
MATERNITY BENEFITS ACT 1961 WITH AMENDMENT OF 2017

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ABSTRACT

This research paper aims to study the changing trends in women empowerment in the country through judicial interpretations and analysis of the 2017 revised legislation. The inclusion of women in labor industry and the challenges faced by them in the workplace.

The basic purpose of providing maternity allowance is to maintain self-respect to the mother, protect the health of women, and ensure the complete safety of children. The research would also focus on Compulsory paternity leave which helps ensure that father and mother share parental responsibilities and increase men's involvement in the critical early stages of infant development. It also analyzes the scope of the act that is extended for adoptive mothers and will also go through data's showing the number of women dropouts from the workplace and whether there are any changes after the amendment or not.

Introduction

“When you are looking at your mother, you are looking at the purest love you will ever know.” Said by Charley Benetto. Mothers are the most magnificent creatures created by God, they bring a tiny human into this world, they are known to sacrifice their dreams, aspirations for the sake of their family. When it comes to their family or children they keep everything aside just for the sake of their happiness, they put all their efforts to make sure that their child is healthy and secure, the amount of love a mother can give, can't be compared to any form of energy and love in this entire universe because it's so selfless and pure but the sad reality is that despite everything a woman does for this society and their families, they are just treated as a commodity and are not given the respect they deserve. As India has always been a patriarchal society, the rights, interest, choices, dreams, passions, talent and potential of women were always being suppressed. Patriarchy subjugates women at various levels – political, social, economical, and cultural. The exploitation and oppression of women's labor, fertility, sexuality, at the workplace, family, and society in general and Conscious actions of women and men to bring a transformation in the current scenario, overcoming patriarchal beliefs and unjustified practices is called women empowerment and keeping in mind these scenarios, the government brought the Maternity Benefit Act in the year 1961 and later on it was amended in the year 2017. The purpose of this act is to provide protection to all the women and safeguarding their interest and rights. With the help of this, a woman would get the opportunity to take some space and time off from all the hustle and bustle at the workspace and devote some time towards her health and unborn child which is the utmost priority at that period of time. There are many provisions in this act which provide certain benefits to women and due to this a woman gets the entitlement of a safe, secure workplace who respects certain limitations of a women's body so all these organizations should work under the purview of this act and it would definitely enhance the productivity of women in any sector and would help in dissolving the ratio of man to women in a workplace and the main motive behind this act is to make sure that the women should feel welcome and at home and also it gives a sense of security and financial stability for a woman's family and not the feeling of abandonment. A country can only properly develop where a man and woman are treated equally with respect and dignity and also there should be income parity, such acts are needed and plays an important role in molding the society and people's mindset in a better way.

Background And History of the Act

The maternity benefit act is one the best initiative taken by the government to protect women employment while they go through the phase of maternity. It's basically getting the benefit of receiving complete allowances while being absent from the work and as per the government rules every organization who has 10 or more employs needs to work in accordance with this act. Maternity benefits should be aimed at providing employment for women in certain institutions for a particular time span before and after childbirth, as well as other benefits. The level of women's participation after childbirth has a negative impact on the labor market and the factor to look upon is that in recent years, women's participation in the labor market has increased significantly, especially in urban areas. As India seeks to create a gender-friendly environment in the working sector, implementation is increasing in order to achieve a more conducive working environment. Considering the large number of women working in the different professional sectors and trying to provide financial security to the family and standing on their own feet, so it was the need of an hour to protect and safeguard their health and also of upcoming child. The main purpose of maternity benefits is to preserve the self-respect for motherliness ensure the safety of the child, protect women's health etc. As the number of women working in the public and private sectors has increased, it has become important to help working women with maternity leave and other allowances. At first there were different acts operating at different regions, there was no proper uniform central act for the efficient functioning and due to this fact maternity benefit act of 1961 was introduced and now due to this act women can work freely without having a fear of losing their job. This act would safeguard the rights of women from being curtailed as giving birth is a natural phenomenon so some sensitivity and consideration should be depicted by the government as well as the other section of the society and all the prejudices relating to women employment and pregnancy would be minimized. When a woman is loyal and dedicated towards her work and the company then it's a moral obligation of a company to support her emotionally and financially in this vulnerable phase. The maternity benefit act is applicable to all the organizations including plantations, factories, government organizations, shops.

