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## Critical Analysis of Maternity Benefit Act, 1961

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### Abstract

This paper provides the analysis of the Maternity benefit Act, 1961 which provides for the various benefits to be received by woman employees during course of her pregnancy. This act aim to curb the problem of lesser participation of woman in workplace because of her pregnancy and promote the motherhood by providing health care and nourishment which infant child requires during initial age. Another aim is to provide her the protection against the loss of job and to have source of income during the period when is enable to work it makes the woman independent. The paper also discusses the amendment made in Maternity benefit Act in 2017 which made significant changes to provide better benefits to woman and encourage women in employment. The most significant change is maternity leave increased form 12 weeks to 26 weeks The purpose behind increasing the number of leave is provide woman sufficient time to recover and spent time in child care. This paper also provide the critical analysis of the Maternity benefit Act such as for placing the full financial burden on the employer. Additionally, it says nothing regarding nursing breaks' time, accessibility, or regularity. In this paper I have also discussed the various judicial interpretation and decision of the court. Another important part of this paper is that it discusses the international perspective with respect to maternity laws. It compares the position of various other countries such as Singapore, Malaysia,

Indonesia etc. which provides a perspective as to where India stands globally with respect to Maternity benefits to woman.

**Keywords:** Maternity benefit Act, Maternity Leave, amendment, Social Security, Woman

### Introduction

Women make up a sizable portion of the workforce in the majority of developed nations today. In India, 23.6% of women who are 18 years of age or older work in the economy. Both the formal and informal sectors of the economy employ women who are also caring for young children and new-borns. In order to provide new parents and adoptive parents time off from work, maternity and family leave rules have been put in place. These laws are designed to assist workers in striking a balance between their job and family commitments. They are implemented to enhance family wellness and professional continuity. Maternity has traditionally been viewed as a condition that prevents women from working in any capacity during the few weeks leading up to and following childbirth. When wage labour became prevalent in industrial enterprises, many workers tended to terminate the employment of women workers when they discovered that being pregnant prevented them from carrying out their regular responsibilities. As a result, many female employees at this time had to take unpaid leaves in order to keep their jobs. Many other people experienced tremendous stress while pregnant, which was harmful to the health of both the mother and the unborn child. The idea of maternity benefits was developed to alleviate this hardship on female employees and to allow them to continue performing the societal role of childbearing and childrearing without suffering disproportionate health risks or pay losses. It seems sense that the federal and state governments would establish protective legislation to defend women who work in a variety of broad professional categories in connection to maternity and child care.

According to Article 42 of our Constitution, the State must establish reasonable and compassionate working conditions and maternity benefits. Maternity benefits are an essential component of a woman's employment since they give her the support she needs to think about establishing a family. The laws are in place to help parents after childbirth and during their recuperation period before returning to work. As they guarantee benefits in addition to the mother's job stability and compensation, they also provide peace of mind during this period. 80 nations worldwide offered paternity leave in addition to maternity leave in 2015. Maternity Benefits have a long history in India, where they are now implemented in the legal system. Although there is a centralised policy in India, many businesses use it as a starting point and may increase the benefits' length or compensation.

### Maternity Benefits legislation in India

India's early policy on maternity benefits was to limit benefits to working women in factories. It is clear that the act's primary goal was to protect the health and well-being of women employed in the then-formal sector. With the finding that they are not at risk for health problems in certain jobs, it made no exception for women working in agriculture or other unorganised areas of society. Additionally, it placed more of an emphasis on the mother's prenatal care than on the child's early care and development. However, the Bill placed the responsibility for providing maternity benefits on the government, making the case that the government, not specific companies, should be concerned about the wellbeing of its citizens.

In the Bombay Presidency of British India, the term "maternity benefits" or "maternity leave" is first used in the Indian government in 1928. According to our examination of the literature, Dr. Babasaheb Ambedkar vigorously promoted the concept of maternity benefits.

