

**COMPARATIVE STUDY ON EFFECTS ON EMPLOYEES OF MATERNITY LEAVE POLICIES IN
INDIA AND CANADA**

**Shilpa Ajay Parab¹,
Prof.Harshali Murundkar²**

SYMBIOSIS INSTITUTE OF MANAGEMENT STUDIES PUNE MAHARASHTRA

Abstract

Paid Maternity leave has gained greater salience as more mothers are entering the workforce all over the globe. On one hand the proportion of working mothers is increasing day by day as they keep on playing important roles across various sectors around the world, while on other hand women still face lots of difficulties after they join back from their maternity leave many research papers are seen reporting about this phenomenon. As reported by ILO (International labor organization) the rate of attrition of Indian women workforce is much more than the other part of world. Experts hold a opinion that limited maternity leaves, many a times unpaid nature of such leaves and constant pressure by the employer regarding joining early from the leave period has been seen as the major reason behind this higher rate of maternity attrition in India.

In India Maternity benefit Act of 1961 under Article 42 of Indian Constitution gives directives to provide maternity benefits and protection. Recently in November 2016 the Maternity Benefits (amendment) bill 2016 was passed in the winter session of Lok Sabha which will be applicable to all private and public establishments in India. The maternity leaves benefits will be revised to 26 weeks from present 12 weeks w.e.f. 2017 all over India. If the bill is passed India will be the third country to have such extended maternity leave benefits other than Canada and Norway. The study examines the effects on employees observed in Canada by revision of paid maternity leave duration and try to analyze the probable benefits Indian women workforce might derive from the extended period of maternity leave which is about to be implemented in India.

Key words: Maternity benefits, Maternity Bill, International Labor organization

I. Introduction

Paid Maternity leave has gained greater salience as more mothers are entering the workforce all over the globe. On one hand the proportion of working mothers is increasing day by day as they keep on playing important roles across various sectors around the world, while on other hand women still face lots of difficulties when they join workplace after child birth, which is just not observed in our country but all over the globe. According to UK based Equality and Human Rights commission statistics of 2015 somewhere around 54000 women left jobs due to compulsory dismissals, poor treatment and they were proved redundant.. Data is not available on

how new mothers are treated in Indian companies.

According to ILO's Maternity Protection Convention a minimum 14 weeks of maternity benefit should be given to women, and the convention also recommends that it should increase to 18 weeks. Earlier in 2012 ILO's Working Conditions Law Report 2012, reported that, 82% of Asia and Pacific countries have legislation requiring from 12 to more than 18 weeks of maternity leave. Presently 50% of these countries give 12-13 weeks while 29% give 14-17 weeks of maternity leave. International Labor Organization (ILO) reports that maternity Attrition in India is greater in India as compared to other parts of world. The reasons observed were high variability in duration of maternity leaves, unpaid nature of this leave as well as pressurization from the management to join back early and no provision for extended benefits. A survey report by CII's Indian Women's Network (IWN) organization named Second Innings shows that 37% of women leave their jobs midcareer due to maternity leave issues or difficulties for childcare. This led eventually to have effects on their work performances and proved as glass ceilings to their career graphs.

In India Maternity benefit Act of 1961 under Article 42 of Indian Constitution gives directives to provide maternity benefits and protection. There is substantial research done on causes of attrition across various sectors both in male and female population. The highest percentage of attrition in female population is due to lack of enough maternity leave benefits. In February 2012 44th Indian Labor conference it was suggested that, Maternity leave under the Maternity Benefit Act be increased from the present level of 12 weeks to 24 weeks. Recently, the Maternity Benefits (amendment) bill 2016 was passed in the winter session of Lok Sabha which will be applicable to all private and public establishments. The maternity leave benefits will be revised to 26 weeks from presents 12 weeks w.e.f. 2017 all over India. This comes as a real relief to all women employees who are working under various sectors in India.

As the amended Maternity Benefit ACT 2016 awaits the consent of President of India for its implementation all throughout India, throughout all sectors i.e. Private as well as Public; there is a need to compare the benefits given by those countries who have already implemented the revised maternity leave policy and analyze that whether implementation of the extended leave benefit in India will benefit us the same way as it has done in other countries. We chose Canada to compare as though Canada is way behind in Population as compared to India (India: 1,337,343,361 and Canada: 3, 65, 14,388.) as India is going to be third country to give such an extended maternity leave, so if such scarcely populated Country can give such benefits, then how can India stay behind which has 1.8 crores women workforce presently working across various sectors and contributing towards India's economic growth.

