. **ILO Database of Conditions of Work and Employment Laws** - Offers a picture of the regulatory environment of working time, minimum wages, and maternity protection in more than 100 countries around the world.

### The Constitution of India

Clause (3) of Article 15 of the Constitution of India allows the State to make special provisions for women and children. Article 39 (f), which is a Directive Principle of State Policies commands that the State shall direct its policies towards securing, inter alia, that "children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment". Article 39(e) that the health and strength of workers and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength.<sup>21</sup> Article 47 The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvements of public health as among its primary duties and in particular, the state shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxication drinks and of drugs which are injurious to health.”

In 2017, the Maternity Benefit Act, 1961 was amended. The amendment brought about three major changes. The MB Act had earlier prescribed 12 weeks of maternity leave the amendment enhanced the Maternity leave to 26 weeks. The amended maternity act first time introduced maternity leave for mothers and surrogate mothers. Then there is provided if any establishment which has more than 50 or more employees shall have the facility of a creche for child care. The purpose of the Maternity Benefit Act was to ensure that young mothers' work is not mired because of child-bearing responsibilities. To battle with this dual responsibility, the law makes it mandatory to provide female employees with paid leave and other benefits.<sup>22</sup> There is a provision of child-care for Central Government employees. Initially this provision for working women employees who had two children of less than 18 years of age. The duration of the maximum period of leave was up to 730 days. On the recommendations of the Seventh Pay Commission, the CCL (herein referred to as Central Civil Rules) has been extended to single male parents as well, with some limitations. The child care leave can be availed during their entire service, for taking care of up to two children whether for rearing or to look after any of their needs like examination, sickness, etc. In totality, including the paid leave period, women employees can avail child care leave for 3 years.

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“ The right to work as an inalienable right of all human beings; The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service, and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training, and recurrent training.; The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age, and other incapacities to work, as well as the right to paid leave. The right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction.”

<sup>20</sup>The Maternity Protection Convention, 2000.

<sup>21</sup>Article 39(e), The Constitution of India.

<sup>22</sup>The Maternity Benefits Amendment Act (2017).



All the benefits here will be admissible only in respect of their 2 eldest surviving children. The nature of this leave has to be the same as that of earned leave<sup>23</sup>.

### Paternity Benefits

The Central Government in 1999 by notification under Central Civil Services (Leave) Rule 551 (A) made provisions for paternity leave for a male Central Government employee (including an apprentice and probationer) with less than two surviving children for 15 days to take care of his wife and a newborn child. Any male government employee can avail of this leave 15 days before or within 6 months from the date of delivery of the child.

For Paternity leave, he shall be paid a leave salary equal to the pay last drawn immediately before proceeding on leave. The Government of India (GoI) has announced and implemented various new schemes and programs to expand the Healthcare of both mother and child. A few of the major schemes include Janani Shishu Suraksha Karyakram, Facility-based newborn care services at health facilities, The Chiranjeevi Yojana in Gujarat and the Thayi Bhagya Yojana in Karnataka, Facility Based Integrated Management of Neonatal and Childhood Illness, Navjat Shishu Suraksha Karyakram etc.

It is shocking to know that the women employees in private sectors work under great pressure and among severe staff shortage. The work pressure in the private sector is almost fifteen times. But still, the Government of India is giving child care leave to the central government women employees only whereas the real need is for private-sector women employees who work far away from their homes. How will these women look after their new burns? How will these women look after their families after childbirth especially when their family is a nuclear family with no support from parents as these women are often working away from their homes Now is the time for these women to demand they're true right from the Government in terms of the Child care Leave as the Government is giving to the Central Government Women Employees. Recently in the case of Tanuja Tolia v. State of Uttarakhand & Ors. a full bench of Uttarakhand High Court has upheld the rights of a person working on a contractual basis to have the right of getting child care leave as same as any other regular Government employee. It was agreed that the child care leave is primarily for the benefit and a matter of right of the child, as a child whose mother happens to be employed on a contractual basis with the Government will have similar needs as any other child. Mere denial of a Child Care Leave (CCL) to a government employee due to her employment being contractual would mean a denial of rights of a child rather than the mother as an employee and doing such will be a violation of the rights of the child under Article 14 and 21 of the Constitution of India.<sup>24</sup>

### Conclusion

Now it's time to acknowledge the reproductive role of a woman and a change of views is also needed. One must understand that a reproductive role is a form of social production. Maternity leave is not considered as 'absence' from economical activity. A woman who is performing the dual role of production and reproduction at the same time expects social protection from various sources, such as family, society the state and the employer. Child-Care is a must facility for the children of an employed mother. To create an empowering environment for a woman to work in the establishment there is a need for a child-care support system irrespective of private or government sectors. Child care is inevitable faculty for the children of working mothers both as a support service for working women and as a policy for the protection care and healthy all-round development of young children. It is the time that government should think and extend child leave to private sectors like Maternity benefits Childcare support is needed to create an enabling environment for women to work.

<sup>23</sup> Sixth Central Pay Commission, Government of India, Ministry of Personnel, Public Grievance and Pensions, Retrieved 11th September, 2008 from GOI online via access: [http://india.gov.in/govt/studies/estt.\(I\).pdf](http://india.gov.in/govt/studies/estt.(I).pdf)

<sup>24</sup> Tanuja Tolia v. State of Uttarakhand & Ors. 2020.

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