Eligibility

A woman must have worked in an establishment for a period of at least eighty days in the past 12 months.

Maternity Benefits

"Payment of maternity benefit at the rate of the average daily wage for the period of actual absence immediately preceding the day of her delivery or actual day of her delivery

A woman can avail 26 weeks of maternity leave. She could avail up to eight weeks leave before and the balance after delivery.

A woman with 2 living children entitled to 12 weeks of maternity leave.

Crèche Facility

Establishments with fifty or more employees is to have crèche facility within prescribed distance. Employer should allow the woman to visit the crèche four visits a day, including the interval of rest.

Protections

- Employers required to inform woman in writing, upon joining, of available maternity benefits, eligibility.
- Eligible women can be permitted to work from home if nature of work permits
- A woman cannot be dismissed for taking maternity leave and cannot serve a termination notice on a woman on maternity leave
- Terms of service cannot be changed to woman's disadvantage during her maternity leave
- Women should not work in any establishment during six weeks immediately after her delivery, miscarriage or medical termination of pregnancy.
- Woman on maternity leave entitled to her existing wages before going on such leave

Contraventions by the Employer – Employer contravening the provisions of the Act is liable to be punished with imprisonment of not less than three months but which may extend to one year and with fine not less than two thousand rupees but extendable up to five thousand rupees."¹

¹DipankarBandyopadhyay,India - Maternity Benefits Act 1961,conventus law (21st November 2019)<https://www.conventuslaw.com>

Under this act a woman can claim medical bonus of rupees 3500 if pre-natal confinement and postnatal care is not provided by the employer free of cost. And when there are certain difficult and traumatizing times like miscarriage then at that time the woman can take leave of 6 weeks.

Employer's interest and Restrictions.

- In every organization the employers seek profit maximization, with such pre-set goals, employers must not care about the welfare expenditures of female employees. It is like an extra burden for the employer. The public payment of maternity allowances is imminent, so employers will not be overburdened by the social security guaranteed by the law. it would be unlawful for the employer if he dismisses or discharges any women just because she is pregnant or on maternity leave and can be punished under section 12 of the act.

Schemes Implemented by Central Government for Maternity Benefit

The government has launched various schemes and has contributed largely for facilitating the benefits of maternity act wide and far in the country.

"The Indira Gandhi Matritva Sahyog Yojana (IGMSY) - It is also known as Conditional Maternity Benefit (CMB) scheme. The scheme provides recourse on the issues regarding the woman's compulsions to work right up to the last stage of pregnancy and resumption of work soon after childbirth. The basic aim of the proposed scheme IGMSY is to improve the health and nutrition status of pregnant and lactating women and infants by:

- Encouraging the women to follow (optimal) IYCF practices including early and exclusive breast feeding for the first six months;
- Contributing to better enabling environment by providing cash incentives for improving the health of pregnant and nursing mothers;
- Promoting appropriate practices, care and service utilization and safe delivery and lactation.

Rajiv Gandhi National Crèche Scheme for the Children of Working Mothers- This scheme is implemented by three governmental bodies i.e. the Central Social Welfare Board, Indian Council for Child Welfare and Bhartiya Adim Jati Sevak Sangh for collecting user charges of Rs. 20/- per month from BPL families and Rs. 60/- from other families." ²

Analysis of the Maternity Benefits Framework and the key changes brought by the Amendment of 2017.

On 1st April 2017 the maternity benefit amendment act has come into force.