Objectives of our study

- 1) To study maternity leave policy and benefits offered to working women force in India.
- 2) To study maternity leave Policy and benefits offered to various countries with special emphasis on Canada.

- 3) To study the effects of these policies in India and Canada on women workforce.
- 4) Compare the maternity benefits and Policies offered by India and Canada.
- 5) Recommend ideal maternity leave period , benefits and policies for both organized and unorganized sector women workforce in India.

Review of Literature

- 1) **Implementation of Maternity Bill Benefit :Shashi Bala, Paper published by V.V.Giri National Labour Institute Noida NLRI research studies series no.099/2012** The study examined the Maternity benefit provisions in selected Private sector firms in Noida. The study throws light on loopholes, ambiguities and reasons for the lack of motivation for effective in implementation of maternity benefit act in India. The study also compared experiences of International maternity policies and recommended few major changes in benefits offered in India with emphasis on extended duration and added benefits on joining.
- 2) **National Policy for Women 2016: Draft by Government of India, Ministry of Women and Child development , May 2016.** The draft states the vision, Mission and plans of implementation of new proposed Maternity Bill and its implementation strategies as well as beneficiaries.
- 3) **Trends in Childbirth leave entitlements: OECD Family database- Social Policy Division- Directorate of Employment Labour And Social Affairs:** The paper has information on changes of Parental leave policies around the world and also mentioned best Policy implementers as well as countries with minimum leaves.
- 4) **Falling through the cracks: The Law governing Pregnancy and Parental Leave: Kathyreen Meehan, Ottawa Law Review.** The study reflects the difficulties faced by insurance companies while implementing the maternity benefit act in various regions of Canada and solutions offered by the law.
- 5) **The effect of work life balance policies on women employees turnover: Chiang Hui-Yu, Japanese paper published in April 2008 OSSIP Discussion Paper: DP-2008-E-008** They explored work life balance and three outcome of interests to employee and employers: the job tenure of women employees, turnover rate of women employees and retention rate of new women graduates. Result of the study suggested that full payment of maternity leave and policies like flexitime prove beneficial to both employee and employers.

- 6) **Maternity/ Parental leave provisions in Canada: We have come a Long way, but there's further to go: Jane Pulkingham and Tanya Van Der Gaag, Canadian Woman studies Volume 23, Numbers3,4 2003.** The study observes many loopholes in implementation of Maternity benefits in Canada right from it's inception thirty years back. It observes that due to insurance laws and labor laws governing certain sections only few are still to get proper benefit of Maternity Leave Policies in Canada.

II. Journey and progress of Maternity leave benefits In India

- **In 1919 adoption of Maternity Protection Convention by ILO. Indian Government along with other member countries was requested to study and present report on their respective country situation in text to the conference.**
- **In 1921 Indian Government prepared and submitted the report after consulting the provincial governments and employers. The Indian Government gave following reasons for not adoption the convention:-**
 1. **It was impossible to enforce complete period of absence for pregnant women workers.**
 2. **Negligible no. of Female practioners were available who were necessary for giving medical certificates for such women workers.**
 3. **It was impossible for Indian Government to provide such benefits under compulsory benefit schemes.**
 4. **There was no such provision for nursing periods and protection of women from loss of employment during Pregnancy in ILO Labor Legislation in India 1952.**

The maternity benefit legislation came into effect in India in 1929 with the Bombay Maternity Benefit Act. This Act gave 4 weeks of paid Maternity leaves to women workforce with 8 annas per day of pay on presentation of medical certificate. This was the first case of maternity benefit legislation in India, followed by implementation of the law to Central Provinces and Berar in 1930.

Thereafter all throughout the country the implementation of maternity leave benefit was gradually done as under:-

- **Madras and Ajmer(1934)**
- **Delhi (1937)**
- **Uttar Pradesh (1938)**
- **Bengal and Sind (1939)**
- **Hyderabad (1942)**
- **Punjab(1943)**
- **Assam (1944)**

- **Bihar (1945)**

Thereafter the Maternity benefit Act underwent numerous changes like in the state of Bihar the Act was re-enacted with changes in 1947. After rigorous modifications from time to time with consultation from Provincial Government the first Benefit Act was passed in 1941 with application only to mine workers.