The Maternity Benefits Act of 1961 was passed by the Republic of India on December 12, 1961, following the country's independence. The statute included conditional benefits for pregnancy, delivery, and problems related to them, in conformity with the then-current international standards. The legislation covered a lot of area with meticulous precision and care paid to many aspects of considerations influencing maternity benefits, despite the fact that India was still a developing nation and in its 14th year of independence. The Maternity Benefit Act of 1961 is applicable to all factories, mines, plantations, and circuses in India, as well as any similar establishments owned by the government, with the exception of those establishments covered by the Employees' State Insurance Act of 1948. The Act also applies to stores and other commercial premises when 10 or more people are currently engaged or have previously been hired to conduct equestrian, acrobatic, or other displays. The Maternity Benefit Act of 1961 aims to provide working women with all the facilities in a dignified manner so that they can embrace motherhood honourably and peacefully without being deterred by the fear of being victimised for being absent without permission during the prenatal or postnatal period.

The statute was applicable to all businesses, including those that belonged to the government and those that hired individuals to do equestrian, acrobatic, and other acts for display in factories, mines, and plantations<sup>2134</sup>. Additionally, it applied to any store or business with ten or more employees. The Act requires the employee to refrain from hiring any knowing woman in any place for the six weeks immediately after the day of the employee's birth, miscarriage, or medical termination of pregnancy. During the six weeks immediately after the day of delivery or miscarriage, no woman shall work in any company. The employer shall not, without the consent of the employed woman, require such women to

<sup>2134</sup> Section 2 of the Maternity Benefit Act, 1961

perform any work that would have a negative impact on the pregnancy or the normal development of the foetus, or that would be likely to result in a miscarriage or have other harmful effects on the employee's health.

### ***Condition and Period of Maternity Benefit***

Only when a woman has really worked in an establishment of the employer from whom she claims maternity benefit for a length of time of at least eighty days in the twelve months immediately before the date of her expected birth is maternity benefit eligible for claim.<sup>2135</sup>

The maximum amount of time that any woman may get maternity benefits is twenty-six weeks, not including the eight weeks that come before the due date of her anticipated birth.<sup>2136</sup> In the event that a woman passes away within this time, the maternity benefit will only be paid for the days leading up to and including the day of her passing: The employer shall be liable for the maternity benefit for the entire period, but if the child also dies during the said period, then for the days up to and including the date of the child's death. This is provided that a woman who has given birth dies during delivery or during the period immediately following the date of her delivery for which she is entitled to the maternity benefit, leaving behind the child in either case.

The maximum amount of time a woman with two or more living children can get maternity benefits is twelve weeks, not including the six weeks leading up to her projected delivery date.

A woman who lawfully adopts a child under the age of three months or who serves as a commissioning mother is eligible to receive maternity benefits for a period of twelve weeks beginning on the day the child is given to the adopting mother or the commissioning mother, as applicable. If a woman's job requires her to work from home, the employer may permit her

to do so after she has claimed the maternity benefit for the time period and on the terms that the employer and the woman may mutually agreed upon.<sup>2137</sup>

### **Changes After Amendment**

The maternity benefit Amendment act was passed in 2016 and received the president's assent in 2017. The Amendment brings several changes to provide better benefits to women and encourage women in employment. Regarding the duration of leave, the amendment provides the woman 26 weeks of maternity leave and out of which not more than 8 weeks should be before the birth of the child unless there are two surviving children. The amendment brought a 17% increase in maternity leave for women as compared to previously. The purpose behind increasing the number of leave is to provide women sufficient time to recover and spend time in child care. Another major reason was the WHO recommendation which states that in order to reduce the child mortality rate, the mother must provide 24 weeks of breastfeeding to the child.