- "The duration of paid maternity has been increased now from 12 weeks to 26 weeks.
- The accessibility to the paid leave has now been extended to eight weeks before the expected due date instead of the previous six weeks.
- This benefit has now been extended to commissioning and adoptive mothers
- Work from home option has been introduced which can be opted after the expiry of the paid leave period for which terms and conditions have to be negotiated by the employer.
- It is now compulsory for the establishments having more than 50 employees to have an in-house crèche facility.
- Women have permission to use the crèche facility for a maximum of four times a day.
- Education of women about their rights to such benefits is now mandatory." ³

The primary reason for receiving maternity leave allowance is to help new mothers adapt to their new roles, and to protect mothers' health and children's wellbeing. In this highly competitive world, higher expenditure and little savings both spouses must work for a decent life. This situation is still inevitable. The fact is that this situation leads to more women entering the work field, so they have to take care of multiple roles of the family. the amendment act of 2017 provided increase in the paid leave from 12 weeks to 26 weeks for 1st and 2nd child and 12 weeks in the case for 3rd child. the act also gave the benefit to adoptive mothers and introduced the policy of "work from home" so that the women can catch up from their home and not miss their work. This act also stipulates that factories and shops employing more than 50 women must have a crèche in the factory, and women employed by the agency should have

²Sayali Diwadkar, All about Maternity Benefit Act, 1961, latestlaws(6th June 2018) <https://www.latestlaws.com>

³Vidhikarya, maternity benefits and the new changes, legalserviceindia, <http://www.legalserviceindia.com/>

access to it at least 4 times a day with all these advantages there are some cons present in the Act: -

1. This increases patriarchy in the society which encourages and shifted the sole responsibility of childbearing on the mother, instead there should be a gender-neutral law.
2. Many companies do not allow women to apply for job vacancies because they will eventually have to extend these privileges to them during childbirth, thus adversely affecting the job opportunities available to women, which in turn is reducing jobs for the women and we should spread awareness to more and more people.
3. In many countries including India, the problem faced by the act is on the implementation level.

We should normalize childbirth and problems faced by the women instead of making it a stigma. we should preserve the self-respect and dignity of motherhood.

Significance

The paid leave which has been increased from 12 weeks to 26 weeks is a great step which goes in line with the commended time for such kind of leave prescribed by WHO. This time period will allow the mother to take care of herself as well as the infant in a proper manner. Maternal care plays an important role in the healthy growth and development of a child, if a child is deprived of care, love at such a vulnerable stage then the child can be prone to many infectious diseases, mental health problems and malnutrition, it can majorly impact the child's growth which can have deadly repercussions in the future and can easily ruin a normal family. One of the highlighted features of this act is that now the adoptive mothers would be able to enjoy the fruits of this act and now India is only behind Canada and Norway in the number of maternity benefits provided to women employees.

Gender Neutral Aspect of Maternity Benefits Act

The Maternity Benefits act of 1961 talks specifically about women. Today women are employed everywhere from big MNCs, or mines or factories but the hard work done by women cannot be compared to others. From managing their home, family, children and simultaneously handling office work is a big task. before 1961 there were many acts at state level which dealt with the condition of women, this was for various purpose like preventing

miscarriages, avoiding lifting of heavy weights by women, etc. so, the act provided leave for pregnant women before and after the baby is born. The provisions were very distinguished from each other in every state and thus a central act was made to reduce the disparity relating to maternity provisions and unify all the provisions which was maternity benefit act, 1961. By the end of 1972 the act was applicable to all of India, but it required various changes. In 1988 the act was changed drastically; it was the biggest amendment in the act.

The object and scope of the act is applicable to all the organizations including the factories, plantations, mines, government organizations, legislative organizations, shops or any other organization that is centered by the central government. The law requires companies or organizations with at least 10 employees to provide paid leave to their female employees. the objective behind the Maternity Benefits Act, 1961 was to regulate the employment of women in certain establishments for the period before and after the childbirth, well though after the amendment of 2017 the intentions of the government to give 26 weeks paid leave was of good intention but it gave way to a new problem that was discrimination against women in their workplace, Employers began to discriminate against women because they did not want to pay full wages for the 26-week paid leave. Today, women face stigma and hostility in the workplace during pregnancy and remain vulnerable after the act.