In 1946 the Bhole Committee reported about inadequate availability of Creche facilities in and around various Industrial sectors of India and improper and unjustified implementation of maternity Benefit provision by various provincial Governments of Pre-independent India.

After Independence the Maternity leave Benefit Act underwent many changes which were as under:-

- **In 1950 the constitution was formulated and adopted which contained special rights and privileges to women. In particular is Article 42 which provides for just and humane working conditions for women workforce as well as speaks of maternity relief.**
- **In the second Five year Plan (1956-61) the central legislation of Maternity benefit was enacted. It also highlighted the need of women workforce for the organization as well as need of protection for women from injurious work. The act also identified the need of maternity leave and provision of crèche facilities at work places.**
- **In 1961 The Maternity Benefit Act which extended the benefit of this Act to whole of India, applied to every establishment with 10 or more employees was the most important development in Maternity benefit Act.**
- **In 1972 the State Insurance Act (1948) was combined with Maternity Benefit Act.**
- **In 1973 the act was extended to Circus industry.**
- **In 1976 the Act was extended to women Employees in factories and establishment under ESI Act (1948).**
- **In 1988 the Act was extended to women working group of Economic Administration Reforms Commission.**
- **In 1995 the act was amended to expand the coverage to recognized medical termination of pregnancy and 2 weeks of paid leave for family planning operations.**
- **The Employees State Insurance Act (1948) also gave additional 1 week leave for pre-mature birth with 12 weeks of maternity Leave benefit.**

Right from its inception in 1961 the Maternity Benefits Act, till 1995 underwent numerous changes with expansion to whole of India. In spite of its mandatory nature it is not uniformly implemented all throughout the country. Increasingly, Indian employees have been facing variable challenges to claim the Maternity benefits and many have to knock the doors of courts to claim it. The employers are to be pressurized to give these paid leaves to their employees.

After 1995, in August 2016 the Maternity Benefit (Amendment) Bill was passed in upper house of India's Parliament.

The salient features of this bill are as under:-

1. Increase in duration of Maternity leave from 12 weeks to 26 weeks.
2. The said leave can be availed 8 weeks from date of expected delivery as against 6 weeks presently.
3. The Act is not applicable to women with 2 or more children.
4. The leave benefit is also extended to commissioning mothers (who uses her egg to create an embryo implanted in another as she herself is unable to do so due to medical reasons). The leave benefit is to be of 12 weeks duration in such cases.
5. The Act also makes provision of crèche facility mandatory for establishments with 50 or more employees.

Added Key Features of Amended Maternity leave

- a) Work from option for nursing mothers once the leave period is over.
- b) It is compulsory for any establishment with more than 50 employees to provide for crèche facility for women workforce with children needing this service.
- c) If this amendment is implemented successfully in India, then India will rank third next to Norway with 55 weeks and Canada with 52 weeks of leave.

III. Beneficiaries of Maternity Leave Benefit in India

Numerous reports state that number of female workforce is much less than men workforce which makes India to rank to rank 127th On World Gender inequality Index. In 2015 in International conference on gender inequality organized by UN women and Kerala Government concluded that 30.3% are working in India. Additionally WDI report of World Bank says that among the eight South East Asian countries India is 134th in Economic Participation Of Indian Women as compared to other 7 countries.

Only 10% of total approximately 60 crores of women are working in organized sector have access to the benefits of Paid Maternity leaves, while the majority of them belonging to unorganized sector do not come under the ambit of this law. In India large section of the unorganized sector

include waged workers or are contractual workers doing highly laborious and difficult work and the Maternity Benefit Act do not apply to them. As they are daily wage workers giving them such a long paid Maternity leave becomes huge expense for the employer. Pregnant employee is seen as a financial liability. This fixed mindset of employer is difficult to change even with this amended Maternity benefit Act. This fixed mindset of Indian employer is commonly seen across all sectors let it be Manufacturing, healthcare or Banking. They are not offered paid leaves for Maternity Period and some are made to resign if they ask for such benefits. There are very few cases where women fights back for her rights while many of them succumb to these pressures and leave their jobs resulting in high percentage of Maternity Attrition.