When a woman adopts a child below the age of 3 months, she is also entitled to 12 weeks of maternity leave. Another change was allowing the woman to work from home if there is a consensus reached between the woman and employer. Allowing work from home also depends on the nature of work she is engaged in. The amendment also provides that in case the establishment has employed more than 50, it shall provide creche facilities; the same could be provided either separately or as common facilities. The increase in maternity leave for women reduces the number of women leaving the workplace because they were not getting sufficient leaves. After the Amendment, India became a third country after Canada and Norway in providing better maternity benefits to women. However, there were no changes brought with respect to remuneration and job protection.

<sup>2135</sup> Section 5 (2) of the Act 1961

<sup>2136</sup> Section 5 (2) of the Act 1961

<sup>2137</sup> the Maternity Benefit (Amendment) Act 2017

### Judicial Pronouncement

- **Municipal Corporation of Delhi V. Female Workers**<sup>2138</sup>

In this case, the Supreme Court ruled that nothing in the Act grants the advantage of maternity leave to just regular female workers and excludes other female employees who are engaged on a casual basis or on a muster roll basis in daily earnings. The most natural thing in a woman's life is to have children. Whatever is required to make it easier for a working woman to give birth to a child, the employer must be sympathetic and considerate of her needs. They must also be aware of the physical challenges a working woman would face in carrying out her duties at the workplace while carrying a baby in the womb or while rearing the child after birth. The Maternity Benefit Act of 1961 intends to give all these advantages to a working woman in a dignified manner so that she may successfully navigate parenthood without being deterred by the fear of being persecuted for being absent for an extended length of time before or after childbirth.

- **J. Sharmila V. The Secretary to Government, Edu. Deptt.**<sup>2139</sup>

The petitioner had twins at her first birth, and a single kid on her second. Consequently, the maternity leave was limited to the delivery of the second child and was not dependent on the standard for the third child. According to the court, it is sufficient to say that if the State government wants to provide protection for the woman at her second birth, it shouldn't be based on how many children she has throughout those two pregnancies. The importance must only be viewed from the perspective of the health of the female government employee, not from the perspective of how many children are delivered at each delivery. The importance must be viewed only from the perspective of the women government

employees' health, rather than the quantity of children delivered at each delivery. The petitioner is entitled to be paid her entire wage for the duration she took maternity leave during her second pregnancy.

- **B. Shah V. Presiding Officer, Labour Court Coimbatore**<sup>2140</sup>

The Maternity Benefit Act of 1961, which is intended to achieve the goal of ensuring social justice to female employees employed in the plantation and which squarely falls within the ambit of Article 42 of the Constitution, is one such beneficial piece of legislation that the Supreme Court noted must be kept in mind when interpreting its provisions. The beneficent rule of construction that would enable would enable the interpretation of the law to be favorable to the purpose of ensuring social justice to female employees in the plantation, the court stated.

### Criticism

The Maternity Benefit Act of India has long been criticised for placing the full financial burden on the employer. Maternity benefits and the indirect cost of training temporary workers for the period must be covered by the employer. After the change, the employer will incur additional costs for providing childcare services in addition to increasing costs from the prolonged maternity leave. The law makes it easier for pregnant women to be discriminated against. Employers may discriminate against women, and especially women of childbearing age, in order to save future maternity benefit expenditures. Even if young women are hired, their pay may be reduced as businesses make up for greater lifetime expenditures. It is unclear if the legislation applies to women who work in the unorganised sector because the statute's application has not changed. Paternity benefits are not mentioned in the statute. If the father is

<sup>2138</sup> 2000 SCC(L&S) 331

<sup>2139</sup> W.P. (MD) No 13555 of 2009.

<sup>2140</sup> AIR 1978 SC 12

permitted to visit the child care facility during business hours is not specified. It is unclear whether there will be any paternity leave. According to a poll of 300 employees across 10 industries, although major organisations will promote recruiting women to meet diversity objectives, smaller organisations will pull down hiring women to save money. The research estimates that throughout the first four years of the act's implementation, the attrition rate for jobs connected to child raising will decrease from 56% to 33%. According to reports, over the next four years, there would be a loss of roughly 11 lakh employment for women. The legislation is ambiguous regarding the scope of employee access to childcare services. Additionally, it says nothing regarding nursing breaks' length, accessibility, or regularity.