While our legislation is filled with the requests of gender neutrality in the laws, the Maternity benefits act proposes gender neutrality that will bring benefits which will be shared equally. the current act shows the stereotypical thought of the legislature that the women is solely responsible for the care and nourishment of the child. It is always believed that the responsibility of father is limited to providing shelter and earning money for the family and providing security, paying for education of the children. it has clearly overlooked the role of a father in an inner emotional circle and related him only as an earner and provider and a mother to be the primary caregiver. "Although traditionalists continue to believe that baby care must remain the mother's responsibility, but in reality, it is the responsibility of both the genders, Until and unless we make childcare gender-neutral, talented, deserving and qualified women will continue to withdraw from the workforce, which is a loss to the company and society. To make the policy gender-neutral, to allow men to be taken care of their children and bond with them, to ensure that women have choice and flexibility in maternity leave. What a mother need is flexibility, choice and some time for her work and the father need more inclusion in his family. By providing paternity leave or a broader umbrella term Family leave will solve major

problems related to the care of a child. India does not have a mandatory provision for paid paternity leave"⁴, Such abandonment leaves fathers in distressed when it comes to care and nourishment of their newborn children. "There has been initiation in the Parliament to pass the Paternity Benefits Bill, 2017"⁵ but nothing has substantiated till now. As of now, there is nothing in the Maternity Benefits Act which talks about paternity leave, given the "Statement of Objects and Reasons" of the Maternity Benefits Act. if there is introduction of paternity benefits act, it would have a very positive effect on gender discrimination, because this is what this generation is fighting for, this is what the feminists want. But the issue with the act is that firstly it still restricts the leave in the case of the third child and secondly the payment of maternity benefits under the Act are the sole burden of the employer even under the scheme of the new Act. Equality, a small word but something that every corner of the world is fighting for, in every field. "Although the Act stipulates that an Employer can neither dismiss a woman on account of leave as per the directions of the Act"⁶, "nor deny her the benefits under the Act because of procedural irregularities"⁷, "it does not discuss the issues arising during the pre-employment period and post-pregnancy period"⁸ why this discussion becomes important is because there is no section or rules that restrict any company to employee a woman when she is pregnant. "Novartis, a pharmaceutical company, announced 26 weeks paid gender-neutral parental leave. This means that Novartis is allowing its male employees to take 26 weeks paid paternity leave."⁹ Before Novartis, Zomato offered paid 26 weeks parental leave to both mother and father and also to adoptive parents and same sex parents. Now is the time for breaking the jinx and bringing gender neutral aspects to the maternity benefits act. "The ILO Report also highlights the need and importance of parental leave similar to that of maternal leave and several other employment benefits that must be equally shared."¹⁰

Criticism

⁴ *Paternity leave provided by some firms in India: Private sphere recognizes changing times*, MEDIA INDIA (July. 17th, 2017) available at: <https://mediaindia.eu/social-vibes/paternity-leave-provided-by-some-firms-in-india/>

⁵ *New Bill Proposes Paternity Leave across All Sectors*, NDTV, (Sep. 17th, 2017) available at: <https://www.ndtv.com/india-news/paternity-leaveacross-all-sectors-proposes-private-members-bill-1751408>

⁶ 12, Maternity Benefits Act, 1961, Act No. 53 of 1961, Acts of Parliament, 1961 (India).

⁷ § 6 (6) Maternity Benefits Act, 1961, Act No. 53 of 1961, Acts of Parliament, 1961 (India)

⁸ Labour Law Offices, *Legal Rights of Pregnant Women at Work*, LABOUR LAW OFFICES, (June. 15th, 2009), <<https://labourlawoffices.wordpress.com/2009/06/15/legal-rights-of-pregnant-women-at-work/>>.

⁹ www.toppr.com

¹⁰ Statement of Objects and Reasons, Maternity Benefits Amendment Act, 28th March 2017, Chaitra 7, 1939 (SAKA).

The main purpose of this act is to promote women empowerment and bring parity in the employment sector among male and female but sadly there are few loopholes in this act due to which the prime objectives are not achieved.