IV. Maternity leaves Benefits in Indian companies

Till date many of the Indian corporate sectors as well as Central Government and State Government departments have implemented the extended Maternity leave duration of 6 months. Still this is observed to be very miniscule in percentage. The few companies who have already accepted this law and implemented it are:-

- Star India announced 6months of paid maternity leave benefit to its employees with additional 6 months leave for childcare on half pay.
- Similarly many companies like Nestle, Kellogg's, Netflix, L'Oreal (India), Pepper fry, SBI, Flipkart-Myntra, Godrej, HCL (India), HUL, Accenture (India), Bharati Airtel, Genpact have already extended the Maternity leave duration for their female workforce. They also offer them additional benefits such as childcare facilities, telecommuting, work from home, precommute facility for expecting mothers from sixth month of pregnancy, Maternity insurance cover etc. and all these are given in variable percentage.

Though these companies are providing benefits still large section in Private sector companies don't even care to give 3 months maternity leave also. The most common sector to be affected by it is health care sector, software, manufacturing, Pharmaceutical industry etc.

V. Development of Maternity leave Benefits in Canada

The origin of Job protected Maternity leave goes back to more than 80 years ago in Canada. Around 30 years ago the federal Maternity benefit came under UI Act, while the Canadian collective agreement negotiated paid Maternity leave 20 years ago.

Before 1971 In Canada Maternity benefits were rare.

After that the major mile stones in the journey of Maternity Benefit in Canada are :-

- **Between 1971 and 1996 though the provisions were expanded but it was available to privileged employed class under UI Act. While lot many changes kept on happening for unemployed.**

- **The major change to this benefit happened in 2003 when 65% women with children of 1 year of age and less than that received parental or maternity benefits.**
- **As per the Provincial insurance plans Canadian Government has made it mandatory for maternity leave as well as benefits for Women workforce.**
- **The duration of Maternity leave ranges from 17 to 52 depending on length of employment history of new mothers.**
- **After the employee's stipulated leave period is over the job is to be given back to her at same rate before her leave she is to be paid along with the benefits.**
- **Along with the maternity benefit either one of the partner can avail the benefits, under which the father can avail 52 weeks of Parental leave. The choice is left to the parents of the new born child.**
- **The eligible candidates can get cash benefits of 55% of parent's weekly insurable wage maximally up to \$ 485/week.**
- **For low income group the benefit went up to 80% and maximally up to \$ 485/week.**

VI. Maternity leaves benefits in Canadian Companies

According to Canada's Top 100 Employers, annual guide for rating companies on offers of family benefits. The benefits offered by these companies are not only the extended 52 weeks of Maternity leave but additional parental benefits in form of flexible working hours, work from home facility, alternative work schedules and many more.

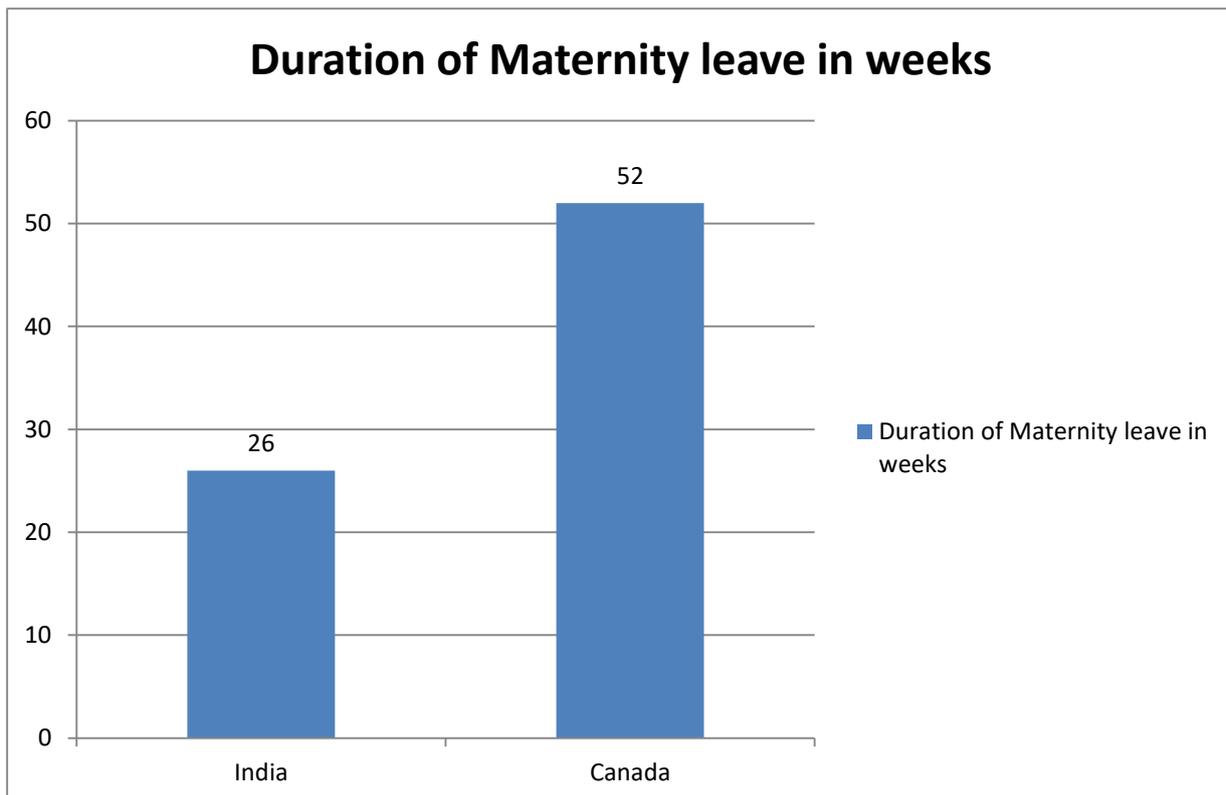
Among the top 20 companies following are the few who offer such benefits:-

