

IMPACT OF MATERNITY BENEFITS ON WOMEN WORKFORCE

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Abstract

The Maternity Benefit Act, 1961 is an Act to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefit and certain other benefits.¹¹⁶⁴ This Act aims to protect the health and employment of women during pregnancy and after childbirth. One such crucial step towards betterment of working pregnant women and new mothers was the 2017 amendment to the Maternity Benefits Act, 1961. Introduction of this Act aimed at strengthening and modernizing the existing law in response to changing societal and workforce dynamics. With more women joining formal employment and increasing awareness of maternal and child health, the original provisions were seen as insufficient. This paper analyses the impact of The Maternity Benefit Act, 1961 (Amendment in 2017) on the women workforce and points out the positive and negative outcomes of these legal benefits ensured to the working pregnant women and new mothers.



¹¹⁶⁴ Maternity Benefit Act, 1961, No. 53 of 1961, § Preamble, India Code (1961)

Research Problem:

Despite the progressive intent of the Maternity Benefit (Amendment Act 2017), its practical implementation has revealed significant challenges while the amendment aims to support working mothers through extended paid leave and job security, evidence from secondary sources suggest that many women still face employment discrimination, lack of awareness and difficulty in job retention during and after pregnancy. Therefore, a question arises whether to the amendment effectively achieved its goal of improving job security and work force participation among women or has it inadvertently contributed to new forms of employment barriers.

Research Methodology:

This paper was drafted by drawing insights from various insights from a wide range of academic and policy based literature assessing the impact of the Maternity Benefit Act 1961 (Amendment 2017) on businesses and the employment of working mothers. The people used only secondary resources highlighting the positive and negative implications of the amendment.

Limitations:

The research was done during a very limited period of time; it was done using only very limited resources. Since the study is based on secondary sources, the findings maybe limited in scope and may not capture current, real time data or nuanced person experiences.

Introduction:

In today's era, both men and women actively contribute to the workforce to improve their standard of living. However, a comparison of career trajectories before and after marriage reveals a noticeable gender gap. While men typically continue their careers uninterrupted, women often face significant challenges, particularly during and after pregnancy. Although men shoulder the primary financial responsibilities for their families, many women also pursue careers—either to utilize their

education, support the family financially, or to achieve financial independence and self-esteem. For women, pregnancy often becomes a career obstacle, sometimes even a “career killer”, as it hampers their ability to continue working during this physically and emotionally demanding phase. Maternity and childbirth temporarily disable women from performing regular duties, making it essential to relieve them from work during the weeks before and after delivery to safeguard their health and that of the newborn.

Recognizing these challenges, the Maternity Benefit Act was first introduced on July 28, 1928, in Bombay's Legislative Council, with strong support from Dr. B.R. Ambedkar. Eventually, the Maternity Benefit Act, 1961, was formally enacted by the Indian Parliament as the 53rd Act of 1961, coming into force on December 12, 1961, in the 12th year of the Republic of India. The primary objective of this Act is to regulate the employment of women during a specific period before and after childbirth, and to ensure they receive cash benefits and other related facilities, thereby protecting their health, employment, and dignity during maternity.

Even though the Maternity Benefit Act was established to ensure that women's participation in the workforce is not compromised due to childbearing and childcare responsibilities, its implication has also negatively impacted them in securing jobs. Traditionally, women have carried the primary burden of caregiving—even when they have supportive partners—which often creates significant challenges for working mothers, particularly those without adequate support systems. To address this, the Act mandates paid maternity leave, allowing women the necessary time and recovery period around childbirth without fear of income loss or job insecurity. The 2017 amendment further strengthens these protections by introducing a provision for crèche facilities in establishments with 50 or more employees. This addition aims to ease the transition back to work for new

mothers by ensuring access to nearby childcare, thereby reducing the emotional and logistical burden of leaving young children unattended.