- This act is indirectly promoting patriarchy as in this amendment the primary Focus is on female nurturing and the whole responsibility comes on a woman whereas it's the duty of both the parents to put equal amount of love, care, efforts, time in child's development but in this act, government has not announced any leave for fathers.
- Many of the private organizations would not prefer female employees as they would form a perspective that they have to unnecessarily pay and give them leave up to 26 weeks which can impact their company's growth and can also cause financial issues and due to all these issues, these people would be much happier and would be in profit while hiring a male employee and all these factors can lead to loss of jobs and opportunities for the women.
- Various aspects of the MB Amendment Act need further clarity, for example, period up to which the crèche facility could be extended to the concerned woman as well as the aspect of availability, frequency and extent of nursing breaks. Further, the proviso of Section 11A states that employer shall allow 4 visits a day to the crèche by the woman employee. The proviso conflicts with the section, which is applicable on both male and female employees, therefore, the issue arises as to whether male employees are allowed to visit the crèche. A clarification or amendment in this regard is awaited.
- Provisions related to the application of the law to the unorganized sector remain unclear. On the one hand, the act states that women working in plantations, shops, mines and factories, in both organized and unorganized sector. On the other hand, the 2008 unorganized worker Social Security defines unorganized sector workers as those who are paid to work at home, self-employed, or in an institution with less than 10 employees, so it is not vivid whether the provision deals with the women working in companies with less than 10 employees, this is a major concern as 90% of women are employed in unorganized sector in India and the act is ambiguous about this fact.
- There are many women who do get any institutional support, though there are women who get the benefit from the schemes like Indira Gandhi Matritva Sahyog Yojna and Janani Surksha Yojna but they get assistance only in terms of cash and other lacks in other institutional support mentioned under the act.

Legal Provisions and Case laws

Starting from our constitution, the constitution drafters always kept in mind the need for certain special provisions for the benefit of women in the society. It must be noted that the Constitution of India establishes equality of the sexes under "Article 14"¹¹ and creates a special provision for women under "Article 15(3)"¹². The Directive Principles of State Policy (DPSP) create an obligation on the State under Articles 38, 39 and 42 to reduce the inequalities and provide social justice to women.

The law relating to beneficial legislations, specifically the Maternity Benefits Act has been overtly discussed by the judiciary in recent times, the prime example being the "*B. Shah v. Presiding Officer, Labor Court, and Combaitore*"¹³ wherein for the first time, a doctrine of "beneficial rule of construction"¹⁴ was aptly discussed in respect to social legislations like Maternity Benefits Act. "Even though the objective behind yielding social legislations is to advance welfare of the masses, provide improved access to justice and give impetus to reasonability, such primary constituents of the great legislative intent in majority of these promulgations⁴⁶ have failed to materialize as access of these to the vulnerable and marginalized group of women still remains a hurdle."¹⁵ The question of the time period of maternity benefit was brought up in *B. Shah vs. Presiding Officer Labour Court, Coimbatore, and Ors.* The issue that arose in court was whether Sundays, being wageless holidays, should be included in the calculation of the maternity benefit period.

In the landmark case of "*MCD v. Female Workers (Muster Roll)*", "the question of maternity benefits for daily female workers was raised"¹⁶

"The Supreme Court upheld the right to maternity benefits of these employees and ordered the Corporation to extend the benefits to these daily wage female employees. The court reasoned that depriving muster roll female workers of maternity benefits was against the principles of

¹¹ article 14 of the constitution provides equality before law and equal protection of law.

¹² "Nothing in this article shall prevent the State from making any special provision for women and children."

¹³ 1978 A.I.R 12.

¹⁴ "*Beneficial construction is an interpretation to secure remedy to the victim who is unjustly denied of relief. The interpretation of a statue should be done in such a way that mischief is suppressed, and remedy is advanced*"; GRANVILLE SHARP, MAXWELL ON INTERPRETATION OF STATUTES, 68 (Sweet & Maxwell Limited, London 10th ed. 1953).

