



THE LAWWAY WITH LAWYERS JOURNAL

VOLUME:-11 ISSUE NO:- 11 , MAY 20 , 2024

ISSN (ONLINE):- 2584-1106

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## **Interpretation of the Maternity Benefit Act, 1961 and 2017: A Legal Issue.**

### *Abstract*

Over the last ten years, there have been significant changes in developing societies. Women have contributed significantly to this decade-long expansion, which has had a positive impact on the existing social and economic institutions. Even though the data indicate a severely skewed gender ratio in the labour force, one cannot ignore the contribution made by women in developing the skilled labour force in the nation. Developing nations must recognize this critical role and offer leverage to reconcile the gender-centric roles of men and women. The idea of social justice has changed recently in order to achieve this goal. This idea originated with the way judges interpreted laws that were passed to help communities that needed assistance and care. The Maternity Benefits Act, 1961 (and its recent amendment of 2017) is one example of progressive labour laws. It was created in response to the need for protection for working women in sensitive situations, such as pregnancy, to prevent harassment on the grounds of work obligations. In addition to these statutes, the judiciary has contributed equally. It regulates pregnant women's employment prior to, during, and following childbirth. This article offers a perceptive analysis of the Act's contents, including the significant changes made by the 2017 Maternity Benefit (Amendment) Act. The Act is applicable to any organization that employs ten (10) or more people. As to the Act, every woman who has worked for an organization for a minimum of eighty (80) days is eligible to receive maternity

benefits. All of India is covered by the act, with the exception of Jammu & Kashmir. This act's primary goal is to provide working women with social fairness.

**Keywords:** The maternity benefit act 1961, social justice, Legislations, development, Labour laws.

## **INTRODUCTION:**

The law passed to safeguard women's rights during pregnancy is known as the **Maternity Benefit Act of 1961**.<sup>1</sup> It controls pregnant women's employment prior to, during, and following childbirth. Through this Act, working women receive specific financial benefits throughout their maternity leave. On December 12, 1961, the Union of India passed the Maternity Benefits Act of 1961, which came into effect after the nation gained its independence. In accordance with the then-current international standards, the statute offered conditional benefits for pregnancy, childbirth, and problems associated to such conditions. Despite the fact that India was still a developing country and this Act covered a wide range of topics with great care and accuracy, giving careful consideration to many different aspects of factors impacting maternity benefits. **The Maternity (Amendment) Bill 2017**,<sup>2</sup> which was approved by the Lok Sabha on March 9, 2017, amends the Maternity Benefit Act, 1961. The aforementioned Bill was subsequently approved by the Rajya Sabha on August 11, 2016. Moreover, on March 27, 2017, the President of India gave his approval. The Maternity Benefit (Amendment) Act, 2017 (the "Amendment Act") went into effect on April 1, 2017, while Section 111 A, which deals with crèche facilities, became operative on July 1.

The most recent research in this field conducted in India indicates that India complies with international conventions. This article summarises the benefits suggested by international standards and provides a summary of maternity benefits available in the nation. Along with providing a limited comparison with other countries on the same topic, it also aims to aggregate all recent studies relevant to India. Legislation is intended to assist parents before they return to the workforce and during their postpartum recuperation. They offer the mother peace of mind during this time by guaranteeing benefits in addition to her work security and pay. The article also seeks to provide country dwellers with a basic understanding of the law.

## **OBJECTIVE OF MATERNITY ACT:**

The main objective of the Act is to remove the barriers that women encounter when they become parents. Making it feasible for women to manage work and parenting without having

to make compromises is the Act's main objective. Germany set the trend for the rest of the

<sup>1</sup>India code, [https://www.indiacode.nic.in/bitstream/123456789/17115/1/maternity\\_benefit.pdf](https://www.indiacode.nic.in/bitstream/123456789/17115/1/maternity_benefit.pdf) ( last visited on 12 June 2024)

<sup>2</sup>Ministry of Labour and Employment, [https://labour.gov.in/sites/default/files/maternity\\_benefit\\_amendment\\_act2017](https://labour.gov.in/sites/default/files/maternity_benefit_amendment_act2017) ( last visited on 12 June 2024)

world by establishing maternity benefits by the end of the 19th century. The Act forbids terminating a female employee while she is on maternity leave. It guarantees women's employment stability during the critical times of pregnancy and childbirth. In addition to maternity leave, this also offers women employees a medical bonus. Its purpose is to pay for maternity and delivery-related medical costs.

## **HISTORY OF MATERNITY ACT IN INDIA:**

In 1928, the Bombay Presidency of British India made the first reference to maternity benefits or leave in the government of India. Our analysis of the literature shows that Dr. Babasaheb Ambedkar was a fervent advocate and propagator of the concept of maternity benefits. He was observed advocating for the Bombay legislature's maternity benefits. When it came to maternity benefits, India first exclusively offered them to women who worked in factories. It is clear that the act's goal was to protect women employed in the formal sector of the economy from harm. Women who work in agriculture or other unorganized sectors of the economy were ignored. Additionally, rather than providing adequate child care for the first several days, it concentrated exclusively on the mother's prenatal care.