While The Maternity Benefit Act is undoubtedly well-intentioned, it is essential to critically examine its socio-economic implications. As with any legislation aimed at benefiting specific groups, care must be taken to ensure that its implementation does not unintentionally produce outcomes that undermine its intended purpose. Without such evaluation, legal reforms risk becoming symbolic—promising equality, yet failing to achieve it in practice. Under the current provisions of the Act, the financial burden of paid maternity leave rests entirely on the employer, with no parallel requirement for male employees. As a result, maternity leave becomes a gendered cost, which employers may seek to avoid by limiting the recruitment or retention of women of childbearing age.

Though The Maternity Benefit Act aims to promote equal opportunity, in reality, its structure may inadvertently discourage employers from hiring women altogether. This unintended consequence is reflected in workplace practices where female candidates are often subjected to intrusive questions about their marital status and family plans—questions rarely, if ever, directed at male applicants. As noted by Johari (2014), there is a growing perception among employers that hiring women has become financially burdensome due to the legal obligations imposed by the Act. Ultimately, the Act may be counterproductive, contributing to a decline in female workforce participation by reinforcing workplace biases and gender-based hiring discrimination. Rather than leveling the playing field, the current design of the MB Act risks deepening existing inequalities unless paired with shared parental leave policies, government co-funding, or other mechanisms that distribute the cost of caregiving more equitably.

Amendment of 2017:

Before the Maternity Benefit (Amendment) Act, 2017, the original Maternity Benefit Act, 1961 had provisions that were more limited in scope, especially concerning the duration of maternity leave and the applicability of certain benefits. Under the 1961 Act, women were entitled to 12 weeks of maternity leave, irrespective of whether it was their first, second, or subsequent pregnancy. This provision was fairly standard, but it did not account for the varying needs of women in different circumstances, such as those with multiple children or adoptive mothers. Furthermore, the Act did not include provisions for work-from-home options, nor did it require employers to provide crèche facilities. In terms of maternity benefit, the 1961 Act stipulated that women were entitled to be paid their average daily wage during their absence, but it did not define detailed guidelines for employers to support employees beyond the period of leave. Additionally, the Maternity Benefit Act of 1961 applied to establishments with 10 or more employees, and women who had worked for at least 80 days in the preceding 12 months were eligible for benefits.

However, the Maternity Benefit (Amendment) Act, 2017 made several notable changes aimed at improving the welfare of working women. The amendment extended the maternity leave duration from 12 weeks to 26 weeks for women with fewer than two children, providing them more time to care for their child post-delivery. Importantly, for women having two or more children, the maternity leave was capped at 12 weeks, a change that better recognized the demands of mothers with multiple children. Additionally, the amendment introduced provisions for adopting mothers and commissioning mothers—offering 12 weeks of maternity leave for women who legally adopted a child under the age of three months or who were commissioning mothers (those who donated eggs for fertilization). Another significant shift was the mandate for crèche facilities in establishments with 50 or more

employees, ensuring that mothers have access to quality childcare within proximity to their workplace. This change is pivotal for allowing mothers to return to work without the concern of childcare, enabling them to visit the crèche during work hours, up to four visits a day. Furthermore, the 2017 amendment added the option to work from home after maternity leave, an innovative provision for women who can perform their job duties remotely, offering them flexibility in managing their work-life balance. The amendment also made it a requirement for employers to inform female employees about their maternity benefits in writing at the time of their appointment, ensuring awareness and transparency regarding their rights. Finally, the penalties for non-compliance were strengthened, with employers facing imprisonment and fines if they denied benefits or discriminated against women on the grounds of pregnancy or maternity leave. These provisions, while aimed at benefiting women, also created concerns among employers about the additional costs and gender-based discrimination that could arise due to these obligations, especially in smaller organizations or the informal sector. Thus, the Maternity Benefit (Amendment) Act, 2017¹¹⁶⁵ expanded the scope of support for working women compared to the earlier 1961 Act, making maternity leave more accessible, flexible, and comprehensive in addressing the needs of diverse working mothers.

