



International
Labour
Organization

Maternity protection in Bangladesh: Legal gaps and discriminatory practices

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► Why is maternity protection important?

Protects the health and safety of the mother and the child

Protects against economic vulnerability due to pregnancy and maternity

Is central to gender equality in employment

Maternity protection is set out by international labour standards

- ILO Convention on Social Security (Minimum Standards), Part VIII Maternity Benefit, 1952, (No.102)

C 102

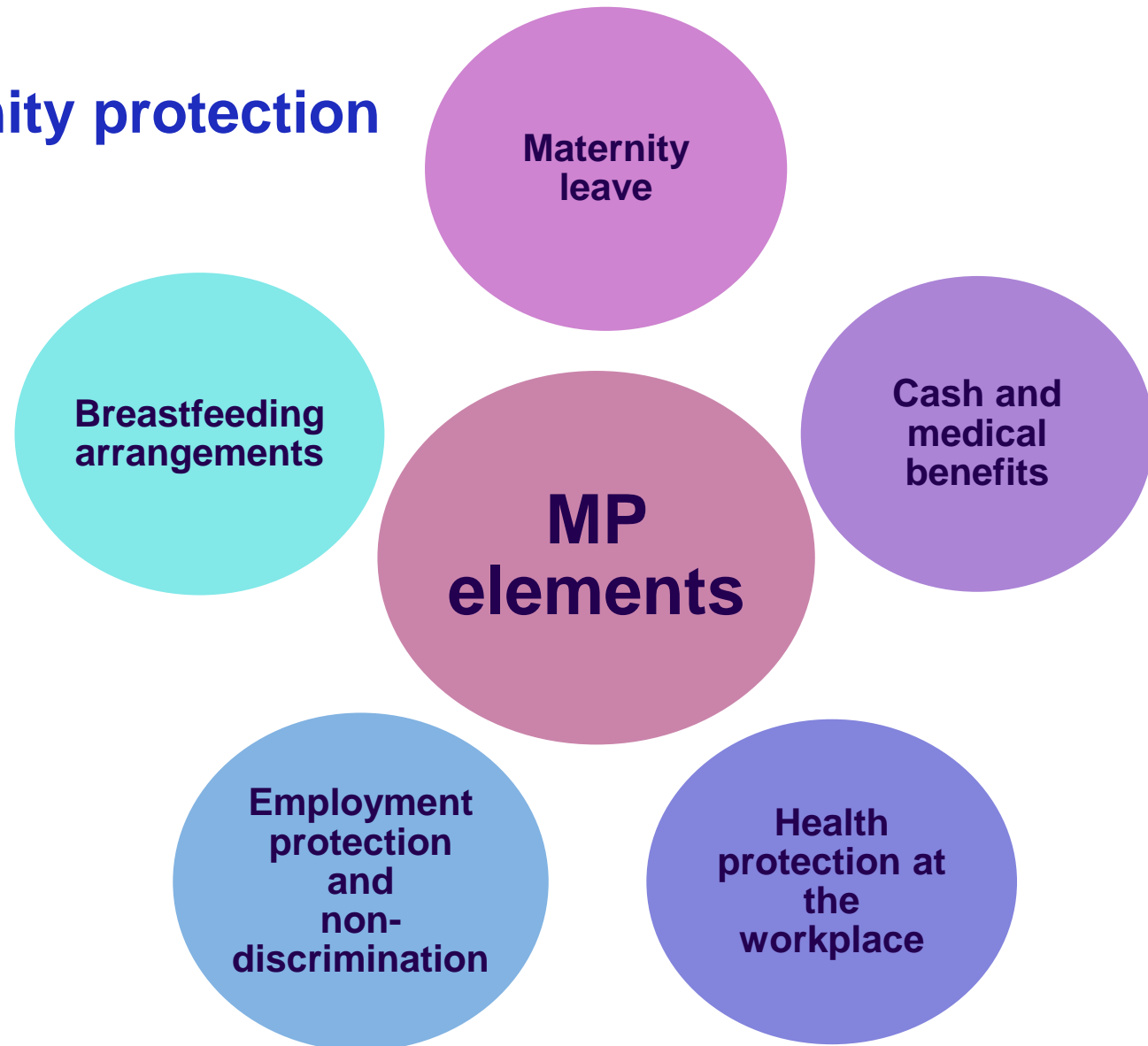
- ILO Convention on Maternity Protection, 2000 (No. 183)

C 183

- ILO Recommendation on Maternity Protection, 2000 (No. 191)

R 191

Core elements of maternity protection



► Beyond maternity: Coping with childcare

Workers with Family Responsibilities Convention and Recommendation, 1981 (No. 156 and No. 165)

Examples of measures

- Care services – childcare, elder care, services to reduce domestic tasks
- Leave policies – maternity leave, paternity leave, parental leave, emergency family leave, adoption leave
- Working time and organization – duration, part-time, flexitime, predictability
- Social security measures – allowances, tax-breaks, pension credits for caregivers
- Labour market reintegration policies – vocational training, job services, ‘stay-in touch’ programmes
- Services that lighten the load of unpaid work – canteens, piped water, labour-saving devices, public transport, rural roads, healthcare facilities