The amendment increase the maternity leave from 12 to 26 weeks. However, mothers who have two or more living children are exempt from this extension of maternity leave. These women will be eligible for a 12-week leave. According to the administration, the legislation aims to increase the length of maternity leave to 26 weeks in order to ensure that the kid receives maternal care throughout the early years of life. The importance of such early care for a child's growth and development has also been recognised. If enough maternity leave is not provided in the case of a third born child, this goal risked being lost. Currently, regardless of the number of prior children, the 1961 Act requires all women to take a minimum of 12 weeks of maternity leave. There are already several labour regulations that offer maternity benefits to women in various industries. The coverage, advantages, and methods used to finance the benefits of these legislation vary. Recommendations for the modernization of different labour regulations regarding the provision of social security, including maternity benefits, came from the Second National Commission on Labour in 2002.

### International Perspective

- **Malaysia**

According to The Employment Act of 1955, a woman in Malaysia is entitled to 60 days of fully paid maternity leave as long as she has worked for at least 90 days in the four months prior to beginning her leave. At least four months must pass before the maturity before the employer learns. The pregnant mother is eligible to more than two months of statutory leave in the following situations.

Bank employees and other state government workers are eligible for up to 90 days of paid maternity leave.

Some large corporations provide maternity leave that is even longer than 90 days.

Some businesses permit employees to leave without pay for more than 90 days.

It always relies on the employer and, thus, the work contract. It's important to remember that maternity benefits typically only apply to the first five children; no leave of absence is offered for the birth of the sixth and subsequent children.<sup>2141</sup>

- **Philippines**

maternity benefits have just been increased from 60 to 150 days according to a new law known as Republic Act no. 11210. No matter the legality or civil status of the child, a miscarriage, or any other circumstance, the legislation is applicable to any or all employees in the public as well as private sectors, including those in the informal economy. The following benefits are provided to the employees: Paid maternity leave is available to any or all working mothers; Private sector employees receive their full payment within 30 days of submitting a request for leave;

<sup>2141</sup> Malaysia Employment Act 1955.

Employees may extend their leave by up to 30 days by notifying their employer 45 days before it ends.<sup>2142</sup>

- **Singapore**

It has strict maternity regulations. Depending on the child's citizenship and the woman's marital status, it varies. The mother does not receive all of the advantages of the act if the kid is not a Singaporean citizen. According to Singapore's Ministry of Manpower, the mother must meet the following criteria in order to be eligible for the entire 16 weeks of paid maternity leave: The mother must be lawfully married to the kid's father, the child must be a Singaporean citizen, and the mother must have worked for the employer or been self-employed for at least three months prior to the child's birth.

Before taking maternity leave, an employee must provide their employer at least one week's notice and notify them as soon as feasible of the impending delivery. Otherwise, unless they have a good cause not to deliver the notice on time, the employer may grant half of the whole sum.<sup>2143</sup>

- **Indonesia**

maternity benefits include access to health care both before and after birth. It is offered in accordance with Social Security Law stipulations. The following advantages are provided to the staff: The female employee will still be entitled to maternity benefit even if she dies after or during the delivery. The employer is required to pay cash benefits equivalent to the monthly wage for a period of 12 weeks, six weeks before confinement, and six weeks after. No restrictions are made regarding the work or contribution requirements for receiving maternity

benefits. This is a significant disadvantage since the company must pay benefits whether the woman gives birth within the first month of employment or not.<sup>2144</sup>

### Recommendation

Corporate entities with more than 50 workers, more than 20 female employees, or 50 employees overall should maintain a Maternity Benefits fund or reserve. This will lower the employers' present capital expenditure burden. To cut down on capital costs, daycare or crèche facilities might be integrated into the employers' building. If not, they can be outsourced and mothers can still get the same benefits under the Act. The statute states that it is applicable in all institutions, however due to a lack of knowledge and government outreach, this is not always the case. It's critical to support campaigns and communication initiatives that enlighten women about their entitlement to paid maternity leave in order to increase their involvement in the formal and unofficial labour markets.