Legal Intent and Ground Reality:

The 2017 Amendment to the Maternity Benefits Act, 1961 brought several significant changes aimed at improving the welfare of working women, particularly mothers. One of the major amendments aligned the provisions of maternity and child care leave with the guidelines established by the Sixth Central Pay Commission and the Central Civil Services (Leave) Rules, 1972 (CCSL Rules). These provisions introduced, for the first time, a Six Months Paid Leave Policy for central

government employees. This was a landmark policy intended to support working mothers in the government sector by providing adequate time for maternity care without financial strain.

On a global scale, the International Labour Organization (ILO) addressed maternal care by formulating the Maternity Protection Convention (2000), which requires countries to provide a minimum of 14 weeks of maternity leave for women. This was part of an ongoing global recognition of the need for maternity protection to ensure women's health and well-being post-pregnancy. Additionally, the United Nations has recognized Maternal Health as one of its Sustainable Development Goals, highlighting the importance of maternal care for the overall well-being of families and communities.

Internationally, the recognition of maternal health is not limited to policy alone. The Universal Declaration of Human Rights (Article 25)¹¹⁶⁶ asserts that motherhood and childhood are entitled to special care and assistance, forming the basis for further global legal commitments to maternity rights. Similarly, the Convention on the Rights of the Child stresses the importance of assisting parents and guardians in child-rearing responsibilities, emphasizing the need for institutions, services, and facilities for child care to support families. Building on these global frameworks, the 2017 amendment to the Maternity Benefits Act aligns with international standards, aiming to provide better support to working mothers in India while ensuring their well-being and the healthy development of children. These provisions not only aim to protect the health and rights of mothers but also foster an environment where women can continue to participate actively in the workforce without the fear of losing their livelihood or health. However, while these amendments are a positive step forward, challenges remain in the practical implementation and awareness of

¹¹⁶⁵ Maternity Benefit (Amendment) Act, No. 6 of 2017

¹¹⁶⁶ Universal Declaration of Human Rights, art. 25, G.A. Res. 217 A (III), U.N. Doc. A/810 (Dec. 10, 1948).

such benefits, particularly in private and smaller sectors.

In India, several legislative frameworks were already in place to address maternity benefits. These include the Factories Act, 1948, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1966, and the Unorganized Workers' Social Security Act, 2008. Additionally, the Employees' State Insurance Act, 1948 has provided maternity benefits as one of its primary objectives, laying down a leave structure of 12 weeks for mothers, along with a regulatory framework for effective implementation. However, the Employees' State Insurance Act is primarily applicable to government establishments, which created a discrepancy in the applicability of maternity benefits across different sectors, especially for daily wage workers, casual employees, and contractual workers.

The Supreme Court of India had previously directed that maternity benefits should be extended to all women workers, regardless of their employment status, and that these benefits should be applicable to all women employees, from daily wagers to those working in formal sectors. This direction was in direct contrast to the limited application of maternity benefits under existing laws. The Maternity Benefit (Amendment) Act, 2017 has played a pivotal role in addressing these gaps, particularly through its provision for crèche facilities for children of working women. This provision aims to alleviate the burden on working mothers by providing accessible childcare facilities, thus encouraging women to return to work after childbirth without the added concern of childcare. The amendment marks a significant step in aligning India's policies with international standards, ensuring better protection for working mothers, and promoting a more inclusive workforce.

The Maternity Benefits Act offers significant benefits to female employees, particularly in terms of paid maternity leave

and crèche facilities, making it a valuable tool for supporting women in the workforce. However, the Act also raises concerns regarding the financial implications for employers, especially in the private sector. Employers may face apprehension about hiring women due to the added costs associated with maternity benefits, which could discourage them from employing women, especially in smaller businesses or industries with limited resources. While existing laws, such as provisions on equality and non-discrimination in the Indian Constitution and the Equal Remuneration Act, 1960, prohibit gender-based discrimination in the workplace, there remains a need for stronger enforcement mechanisms to ensure that women are not discriminated against due to the financial burden of maternity benefits.

