

## Women's Reproductive Rights: India is Decades Ahead with Laws, Now Needs to Focus on Implementation

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### Abstract

Recently, New Zealand's parliament passed legislation to provide for paid bereavement leave for mothers and their partners following a stillbirth or miscarriage. While the country certainly deserves praise for the new law, it is notably the second in the world to enact such legislation. India was the first to enact such a policy way back in 1961. In fact, over the years both the Indian parliament and judiciary have worked together to enact numerous progressive legislation to secure Indian women their reproductive rights. These strides deserve to be applauded. However, while India has succeeded in meeting and at times even surpassing global legislative benchmarks, it is yet to succeed in implementing such legislation across the country.

Here is a look at some progressive aspects of the Indian law that upon proper implementation can revolutionize maternity and childcare systems in the country.

### The Constitution

The Indian Constitution ensures equality for all its citizens through Article 14. While Article 15(1) provides for affirmative and positive action in favour of women, 15(3) empowers the state to make special laws to protect the rights of women and children. Similarly, Article 16 provides for equal opportunity for all in matters relating to public employment or appointment to office by specifically forbidding discrimination on the basis of sex. In the same regard, the obligation to renounce practices derogatory to the dignity of women was raised to the status of a fundamental duty via article 51A of the 42nd constitutional amendment.

Today, enactments such as The Maternity Benefit Act and the Medical Termination of Pregnancy Act owe their existence to these provisions of the constitution.

## **India's Law on Miscarriage, a Step Ahead**

*The Maternity Benefit Act, passed in 1961 made India the first country in the world to entitle women to six weeks of paid leave immediately following the day after their miscarriage. In comparison, Britain and Australia offer miscarriage leave only after 24 weeks and 12 weeks of pregnancy respectively. While employers in the United States have no obligation to provide paid miscarriage leave.*

Even compared to New Zealand's newly enacted legislation, India is still a step ahead. The leave-in India is over and above New Zealand's leave of three days, as the Act also provides leave for tubectomy operations and even has provisions for women to avail work of home options if the nature of the work allows it.

### **Maternity Leave**

In 2017, the Maternity Benefit Act was amended to extend paid maternity leave for women with less than two surviving children, from the original 12 weeks to 26 weeks. This places India ahead of countries like the United States, Canada and Singapore which offer maternity leave up to 12, 15 and 16 weeks respectively.

The amendment also entitled mothers adopting children less than 3 months of age (also known as commissioning mothers) to take up to 12 weeks of maternity leave from the date of receiving the child. In addition, it mandates the establishments employing 50 or more employees to have a creche with required prescribed facilities and amenities, where women can visit their children at least 4 times a day.

### **Medical Termination of Pregnancy**

Another progressive amendment the Medical Termination of Pregnancy (Amendment) Act 2020 was passed in March of this year. It brought long-pending changes to the 1971 abortion law. The legally permissible limit for abortion was raised from 20 weeks to 24 weeks. Additionally, the amendment also stated no limit for gestational age in case of fetal abnormalities. This was done in order to address maternal mortality and morbidity arising from unsafe abortions and to spare women the stress and agony of seeking permission from courts as time runs out. Moreover, the change also accepts the failure of contraception as a valid reason to abort.

India's move comes at a time when women in the United States continue to worry about the government ring-fencing their options as the landmark US Supreme Court judgement of Roe Vs Wade, which protects a woman's liberty to decide whether or not to have an abortion without needless government restrictions is presently under judicial scrutiny. Notably, in 2019 nine states in the US passed abortion bans at various stages of pregnancy with Alabama passing a complete ban.

### **Good on Paper, Bad in Practice**

India is decades ahead of the globe when it comes to providing a legal endorsement of women's reproductive rights. We have the laws but they suffer when it comes to implementation.

For example, take the provision of miscarriage leave, most Indian women are unaware of the existence of such a law. Even for those who have enough education, obtaining paid miscarriage leave is a challenge. Companies often simply don't pay heed to this legal

requirement and get away with non-compliance as financial strains and concerns regarding future career prospects prevent women employees from seeking legal respite. This is particularly worrisome as studies show that Indian women have the highest stillbirth rates in South Asia and have the highest chances of miscarriage in their first pregnancies when compared to other ethnicities.

Similarly, while the increase in maternity leave is welcome, the consequential burden on employers and fellow employees often leads to preferential hiring of male candidates causing a further decrease in female workforce participation.

When it comes to abortion, severe lack of awareness combined with social stigma and fear of judgment from medical practitioners continue to limit women's access to safe abortion facilities.

### **Way Forward**

If such challenges are left unaddressed progressive legislative amendments cannot create any meaningful change on the ground. Some solutions include generating awareness among women about their reproductive rights and increasing their access to all forms of legal aid. Additionally, in order to ease the burden on employers, the government can initiate public-private partnerships as placing the responsibility of change on corporations alone will not be effective. In this regard, the speedy passing of the changes like the incentive scheme proposed by the Ministry of Labour and Employment where in 7 weeks wages would be reimbursed to employers who employ women workers with a wage ceiling up to Rs 15,000/- and provide the maternity benefit of 26 weeks paid leave is the need of the hour.

Sensitization of healthcare providers towards being scientific, objective and compassionate in their approach to abortions legally allowed by law can help women reap the benefits of the new amendments made to the Medical Termination of Pregnancy Act.

India's legislative position is worthy of applause. However, when these laws are complemented with progressive and humane implementation, then only can women truly enjoy the solid response of their strengthened reproductive rights.