The government may establish a Social Security Scheme or a comparable law that would allow both the husband and the wife to make payroll deductions for maternity insurance premiums. Both the National Pension Scheme and the Atal Pension Yojana are programmes that the Indian government is currently managing. Additionally, this law may have a tribunal where expectant workers can file complaints and have their problems resolved. This might aid in tracking any infringements of the same. Because of the financial independence that paid job gives women, it also gives them options when faced with violent conduct at home. Although it might be a result of financial stress, imbalances, or neediness, work drive investment is considered as not being fundamentally beneficial since it can place a double burden of labour on women

<sup>2142</sup> the Republic Act No. 11210 of Government of Philippines.

<sup>2143</sup> Child Development Co-Savings Act And Employment Act of Singapore

<sup>2144</sup> the Labour Protection Act, B.E. 2541, 1998



who are responsible for all domestic duties in the family. In this sense, corporate perks, especially maternity benefits, are important additions to women's paid labour. Maternity leave can create a space that improves a woman worker's capacity to balance work and family obligations.

The current situation shows that many firms and organisations bear a significant portion of the cost of maternity benefits. Therefore, maternity benefits actually show to be a barrier or a disadvantage to hiring women since they place a large financial burden on businesses, rather than being a benefit that encourages women to enter the workforce. A structure that divides the payment between the government, the employer of the father, and the employer of the female employee who is expecting, adopting, or commissioning a child would be the answer. Because the payment of the maternity benefit would be split with the employer of the expectant father as well, firms would no longer see hiring women employees as a hardship. This would greatly reduce the stereotype that women's employment is more expensive and time-consuming and will also help to ensure that men and women are treated equally in the workplace. Indian women's issues are distinctive. They deal with entrenched preconceptions in interpersonal interactions. In marriage, they often do not have an equal standing. There is still a widespread dowry system. Simply said, they get the short end of the stick due to their gender alone. Making clear that these rules are meant to advance women to parity with men and promote gender equality is the key to finding a solution. Their goal is to advance society and promote economic growth. They just want to dispel negative perceptions that are deeply rooted and promote equality in accordance with article 14 of the Indian Constitution, without being prejudiced to males.

### Conclusion

In order to successfully balance work and family obligations after the birth of a child, maternity leave regulations are crucial for new families

and much more so for new moms. The fundamental issues surrounding the use of leave, effects on women's experiences in the labor market, affects on child welfare, and effects on employers are discussed in this overview of the current research. India's current legal framework complies with international organizations' recommendations regarding both labor and child care conventions. Laws governing leave are sensitive; if they are only in place for a short time, they may cause health issues and deter women from entering the labor. Additionally, if provided for too long, it may harm their career. aid for women who are employed in the sense that they are not unable to do their jobs throughout pregnancy. Whatever the case, it is important to consider the Act's shortcomings. In the beginning, the length of leave must be determined with a particular purpose in mind, allowing a mother to fully recover and nurture her newly conceived child. In this, it is important to consider things like the rise in typically relationship partnerships, nuclear families, and growing urbanization while extending the postnatal time. It was mandated during the 44th Indian Labor Conference, which took place in February 2012, that the Maternity Benefit Act's current 12-week limit on maternity leave be increased to 24-weeks.

The crucial questions surrounding the act remain unanswered and offer room for additional research. After the amendment in 2017, analysis of the act's long-term effects on small businesses and large multinational corporations is still pending. The long-term effects of the amendment on infant mortality in the nation are still unknown because it is so recent. It is necessary to conduct in-depth research on how the act will affect women working in the unorganized sector.