Additionally, Section 11A of the Act mandates that employers provide four visits a day to the crèche for the female employee. This provision, however, raises a question regarding whether male employees are also permitted to visit the crèche, especially since the section pertains to both male and female employees in general terms. This potential conflict in the interpretation of the law highlights the need for a clarification or amendment to ensure clear and consistent application of the crèche visitation rights. Addressing these concerns may involve finding ways to reduce the financial burden on employers, possibly through government subsidies or incentives, thus ensuring a balance between employer interests and the need to support female employees in the workplace. This issue emphasizes the broader challenge of reconciling gender equity with economic feasibility for employers, calling for a nuanced approach to policy design that considers the practical realities of businesses while also upholding the rights and protections for working women.

While the Maternity Benefits Act, 2017 aims to provide critical support to women in the workforce, the financial and operational burdens it places on employers have, in some instances, led to unintended consequences.

Real-life examples illustrate how these well-intentioned provisions can inadvertently discourage employers from hiring women, particularly in small and medium enterprises (SMEs) or industries with tight profit margins. For instance, several women professionals have shared their experiences of being passed over for job opportunities after disclosing their marital status or intentions to start a family. A common practice in some sectors has been to avoid hiring women of childbearing age for fear of the costs and disruptions associated with maternity leave. In one such case, a woman working in a private company in the IT sector reported that, despite her qualifications, she was not hired after the employer inquired about her future family plans during the interview. When asked if she was planning to have children soon, she was told that her “potential maternity leave would be an issue” for the company.

This trend is not limited to any single industry but cuts across sectors, with women facing obstacles in both traditional industries and modern workplaces. In the manufacturing sector, particularly where companies rely on short-term contracts or fluctuating workforces, employers often prefer male workers or avoid hiring women altogether, perceiving the cost of maternity leave as too high. One incident involved a woman applying for a managerial position in a factory. After the initial interview, she was informed that the company “wasn't hiring women at the moment” due to “high turnover” during maternity leave periods.

Such discriminatory practices highlight the significant gap between policy intent and on-the-ground realities. While the Maternity Benefits Act seeks to protect women's rights, these real-life examples demonstrate that the financial obligations it imposes can, ironically, perpetuate the very gender inequalities it aims to eliminate. Employers, particularly in informal sectors or small businesses, may see maternity benefits as a financial liability, leading them to avoid hiring women altogether. This ultimately restricts women's access to career

opportunities, undermining the law's objectives of promoting gender equality and increasing female workforce participation. To address these issues, it is essential to create more supportive mechanisms for employers, such as government subsidies, tax reliefs, or other financial incentives, which can alleviate the costs associated with maternity leave. Until such solutions are implemented, women may continue to face systemic barriers to securing employment and achieving workplace equality.

Financial Implications for Employers:

The Maternity Benefits Act, 2017, is a significant step forward in promoting gender inclusivity in the workplace by providing paid maternity leave, crèche facilities, and the option to work from home for women. However, despite these progressive measures, certain stereotypes persist, particularly in the absence of provisions for paternity leave, which remains a glaring omission in India's employment laws. Unlike progressive nations such as Norway, Sweden, and Ireland, where paternity leave is an integral part of labor laws, India has yet to implement a mandatory paid paternity leave policy under the Maternity Benefits Act. This gap in paternity benefits is notable, given that several international and industrial establishments have voluntarily instituted their own parental leave policies. Without statutory provisions for paternity leave, fathers are often left in a position of distress when it comes to the care and nurturing of their newborn children, ultimately exacerbating traditional gender roles that place child-rearing responsibilities disproportionately on women. The ILO (International Labour Organization) has consistently highlighted the importance of shared parental leave, recognizing that both men and women should have equal opportunities to bond with and care for their children during the critical early stages of development.

