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## THE NEW HORIZONS OF MATERNITY BENEFITS IN INDIA: IT'S IMPACT ON THE EMPLOYABILITY OF WOMEN WORKERS

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### ABSTRACT

In a progressive society, it has been slowly acknowledged that women, alongside men, play a crucial role in the country's prosperity and in improving the standard of living. There has been evidence of significant change in the status of women through their increasing participation in the labour market, although the focus on their social protection and social security remains uncertain and inadequate. The common phenomenon behind this societal mindset is the view of women as housewives, caregivers, mothers, and secondary contributors to household tasks. However, the time has arrived to transform this traditional societal view. The government of India, to promote gender neutrality, has enacted several laws that provide employment benefits such as wage advantages, improved working conditions, maternity benefits, and social security. Maternity benefits serve as facilitators that are believed to cultivate an environment that helps enhance a woman worker's ability to balance work and family responsibilities.

**KEY WORDS** – Social Security, Maternity, Informal/Formal Sector, Social Safety Net, Social Justice, Welfare State.

### INTRODUCTION

Nature has designed women to bear children to ensure the continuation of generations. The act of bearing a child is not only a family obligation but also a social duty for a married woman, and an employed married woman cannot be exempt from this responsibility. Thus, maternity is inescapable. Historically, maternity has been perceived as a state of incapacity for women workers, preventing them from engaging in any work during the weeks just before and just after childbirth<sup>805</sup>. With the rise of wage labour in industrial settings, many employers tended to dismiss women workers when they perceived that maternity disrupted their ability to perform regular duties. Consequently, many women workers had to take unpaid leave during this period to maintain their jobs. Numerous others

faced significant stress to uphold their productivity during pregnancy, which posed risks to the health of both the mother and the child. To alleviate this burden on women workers, the idea of maternity benefits was introduced to allow them to fulfill the social roles of childbearing and raising without excessive pressure on their health and loss of income. Given the substantial number of women in various occupations, it was only natural for protective legislation concerning maternity and children to be enacted by both central and state

governments. Article 42 of our Constitution includes the directive that the State shall ensure just and humane working conditions and provide maternity benefits.

#### 1.1. THE MATERNITY BENEFIT ACT, 1961

The Maternity Benefit Act 1961 extends to the whole of India and applies to every factory,

<sup>805</sup>Bala Shashi, Implementation of Maternity Benefit Act, V.V. Giri National Labour Institute, 2012, p. 2.

mine, plantation & circus industry including any such establishment belonging to government but excluding the entire establishment covered under the provisions of the Employees' State Insurance Act, 1948. The Act also applies to shops & commercial establishments in which 10 or more persons are employed or were employed for the exhibition of equestrian, acrobatic and other performance.<sup>806</sup>

In **Municipal Corporation of Delhi V. Female Workers (Muster Roll)**, the Apex Court held that "The Maternity Benefit Act, 1961 aims to provide all the facilities to a working women in a dignified manner, so that she may overcome, the state of motherhood honorably, peacefully, undeterred by the fear of being victimized for forced absence during the pre or postnatal period"<sup>807</sup>

### 1.1.1. BENEFITS COVERED UNDER THE ACT OF 1961

The Act establishes a duty for the employer not to employ a woman worker knowingly in any workplace during the six weeks immediately after the day of her delivery or her miscarriage or medical termination of pregnancy. No woman shall be permitted to work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. Upon a request from the employed woman, the employer shall not require such women to perform any work-

- that adversely impacts her pregnancy or the normal growth of the foetus or
- any work that may lead to her miscarriage or otherwise negatively affect her health.<sup>808</sup>

Every woman shall be entitled to, and her employer shall be responsible for, the payment of maternity benefits at the rate of the average daily wage for the duration of her actual absence, which includes:

- the time immediately before the day of her delivery,

- the actual day of her delivery and any time immediately subsequent to that day.

### 1.1.2. CONDITIONS FOR CLAIMING MATERNITY BENEFIT

Maternity benefit may be claimed only when a woman has genuinely worked in a workplace of the employer from whom she seeks maternity benefit, for a duration of at least eighty days within the twelve months directly before the date of her anticipated delivery.<sup>809</sup>

### 1.1.3. PERIOD OF MATERNITY BENEFIT

The maximum period for which any women shall be entitled to maternity benefit shall be twenty-six week of which not more than eight weeks shall precede the date of her expected delivery.<sup>810</sup> Provided further that if a woman passes away during this timeframe, the maternity benefit shall be given only for the days leading up to and including her day of death: Provided also that if a woman, having given birth to a child, dies during the process of delivery or during the immediate period following her delivery for which she is entitled to the maternity benefit, leaving behind the child in either case, the employer shall be responsible for the maternity benefit for that entire duration; however, if the child also passes away during this period, then the benefit shall only cover the days leading up to and including the child's death.