- **AMAPCEO Public sector bargaining agent, Toronto,**
- **CATHOLIC CHILDREN'S AID SOCIETY of Toronto Provider of social services to protect children and families in need,**
- **,FARM CREDIT CANADA, Provides financial and management services to farmers and agriculture businesses across the country, Regina**
- **,GEORGE BROWN COLLEGE OF APPLIED ARTS AND TECHNOLOGY, Non-profit educational institution, Toronto**
- **JACQUE WHITFORD LIMITED Environmental consulting firm, Dartmouth, NS (with regional offices across Canada and the US)**
- **MCGILL UNIVERSITY Large university, Montreal**
- **NATIONAL ENERGY BOARD Independent federal agency regulates aspects of Canada's energy industry, Calgary.**

Most of the companies in Canada have implemented the extended leave benefit along with paid vacation option and parental leave benefit with extended duration for availing the leave till the child is 8 yrs of age.

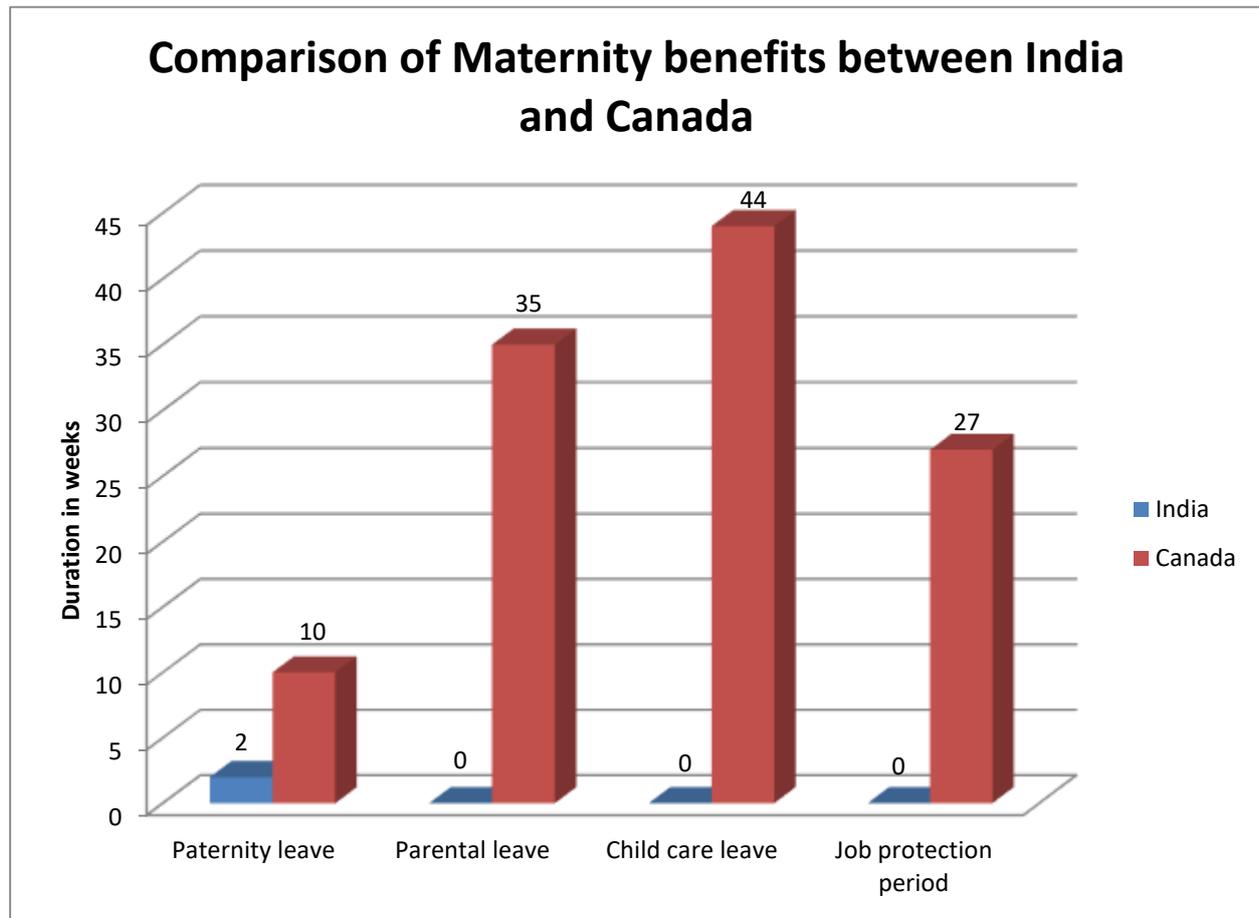
VII .Comparison of maternity leave benefits between India and Canada

Country	Duration of maternity leave
India	26 weeks
Canada	52 weeks



Comparison of maternity benefits between India and Canada

Country	Paternity leave	Parental leave benefit	Child care leave	Job protection period
INDIA	2 WEEKS	0	0	0
CANADA	10 WEEKS	35 WEEKS	44WEEKS	27 WEEKS



VIII. Key issues related to maternity leave benefits in India

- When compared with major countries giving maternity benefits to employees in India other than maternity leave, paternity leave no other benefits are available presently.
- Child care leave, job protection leave and combined parental leave as well as work from options for nursing mothers are not considered at all.
- The most important fact which needs to be considered is India has somewhere around 8-10 crores of women working in unorganised sector out of the 43 crore of total count. This sector does not access to the amended maternity leave duration.