In India, while some government policies, such as the Central Civil Services (Leave) Rules, provide paternity leave, these remain limited in

scope and are not extended to the private sector in a comprehensive manner. The Paternity Benefits Bill, 2017, which was introduced in Parliament, outlines provisions that could profoundly reduce gender discrimination in the workforce. However, despite the introduction of the Bill, it has not yet been passed into law. The absence of paternity leave under the Maternity Benefits Act remains a significant deficit in the Indian employment sector, hindering the development of an inclusive and equitable workplace. Achieving gender equality in the workforce—especially as the number of women entering the workforce continues to grow—requires a comprehensive and gender-neutral framework that addresses both maternity and paternity responsibilities. To foster true equality, it is essential to recognize the need for both parents to be equally involved in caregiving. Until the Paternity Benefits Bill is passed and implemented, gender equality in India's workforce will remain incomplete.

As envisioned by the legislators, the Maternity Benefits Act, 1961, was designed to provide significant benefits to female employees, particularly by ensuring paid maternity leave and other provisions for the welfare of mothers during and after childbirth. However, despite the well-intentioned benefits, the Act inadvertently overlooks the commercial interests of employers, leading to an imbalance between the employee and employer perspectives. While the Act clearly prohibits employers from dismissing or discriminating against women due to their maternity leave, it fails to address crucial issues arising during both the pre-employment and post-pregnancy periods. The Maternity Benefits Act stipulates that women cannot be dismissed for availing maternity leave or for any procedural irregularities related to the leave, thereby protecting women's rights during pregnancy. However, the Act does not provide any safeguards for women in situations such as pregnancy before employment or the challenges they face in returning to work post-pregnancy. This creates a loophole where

employers are not prohibited from hiring pregnant women, but they are also not obligated to retain them after they return from maternity leave. The Act thus fails to account for discrimination during the pre-employment period, where employers may hesitate to hire pregnant women, fearing the financial implications of maternity benefits.

Moreover, although employers cannot legally dismiss a woman for availing of maternity leave, the Act does not prevent employers from terminating pregnant women employees or those who have availed of maternity benefits. This creates a situation where the financial burden of maternity benefits, such as paid leave, crèche facilities, and the overall expense related to the retention of female employees post-pregnancy, can lead employers to make discriminatory decisions in hiring or firing practices. The absence of provisions balancing the interests of both employees and employers has led to criticism of the Act, as it fails to create a mutually beneficial framework for both parties. As the pre-employment and post-pregnancy concerns are not adequately addressed, many employers are reluctant to hire women of childbearing age, fearing the operational disruptions caused by maternity leave and other related costs. This, in turn, undermines the very goals of the Act, which aims to enhance female workforce participation and provide job security for women during pregnancy.

A more balanced approach is required to address the commercial interests of employers while ensuring that the benefits for women are not compromised. For instance, providing some form of financial support or tax incentives to employers who comply with the maternity benefits provisions could make the law more equitable and effective in encouraging the inclusion of women in the workforce. This would reduce the commercial burden on employers while ensuring that women workers are protected and not discriminated against due to their reproductive responsibilities.

These issues have been somewhat clarified by the apex court in the case *Neera Mathur v. Life Insurance Corporation of India*¹¹⁶⁷, where the court safeguarded the interests of a woman who was wrongfully terminated on the grounds of non-disclosure of her pregnancy at the time of her appointment. In this landmark judgment, the court acknowledged the wrongful nature of such termination and emphasized that requiring a woman to disclose her pregnancy during the hiring process is not only discriminatory but also humiliating, as it infringes upon a woman's right to maintain her privacy and secrecy regarding her personal matters.

Conclusion:

The Maternity Benefits Act, 1961 (amended in 2017) serves as a significant step toward improving gender equality in the workplace by providing essential benefits such as paid maternity leave, crèche facilities, and the option for women to work from home. These provisions are intended to safeguard the health and welfare of both mother and child during the critical period surrounding childbirth, while also protecting the employment rights of women. Despite the Act's well-meaning objectives, the research reveals several critical challenges that undermine its intended impact on female workforce participation in India.