After subsection (3), the following provision shall be added, namely: "Provided that the maximum period for which a woman with two or more surviving children is entitled to maternity benefit shall be twelve weeks, of which no more than six weeks shall precede the expected date of her delivery"

Subsection (4) states that a woman who legally adopts a child under the age of three months or a commissioning mother shall be entitled to maternity benefits for a duration of twelve

<sup>806</sup> Section 2 of the Maternity Benefit Act, 1961

<sup>807</sup> 2000 IIJ 846 (SC)

<sup>808</sup> Section 4 of the Maternity Benefit Act, 1961

<sup>809</sup> Section 5 (2) of the Act 1961

<sup>810</sup> Section 5 (3) Amended by the Maternity Benefit (Amendment) Act 2017



weeks from the date the child is given to the adopting mother or the commissioning mother, as applicable.

Subsection (5) states that in cases where the type of work assigned to a woman allows her to work from home, the employer may permit her to do so after utilizing the maternity benefit for such a duration and under such conditions as the employer and the woman may mutually agree.<sup>811</sup>

The Maternity Benefit Act 1961 has highlighted the importance of providing a medical bonus payment to the beneficiary from her employer up to 1000 rupees if the employer does not offer pre-natal confinement and post-natal care at no cost. The central government has increased the medical bonus amount to 20,000 rupees by the Central Government.<sup>812</sup> The woman is entitled to take leave with pay in the event of a miscarriage or any complications arising during pregnancy.<sup>813</sup> Upon proof of any illness caused by pregnancy, the beneficiary is granted an additional leave with wages for a period of 30 days.<sup>814</sup> After returning to work, the mother is entitled to a rest interval and allowed two breaks to breastfeed the child until the child reaches the age of 15 months.<sup>815</sup> Establishments with fifty or more female workers are required to provide a 'crèche' facility in convenient locations.<sup>816</sup> Upon providing proof, women are entitled to leave with wages for a Tubectomy operation.<sup>817</sup> The Act states that it is unlawful for an employer to discharge or dismiss a pregnant woman during her absence or because of it, or to give notice of discharge or dismissal on a day when the notice will end during that absence, or to alter any condition of her service<sup>818</sup> to her disadvantage. The Act specifies that no wage deductions are permitted due to

light work assigned to pregnant women and breaks for breastfeeding the child.<sup>819</sup>

## 1.2. NATIONAL MATERNITY BENEFIT SCHEME

Under NMBS, financial assistance of Rs. 500/- is given to women from households below the poverty line who are 19 years old and above, for their first two live births; it includes both pre-delivery and post-delivery payments. The scheme has been in effect since 1995. The purpose of the scheme is to provide financial support to vulnerable women during their pregnancy, and in the event of the child's death, the women can still receive the benefits. To enhance its effectiveness and reach, the National Maternity Benefit Scheme (NBMS) was revised and renamed as "Janani Suraksha Yojana" (JSY)<sup>820</sup>

## 1.3. JANANI SURAKSHA YOJANA

In 2005, the National Rural Health Mission launched a centrally funded initiative known as Janani Suraksha Yojana, aiming primarily to decrease maternal and neonatal mortality rates by encouraging institutional births among women from vulnerable segments of society. The program categorizes states into low-performing states (LPS) and high-performing states (HPS) based on the level of institutional deliveries before the program began. The Janani Suraksha Program incorporated frontline health workers, referred to as Accredited Social Health Activists (ASHAs). Financial support is provided to the chosen target beneficiaries for delivery and post-delivery care.<sup>821</sup>

## 1.3. VANDE MATARAM SCHEME

This is an optional program through which any obstetric and gynecological society in India and private clinics can offer their services for safe motherhood. The goal of the program is to decrease maternal mortality and morbidity among pregnant and expecting mothers by engaging and

<sup>811</sup> As per the Maternity Benefit (Amendment) Act 2017

<sup>812</sup> Section 8 of the Maternity Benefit (Amendment) Act 2008

<sup>813</sup> Section 9 of the Maternity Benefit Act 1961

<sup>814</sup> Section 10 of the Maternity Benefit Act 1961

<sup>815</sup> Section 11 of the Maternity benefit Act 1961

<sup>816</sup> Section 11A of the Maternity benefit Act 1961

<sup>817</sup> Section 9A of the Maternity benefit Act 1961

<sup>818</sup> Section 12 of the Maternity benefit Act 1961

<sup>819</sup> Section 13 of the Maternity benefit Act 1961

<sup>820</sup> National Maternity Benefit Scheme, available at [www.planningcommission.nic.in/se/report...](http://www.planningcommission.nic.in/se/report...)