- Job protection is the need of the hour as more women are involved at higher levels job position where skilled work force is required. Replacing a trained person proves to be costlier as compared to making efforts to retain the present employee by offering her benefits.
- The Indian workforce is increasing day by day in organised as well as unorganised sector with more women educating and changing social norms leading to identification of need of women to work in middle class as well as higher middle class families. As these women are educated, they are more aware about their rights. This has led to more court cases being filed if employer fails to give them their rightful leaves. The meticulous

maintainance of muster rolls and pay records makes things more easier. Usually legal experts are advising the employers to maintain such records to minimise the risk of penalties which is necessary both for the employee as well as employer.

- Comparing India's population with other countries where maternity policies are revised , referring to this even the women workforce is more in India as compared to these countries but the Maternity benefits is not extensive as these countries.
- The whole idea of extended maternity leave has a foundation which is focused on child development issues.A child needs mother around him not only initially but till 5 yrs of age and these days both parents are seen working so Parental leave and paternity leave are also needed. In Nuclear families of today's times the new mother can just expect her husband to help her with child care activities like sickness . The concept of Paternity leave is new to India. It is practically near to negligible i.e., 15 days.
- The Maternity Benefit Act does not provide any leave benefits to Single mothers, adopting mothers and even divorced mothers. The said benefit is onlyfor biological mothers.
- There is provision of visit to creche four times day and creche facilities to be provided by employers with employees more 50. Both of these benefits are seen in very few organisations.
- Unorganised sector not taken into consideration for extension as they don't come under ambit of Labour law.