▶ Maternity benefits in Bangladesh

- ▶ MoWCA implements Maternity Allowance Programme for the Poor Mothers since 2007-08 with Tk 800 as a monthly allowance to beneficiaries.
- ▶ Another such initiative is the Allowances for Working Lactating Mothers, started in 2010-2011, this program is designed to support poor working lactating mothers.
- ▶ The improved version of the existing maternity allowance programme and lactating mother allowance programme is the Mother and Child Benefit Program (MCBP). An eligible poor woman is entitled to receive monthly Tk 800 for 36 months for a maximum of two children in her lifetime.
- ▶ The MoWCA, for instance, offers a small child grant known as the Maternal Allowance Program for Poor Lactating Mothers that reaches 100,000 families.
- ▶ the Maternal Health Voucher Scheme (MHVS) provides subsidies to target groups of women in need to enable them to buy specific healthcare services

► Maternity protection in Bangladesh: National Legal Framework

**Bangladesh Labor
Act 2006 (Chapter IV,
sections 45-50)**

**Bangladesh Labor
Rules 2015**

Along with national legal framework review, consultations held with workers, employers and civil society organization

► Maternity Leave

National legal and policy framework

- C183 mandates a minimum maternity leave period of 14 weeks
- The Bangladesh Labor Act provides 16 weeks of paid maternity leave of which 8 weeks have to be availed before the delivery and the rest of the 8 weeks to be availed following the delivery (s. 46)

Discriminatory practices and concerns

- Absence of provision for leave extension
- Divergence in maternity leave period
- Gaps in practice in obtaining leave
- Fixed distribution of maternity leave period

Maternity cash benefit

Areas	International Standard	National legal and policy framework
Cash Benefit	C 183- cash benefits should be at least two-thirds of a woman's previous earnings for a minimum of 14 weeks and should be paid throughout the entire duration of maternity leave	<ul style="list-style-type: none"> ▪ Bangladesh provides 16 weeks of paid maternity leave at a rate of 100 per cent of the previous earnings under the existing labour law. ▪ Bangladesh Labor Rules in 2022 introduced a new method of calculation reducing the actual benefit. ▪ Majority of the factories and establishments are actually following the calculation method introduced in the Rules as opposed to the statutory calculation method given under the BLA
Scope and coverage	C 183 includes in its scope all employed women, including women employed in informal and atypical forms of work	The scope of BLA is substantively narrow as it only applies to workers employed in the organized sectors whereas majority of women labor force in Bangladesh are employed in the informal sector including in domestic work.

Maternity cash benefit (Cont.)

Areas	International Standard	National legal and policy framework
Financing	C183- employers should not be individually liable for the cost of maternity benefits, and that benefits should be provided through compulsory social insurance or public funds, which are the pillars of social security	<ul style="list-style-type: none"> Under the BLA, in the absence of any social insurance scheme for maternity, the employer is the sole bearer for the full amount of liability when providing maternity benefits. National Social Insurance Scheme (NSIS) includes strategy for introducing maternity insurance; little progress has been made so far towards implementation of such a scheme
Eligibility requirements	C183- the sole prerequisite for a worker's right to maternity leave is the production of a certificate indicating the expected date of birth	<p>BLA includes a number of eligibility requirements-</p> <ul style="list-style-type: none"> a woman must be working under the employer for at least six months Immediately prior to the day of her delivery (Section 46). disqualifies a woman from obtaining maternity benefit if at the time of her pregnancy she has two or more surviving children (Section 46).

► Health Protection

International standards

- C183 - Pregnant or breastfeeding Workers should not be obliged to perform work that is hazardous, unhealthy or harmful to their health or that of their unborn or newborn child.
- A pregnant or nursing woman should not be obliged to do night work if a medical certificate declares such work to be incompatible with her pregnancy or nursing [Recommendation No. 191, Paragraph 6(4)]

National legal and policy framework

- There are no specifications in the BLA regarding occupational safety and health guidance for night work for pregnant or breastfeeding women, however,
- S. 45 contains provisions prohibiting work of arduous nature, long hours of standing or the one likely to adversely affect woman's health during her pregnancy

Employment Protection and Non- Discrimination

International standards

- ▶ Under C 183 Dismissal is prohibited only on grounds related to pregnancy, birth of a child and its consequences, or nursing.
- ▶ A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave without any discrimination.
- ▶ Such Measures shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment

National legal framework

- ▶ The labour law of Bangladesh does not explicitly protect women against dismissal during maternity but rather emphasizes the right to maternity benefits as entitlement even if the dismissal occurred. (s.50)

Discriminatory Practices

- ▶ Often women are either discouraged from pregnancies
- ▶ Offered special arrangements to temporarily terminate employment relationships for the period of maternity.
- ▶ Instead of dismissal workers are often asked to resign from their jobs when becoming pregnant in return for an “assurance” that they would be able to come back to their posts after the childbirth.
- ▶ Women are sometimes asked about their marital status and plans for pregnancy at the recruitment stage

► Breastfeeding Arrangements at Work

International standard

- C183- A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.
- C183 - These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

National legal framework

- The Bangladesh Labour Rules, 2015 (Rule 37) - The owner and other workers should have the responsibility towards a nursing mother to facilitate conducive environment for breastfeeding.
- (Rule 94) A separate and screen covered area must be kept preserved for the breastfeeding mothers in the children's room so that they can lactate their babies maintaining secrecy and modesty.