Positive Impact on Female Workforce Participation: The extension of maternity leave to 26 weeks under the 2017 amendment is a progressive step aimed at ensuring that women can take time off from work to recover from childbirth and care for their newborns without the fear of losing their employment. The inclusion of provisions for crèche facilities and work-from-home options further facilitates women's ability to balance work and childcare responsibilities, thereby promoting greater workforce participation. These changes have contributed positively to the professional and personal well-being of women employees, especially in the organized sector.

Employer Reluctance and Gender Discrimination: One of the main drawbacks of the Maternity Benefits Act, as highlighted in this research, is the potential for discriminatory hiring practices. Employers, particularly in small and medium-sized enterprises, may perceive the Act's provisions as a financial burden, which can lead to the reluctance to hire or retain female employees. This issue is compounded by the fact that employers are not legally prohibited from hiring pregnant women, leading to a paradox where women may be denied job opportunities due to their potential to avail of maternity benefits. Such discrimination may manifest subtly during recruitment processes, where women may be asked intrusive questions about their pregnancy plans, or they may be overtly denied employment for fear of the financial implications of maternity leave.

Imbalance of Interests Between Employers and Employees: While the Act provides women with significant maternity benefits, it does not adequately address the financial concerns of employers, particularly those in industries that operate under tight margins. This results in a mismatch of interests, where the Act fails to balance the needs of both women employees and their employers. As a result, businesses may resort to strategies that disadvantage women, such as not hiring them or dismissing them once they avail of their maternity benefits. This gap in the law calls for a mechanism to mitigate the financial burden on employers while ensuring that the maternity benefits provided under the Act remain robust and effective.

Lack of Provisions for Paternity Leave: Despite the progress made under the Maternity Benefits Act, the absence of mandatory paternity leave provisions is a glaring issue. Countries such as Sweden, Norway, and Iceland have long recognized the need for both parental leave and the importance of shared childcare responsibilities. The lack of paternity leave in India continues to reinforce traditional gender roles, where the burden of childcare falls disproportionately on women. This imbalance

¹¹⁶⁷ *Neera Mathur v. Life Ins. Corp. of India*, (1992) 1 SCC 201.

underscores the need for comprehensive parental leave policies that support both mothers and fathers in fulfilling their caregiving responsibilities without penalizing either gender in the workplace.

Legal Gaps and Judicial Oversight: The issue of **pregnancy-related discrimination during recruitment** remains inadequately addressed in the law. The case of **Neera Mathur v. Life Insurance Corporation of India** (1992)¹¹⁶⁸ reflects the judiciary's recognition of pregnancy discrimination in the workplace but fails to provide a conclusive legal framework to prevent such discrimination during the hiring process. While the court rightly protected the rights of women against unfair dismissal, it did not create a comprehensive principle to prevent **pregnancy-based biases** during recruitment. This gap continues to affect women's access to employment opportunities, especially in industries that require high levels of physical or logistical commitment.

To maximize the Act's impact on female workforce participation, it is imperative to:

1. Develop mechanisms to balance the interests of employers and employees, possibly through state-sponsored financial support or tax relief for businesses that hire women.
2. Introduce paternity leave as a complementary measure to maternity leave, thereby fostering shared responsibility in child-rearing and promoting a more gender-neutral work environment.
3. Establish clearer guidelines and legal protections against pregnancy-related discrimination during recruitment, ensuring that women are not discouraged from entering or re-entering the workforce due to their reproductive status.

The legislation's success hinges on not only ensuring maternity benefits but also addressing the broader structural issues of gender bias,

financial barriers for employers, and the need for a more balanced approach to caregiving responsibilities. By strengthening the legislative framework to support both women and employers, India can take a significant step toward a more inclusive and equitable labor market for all genders.

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Legislations:

1. **Maternity Benefits Act, 1961**, No. 53 of 1961, § 10, 12, 17 (India).
2. **The Maternity Benefits (Amendment) Act, 2017**, No. 6 of 2017, (India).
3. **Factories Act, 1948**, No. 63 of 1948 (India).

¹¹⁶⁸ Ibid