IX.Conclusion and Recommendations

The careful observation of Maternity leave policies of various countries shows that India has to go a long way in matching those countries benefit counts. Though The Maternity Benefit Act 2016 (Ammended) mentions extended leave of 26 weeks to be implemented all throughout India, still few sectors need attention. There is a need to asses implementation standards .

Population of India is 133,89,44,980 and population of Canada is 3,65,48,657. Comparing the women workforce would be beneficial as more child bearing women workforce prevailing in our country would be benefitted if we make ammendments similar to Canada in our Maternity Benefit policies.

We intend to recommend few points for fruitful outcome of implementation of the maternity bill.

1. Maternity Benefit Laws in India are though formulated but are not fully understood well by the stake holders i.e. the women workforce .It's applicability is not fully understood, so there is no uniformity in its implementation. This has resulted in increased number of court cases in this context. Anyone who is involved in such cases is advised to do it under legal guidance.

2. The full duration can be divided with little increase in maternity leave, Paternity leave but also child care and extended leave till 5yrs. Of age can be considered. If not full pay half pay leave can be given for period more than 4 months
3. Job protection period which is not at all mentioned in the present bill, if implemented for maternity leave period may take care of attrition which is directly related to childcare difficulties faced by women work force due inadequate maternity leave.
4. Among other initiatives for women employees, availability of daycare facilities at or near office locations, stork parking at all locations, work from home or flexible hours if the nature of work permits, and shift timings and location of their choice for up to a year upon return from maternity leave are recommended..
5. Gender diversity is high in India extending the maternity leave will help to improve eco system of any organisation 's women employees and this would prove as an intial stepin balancing the divarsity. This might help women to strike a work -life balance.
6. Work from home options can be made easily available to nursing mothers beyond the maternity leave with variable pay rules as per the norms of the particular company.
7. A number of organizations have increased maternity leave to 26 weeks. This comes even before the government's stipulation. The reason behind such policies is to curb high attrition levels among women employees post maternity. By giving them higher flexibility, women employees would feel more at ease to come back to work under the new policy. Experts suggest three month maternity leave is not sufficient for women to come back to work post child birth.
8. When the particular candidate is on leave her work can be seen by some other members of the organisation with added compensation . The person can join back and take back her job provided she is on telecommuting upgradation programme all throughout her leave period.
9. Providing Paternity leave will indirectly help women employees as women attrition due to maternity leave will reduce, as they need not worry about child care as their spouses can manage that. This will give them achance to perform the at the workplace stress free with better performance . For a country like India this will be increasing women workforce for improving India's gender diversity. The larger impact would be a critical effect on national economy .

10. RECOMMENDATIONS FOR UNORGANISED SECTORS.

1. The maternity bill benefits are to be considered for unorganized sector too as 70 % of working force are under this sector. Our study also aims to suggest some recommendations for this sector as pregnant laborer is seen as a liability here!
2. Large proportion of these unorganized sector workers are daily wage labourers are especially construction workers, some mandatory rules can be made such as

provision of make shift collapsible temporary shelters for nursing breaks as well as for keeping the babies by the builders.

3. They are to be provided job protection with the above mentioned facilities when they come back for work.
4. As observed with other countries added benefits can be given to them under state government Insurance policy for e.g. ESIS schemes which is presently available for factory workers alone.
5. Low income groups should be covered under this which can benefit both mother and child keeping them healthy. The fitness of the new mother is important here as she is one of the bread earners.

References:

1. OECD Family database www.oecd.org/social/family/database.htm OECD - Social Policy Division - Directorate of Employment, Labour and Social Affairs.
2. Kathyreen Meehan , **Falling through the cracks: The law governing maternity and parental leave benefits** Ottawa Law Review. 35:2
3. Somali Cerise, Anna Eliseeva, Francesca Francavilla, Camila Mejia and Michele Tuccio ***How do maternity leave and discriminatory social norms relate to women's employment in developing countries?** OECD Development center 2013.
4. Mandira Kala,Prianika Rao,Legislative Brief, **The Maternity Benefits (Amendment) Bill, 2016** 27th October 2016 PRS Legislative Research New Delhi.
5. Shashi Bala, **Implementation of Maternity Benefit Act** NLI Research Studies series no. 099/2012 V.V. Giri National Labour Institute , Noida.