Discriminatory practices

- A specific space for breastfeeding is not always a reality,
- women workers sometimes report not being given an opportunity to breastfeed,
- There are complains about the behaviour of co-workers or supervisors towards pregnant women and breastfeeding mothers.
- Insufficient time allocated for nursing break

► **Balancing work and family responsibilities**

International standards

- Workers with Family Responsibilities Convention, 1981 (No. 156), and the Workers with Family Responsibilities Recommendation, 1981 (No. 165) address the issue of reconciliation of work and family responsibilities.
- Respect of equality of opportunity and treatment in employment and occupation between men and women with or without family responsibilities.
- Development and promotion of childcare and family services.

National legal framework

- In every establishment, where 40 (forty) or more female workers are ordinarily employed, one or more suitable rooms shall be provided and maintained for the use of their children who are under the age of 6 years (BLA 2006, section 94).
- Such rooms shall provide adequate accommodation, light and ventilation and shall be maintained in clean and sanitary condition
- Rooms shall be easily accessible to the mothers of the children

Discriminatory practices

- Commonly such facilities are unavailable.
- In some instances, it is reported that children's rooms, where available, are either in inconvenient for mothers' locations, such as the top floor of the building or exist only to be shown to buyers.
- Several respondents of the study highlighted that often designated childcare rooms in establishments remain locked, unused or are used as storerooms.

Recommendations

Maternity Leave

Allow flexibility in choosing leave period (before or after birth)

Allow for extension of statutory period of maternity leave on grounds such as, illness or medical complications

Extension of leave in case of childbirth that takes place earlier or later than the expected date of delivery

Amend the BLA provision regarding miscarriage to make it analogous to amended rules (4 weeks paid leave)

Cash and medical benefits

Remove new calculation method from BLR and review existing method

Review current eligibility criteria that disqualify workers from obtaining maternity benefit

► Recommendations (Cont.)

Health Protection

- Specifically prohibit employers, through incorporating provisions in the BLA, from requiring women to go through any pregnancy test or enquiring about their reproductive role or family plans during recruitment.
- Include specific provisions in the Rules mandating employers to develop protocols to be followed during recruitment of women workers and during any employer-facilitated medical examinations required for OSH purpose, so that women workers do not have to face maternity-based-discrimination.
- Include specific provision for occupational safety and health guidance on night work for pregnant or nursing workers.
- Include specific provision in the BLA allowing leave for a certain number of days to pregnant workers for prenatal medical checkups and treatments.
- Include employers' obligation in the BLA to conduct risk assessment in relation to the work of the pregnant or nursing workers upon notification of pregnancy. The law should also specify obligations of the employers to take protective measures when work involves risks and provide an alternative to the work.

Recommendations (Cont.)

Employment protection and non-discrimination

- ▶ Incorporate clear provision in the BLA, prohibiting all forms of discrimination on grounds enumerated in Convention 111
- ▶ Incorporate provisions that explicitly protect women against unlawful termination during maternity.
- ▶ Include a provision in the BLA specifically shifting the burden of proof on the employers where an order or termination or resignation is challenged as being a maternity-based-discrimination in a judicial or administrative proceeding.

Breastfeeding provisions

- ▶ Incorporate specific provisions regarding employers' liability to allocate time for nursing breaks into the BLA
- ▶ Include specific provision in the BLA requiring employers to provide an accessible and convenient space for breastfeeding for nursing mothers. At present this is only mentioned in the BLR

Balancing work and family responsibilities

- ▶ Amend the child-care related provision in the BLA making it obligatory for all factories to provide child-care facilities irrespective of the total number of women working at the factory.
- ▶ In case of large-scale factories, add provisions specifying such number of child-care facilities to be set up, as will be proportional to the number of women employed in that factory/establishment.

► Recommendations (Cont.)

Financing Maternity Benefits through Social Protection

- Initiate a contextual analysis on the current maternity protection provisions followed by a feasibility study on maternity- insurance scheme.
- Tripartite national level dialogues are essential to formulate a roadmap towards developing an effective maternity protection framework for both formal and informal workers.
- Conduct an in-depth legal review to propose outlines of an effective legal framework for establishing social insurance scheme particularly for maternity protection.
- Adopting policy measures to provide maternity cash benefits to informal workers through non-contributory social assistance programmes financed by public funds.
- Review the Domestic Workers Protection and Welfare Policy in 2015 and formulate action plans to implement it.



**Thank
You**