<sup>821</sup> Janani Suraksha Yojana, Available at <https://nhm.gov.in/index1.php?lang=1&level=3&lid=309&sublinkid=841>

utilizing the extensive resources of specialists and trained personnel available in the private sector. The program aims to offer complimentary antenatal and postnatal check-ups, counseling on nutrition, and breastfeeding through public-private partnerships, among other services.<sup>822</sup>

#### 1.4. PRADHAN MANTRI MATRU VANDANA YOJANA

Pradhan Mantri Matru Vandana Yojana is a maternity benefit program launched by the Indian government starting in 2017 to offer a cash incentive of 5000 rupees to pregnant women and nursing mothers. The Yojana aims to provide partial compensation for wage loss in the form of financial support so that the woman can have sufficient time to rest before and after the birth of her first living child. The benefits under this scheme are not available to women who are regularly employed by the Central/State Government or Public Sector Undertakings (PSUs) or those who receive comparable benefits under any legislation.<sup>823</sup>

#### 1.5. PRADHAN MANTRI SURAKSHIT MATRITVA ABHIYAN

The Indian government launches the Pradhan Mantri Surakshit Matritva Abhiyan to guarantee quality antenatal care (a form of preventive healthcare) for pregnant women in the country. Through the Abhiyan, a basic set of preventive healthcare services will be provided to the beneficiaries on the 9th day of each month at the Pradhan Mantri Surakshit Matritva Clinics to encourage healthy lifestyles that are advantageous for both mother and child.<sup>824</sup>

## 2. ADVERSE IMPACT OF THE MATERNITY BENEFIT (AMENDMENT) ACT 2017 ON

### EMPLOYABILITY

- Seeing women workers as a burden- Many of the employers in private firms may avoid giving jobs to such women who may enter into pregnancy period as they are under an obligation to grant them maternity leave and payment for that period (upto 26 weeks). After the amendment many of employers takes the women employee as a burden.
- Increase in costs of production- A sole responsibility of employer for full payment of wages during the specified period increase costs for employers.
- The amendment creates a financial apprehension in the minds of employer's, it could result in increased preference for hiring male workers.
- Loses due to enhanced maternity leave with benefits to industries engaging predominately women workers.
- Reduces the employment opportunities for women workers, employers are either not very keen on hiring female workers or they are being asked to leave just before maternity to avoid additional liability.<sup>825</sup>

### 3. JUDICIAL RESPONSE

The judiciary has played a vital role for ensuring maternity benefits to the women in India by giving interpretation to true intention of legislations and schemes.

In **B. Shah V. Presiding Officer, Labour Court Coimbatore**,<sup>826</sup> The Supreme court regarding

<sup>822</sup> Vande Mataram Scheme, Available at <https://www.telegraphindia.com/india/maternity-scheme-unveiled/cid/775081>

<sup>823</sup> Pradhan Mantri Surakshit Matritva Abhiyan, Maternal Health Division, Ministry of Health and Family Welfare, GOI, Available at [https://pmsma.nhp.gov.in/wp-content/uploads/2016/09/Pradhan\\_Mantri\\_Surakshit\\_Matritva\\_Abhiyan-2.pdf](https://pmsma.nhp.gov.in/wp-content/uploads/2016/09/Pradhan_Mantri_Surakshit_Matritva_Abhiyan-2.pdf)

<sup>824</sup> Pradhan Mantri Surakshit Matritva Abhiyan, Maternal Health Division, Ministry of Health and Family Welfare, GOI, Available at [https://pmsma.nhp.gov.in/wp-content/uploads/2016/09/Pradhan\\_Mantri\\_Surakshit\\_Matritva\\_Abhiyan-2.pdf](https://pmsma.nhp.gov.in/wp-content/uploads/2016/09/Pradhan_Mantri_Surakshit_Matritva_Abhiyan-2.pdf)

<sup>825</sup> Koneru anuradha, The Maternity Benefit (Amendment) Act 2017 A Big and Positive Step towards Improvement in Securing, <http://www.legalserviceindia.com/legal/article-176-the-maternity-benefit-amendment-act-2017-a-big-and-p..>

<sup>826</sup> AIR 1978 SC 12

the significance of maternity benefit to woman employees observed that it has to her kept in mind that in interpreting the provision of beneficial pieces of legislation like Maternity Benefit Act, 1961 which is intended to achieve the object of ensuring social justice to female employee employed in the plantation and which squarely fall within the purview of Article 42 of the Constitution, the beneficent rule of construction which would enable the woman employee not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output has to be adopted by the Court.

**In Municipal Corporation of Delhi V. Female Workers (Muster Roll) and another,**<sup>827</sup> in this case the Supreme Court held that there is nothing in the Act which entitles only regular woman employees to the benefit of maternity leave and not to other female employees who are employed on casual basis or on the muster roll in daily wages basis. To become a mother is most natural phenomenon in the life of a woman. Whatever is needed to facilitated the birth of a child to a women who is in service, the employer has to be considerate and sympathetic towards her must realize the physical difficulties which a working women would face in doing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honorably, peaceably, undeterred by the fear of being victimized for forced absence during the pre or post natal period.