¹⁵ *Budhan v. Nabi Bux* AIR 1970 S.C. 1980.

¹⁶ (2000) 3 SCC 224 : AIR 2000 SC 1274

social justice as they had been working for the Corporation for a number of years and in the same capacity as regular workers."

Another landmark judgment in which a deep-rooted prejudice against women was unveiled is "*Air India v. Nergesh Meerza*" "when service rules regarding age, marital status and pregnancy were challenged. This case was the occasion for the Supreme Court to set right the sex discrimination in the country."¹⁷ in this case the age, marital status and pregnancy was challenged. this case was one of the highly disappointing case on sex discrimination given by the supreme court.

The need for young and attractive cabin crew to pacify temperamental travelers was underlined during the discussions. "The Court justified the inferior treatment to women by putting them in a 'different class' and reasoning that these 'special conditions' meant there was no instance of discrimination."¹⁸

On the question of equal remuneration, the court termed service conditions of women as inferior to their male counterparts thus violating the fundamental right of equality.

"It was held by the Supreme Court that the benefit that was conferred by the Maternity Benefit Act, read with Article 42 of the Indian Constitution, was directed to help women to not only safeguard her maternity rights but also preserve her effectiveness as an employee and keep her efficiency level stable. She, therefore, requires any amount that may become payable to her, in lieu of the medical expenses and wellbeing of the child. The law makes maternity benefit compulsory so as to help women balance their employment and reproductive roles efficiently. Thus, the court, in accordance with the rule of beneficial construction, stated that Sundays would be included in the said period."

In "*Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Anr*"¹⁹, "it was noted that to become a mother is the most natural phenomena in the life of a woman and whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic to give and must realize the physical difficulties which a working

¹⁷ *Air India v. Nergesh Meerza*, (1981) 4 SCC 335 : AIR 1981 SC 1829.

¹⁸ *Air India v. Nergesh Meerza*, (1981) 4 SCC 335 : AIR 1981 SC 1829.

¹⁹ (2000) 3 SCC 224. 54 OA No.1761/2015.

woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth."

"The Maternity Benefits Act, along with the principles of social justice and the DPSPs, are agents of the social amelioration of women. The cost of conferring benefits on the female employees is overwhelmed and outweighed by the benefits arising from it"²⁰

Conclusion

Women have always suffered from exploitation and unequal treatment and strive to maintain their position in this patriarchal society. The decline in the number of women in the workforce is very frustrating. The reason is still that there is little or no realization of their rights and the limited remedies available. Gender equality and providing adequate facilities to women at their workplace is a matter of social justice which everyone should take seriously. Companies in India need to consider work-life balance with their employees. Organizations need to understand that taking good care of employees is good for them because more and more new employees will take the initiative to cooperate with them, which also has a positive impact on the company. Now a days workplace atmosphere matters the most otherwise people switch their jobs increasing competitions for the organization. women coming out of their home and making their names in every field of work was never easy, some leverage should be provided. Thus, the maternity benefits act is a good initiative by the government, but it still needs a lot of changes. The application of the act should be made expressly available to unorganized sector and domestic help and therefore removing the restriction of 10 employees as given under section 2 of the act. The law should clearly provide paternity leave allowances, as this will reflect the gender neutrality of the legislation and create a level playing field. The government should try to unify the maternity allowance in the labor law. Such as the "Employee State Insurance Act of 1948", the "All India Service (Leave) Rules" of 1955, the "Central Civil Servants (Leave) Rules" of 1972, the "Factory Act" of 1948 and the "Unorganized Workers" of 2008 The Social Security Law and other bills have differences in the scope of protection, welfare and financing. All these laws must be merged to unify the spread of interests among the various sectors in India.

²⁰ Radhakishan Ramnath v. State of Bombay, (1959) IILLJ 177 Bom; LancoAnpara Power Ltd v. State Of Uttar Pradesh And Ors, 2017 (I) I.L.R - CUT- 187 (S.C.)