**In Mrs. Savita Ahuja V. State of Haryana & others,**<sup>828</sup> The Hon'ble court held that merely because the appointment of the petitioner was purely on temporary/adhoc basis, she should not be disentitled to maternity leave. She is entitled to grant of maternity leave on full pay

for the period of confinement & that termination of her service on account of her pregnancy was illegal. Therefore maternity leave also be granted to such female government employees who have been recruited on ad-hoc basis.

**In J. Sharmila V. The Secretary to Government, Edu. Dept. Madras,**<sup>829</sup> The questions raised in the writ petition was that whether a married woman Government servant is entitled to get fully paid towards maternity leave availed if she has already two surviving children? The petitioner had delivered during her first delivery twins and the second delivery was a single child. Therefore, the maternity leave was confined only to the second delivery and not based on the third child norm. The court held that it is suffice to state that if the intention of the State government is to afford protection of the woman for her second delivery, then it should not be based upon the number of children she delivers during those two deliveries. The importance has to be seen only from the health point of the women Government servant and not the numbers of children one delivers during each delivery. The petitioner who had availed maternity leave during her second pregnancy is entitled to he paid full salary for the period.

**In K.C Chandrika V. Indian Red Cross Society,**<sup>830</sup> the post of the petitioner as appointed by the Red Cross Society as a clerk is temporary in nature but is likely to continue. The petitioner applied for maternity leave and the same is granted to her by the respondent. The duration of the leave was three months. While on leave, the petitioner was surprised to receive a communication from the respondents wherein it was stated that her services stood terminated. The question for determination was that whether termination of services of K. Chandrika is illegal. After taking into consideration all the relevant facts the Hon'ble court held that the respondent is directed to reinstate the petitioner in service with continuity of service for the purpose of computation of

<sup>827</sup> 2000 SCC(L&S) 331

<sup>828</sup> 1998 (1) SLR 735

<sup>829</sup> W.P. (MD) No 13555 of 2009.

<sup>830</sup> 131 (2006) DLT 585



service benefits. So far as the grant of back wages in concerned, the workman may be called up to do a sacrifice which would be purely in public interest & therefore deserves to be paid wages.

**In Smt. Archana Panedy V. State of M.P & others,**<sup>831</sup> the question in issue was that the petitioners a contractual employee is entitled to get the benefit of maternity leave. High court after taking into consideration the various judgment opined that when it comes to granting her the benefit of facilities required to give birth to a child the employer is duty bound under the Constitution to provide her all the amenities and that the Court see no reason as to why the benefit of Maternity Benefit Act should not be given to a woman contractual employee. The respondents are directed to grant maternity benefit to the petitioner.

#### 4. CONCLUSION AND SUGGESTION

To offer maternity benefits represents a crucial aspect of legislation/schemes that provides employment, health, and economic security to a pregnant worker. Enhancing maternity benefits is a positive move, yet the government should develop a plan to implement an effective system that aims to ensure the benefits for employers, so that the competitiveness of the private sector is not compromised by imposing a burden on the entrepreneur. Recently, to alleviate the sole burden on employers, the government of India proposed to fund half of the paid leave amount that employers provide under the extended maternity leave benefit scheme. This proposal is currently awaiting approval. According to the proposal, the government is prepared to cover the salary for seven weeks of extended leave under maternity benefits. Besides the positive aspects of various schemes and legislation related to maternity benefits<sup>832</sup>, it is also plagued by certain drawbacks, which include –

- Under the Maternity Benefit Act, 1961, benefits are only accessible to the majority of women workers employed in the organized sector. In India, merely 4 percent of women from the overall female workforce are engaged in the formal sector. Once a woman becomes pregnant, she is perceived as a burden. The Act favours workers in the formal labour force.
- The Act does not allow for paternity leave, placing the responsibility of the newborn's upbringing solely on the mother. The inclusion of paternity leave is deemed necessary to establish a system through which a balance can be struck to fulfill the responsibilities.
- The duration of paid maternity leave is discriminatory; for biological mothers, it is 26 weeks, whereas for adopting and commissioning mothers, it is only 12 weeks. It is crucial to recognize that the time and attention needed to raise and care for a child is comparable in both scenarios. The count of paid weeks decreases to twelve weeks in the event of a third birth; it affects the child's upbringing.
- An extended maternity duration imposes a financial strain on employers.
- The funds provided through different schemes are insufficient to handle the demands of pregnancy.
- A separate organization ought to be established to assess the implementation and development of the Act.
- Efforts should be made to raise awareness about the Act/schemes through various channels at the ground level.

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<sup>831</sup> Writ Petition No. 15523 of 2016

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