## **RESEARCH METHODOLOGY:**

Research methodology used in this topic is quantitative methods. It includes secondary data. The secondary data has been taken from different sites and reports. Like reports of different countries have been used to understand the benefits under this act. Bare act has been used for articles and definition of articles.

## **WHAT IS MATERNITY LEAVE?**

Maternity leave is any type of paid leave for expecting employees. The amount of leave that an employer or organization must give pregnant women before and after the kid is delivered is as follows:

1. Pregnant women are eligible to 26 weeks of paid leave for their first and second child; they may take this leave up to eight weeks before the expected birth date.
2. Mothers who

have their third or later child are eligible to 12 weeks of paid leave. 3. A woman is entitled to a 6-week maternity leave in the event that she miscarries or undergoes a medically assisted pregnancy termination. Even though she might need to present proof of the miscarriage, the leave period starts as soon as the date of the miscarriage. 4. Moms who are adopting or commissioning are eligible for up to 12 weeks of paid leave, beginning on the day the baby is handed to them.

Extra leaves might be provided to new moms who require extra time to recover. Employers face jail time as a penalty if they break the Act and don't give the woman maternity benefits. The following parts of the Maternity Act encompass all benefits:

- Section 4: Women are not allowed to work or be employed during specific times.
- Section 5: Maternity benefit payment entitlement.
- Section 7: Provision of Maternity Benefits in the Event of a Woman's Death.
- Section 8: Payment of medical bonus.
- Section 9: Miscarriage Leave, etc.
- Section 10: Leave for pregnancy-related illnesses, delivery, early childbirth, miscarriage, medically assisted pregnancy termination, or tubectomy procedures.
- Section 11: Nursing breaks.
- Section 12: Dismissal during absence of pregnancy.
- Section 13: No deduction of pay in certain instances.
- Section 18: Maternity benefits forfeited.

The Indian government updated the Act in 2017 to provide women with more comprehensive maternity benefits. A new section, Section 5(5), was inserted to the Act along with other revisions, allowing women who requested maternity leave to work from home if it suited them. Section 5(5) of the Act states that, under mutually agreed-upon conditions, an employer may permit a nursing mother to work from home provided the nature of the task that they are assigned permits it.

**THE MATERNITY BENEFITS (AMENDMENT) ACT 2017:** • The length of paid maternity leave was extended under the Maternity Benefit Act. The female employees received 12 weeks of paid maternity leave prior to the modification. The change resulted in an extension of this to 26 weeks. The women can take advantage of an 8-week period prior to the anticipated delivery date, with the remaining term available following the child's birth. A woman is eligible for a 12-week maternity leave if she is raising two or more children.

- Women who commission children and women who adopt children under three years old are granted a twelve-week maternity leave.
- Additionally, the "work from home" option was added by the amendment legislation. Women employees are eligible to work from home once their 26 weeks of paid maternity leave have expired. Only benefits that have been mutually agreed upon by the company and employee may be used for this.
- Additionally, this amendment statute requires enterprises to offer a childcare facility. If a business employs fifty people or more, this is required. With the breaks that are provided, they are allowed to visit the childcare four times a day.
- The employee should be informed about the maternity benefits that are offered at the time of employment by the employer. It is their duty to instruct and mentor them.

### **MATERNITY BENEFITS ACT 1961 BENEFITS:**

The Act allows a pregnant woman to receive maternity benefits and work from home. Nonetheless, agreement to the terms of employment must come both the employer and the worker. The company must provide the expectant worker with an explanation of the maternity benefits during her first session. For the benefit to be paid during the maternity leave, the employee must provide the employer with the required documentation. The Ministry of Labor has mandated that the states give pregnant women information. Since working from home enables women to spend more time with their newborns and give them the care they require, women should embrace this benefit. The Act mandates that employers provide pregnant employees the necessary notice before the employee's due date. The employer must provide her with this notice within 48 hours. This is how the worker will be made aware of the policy. If the woman feels prepared to work from home, she can qualify for maternity benefits. The employee needs to be informed about the maternity benefits during the initial meeting. Even in cases when the employee declines, the employer is legally obligated to offer the benefit. An abrupt leave of absence or departure will not be tolerated by any organization. Since the employees were the ones who drafted the legislation, the organization and the employees must make the most of it.

### **MATERNITY BENEFIT ACT AND THE CONSTITUTION OF INDIA:**

A sufficient means of subsistence is guaranteed by Article 39(a); strength is not exploited; fair and humane working conditions and maternity leave are guaranteed by Article 42; and the right to improve working women's employment opportunities and conditions is guaranteed by Article 46. Other articles that guarantee equality include Articles 14 and 15. Article 15(3)<sup>3</sup> of the Indian Constitution gives the government the authority to make special

measures for women. Article 15 (3) primarily aims to prevent "protective discrimination" against women based on their precarious physical conditions.

**MATERNITY BENEFIT LAWS AND THE INDIAN COURTS:** The maternity benefit legislation in India has been shaped by the Indian judiciary, which has provided interpretations that have favored working women. A synopsis of a few noteworthy court decisions is provided below:

- **Rattan Lal and Ors. vs. State of Haryana**<sup>4</sup>: We considered the claims of the state of Haryana's ad hoc teachers over nonpayment of salary during summer vacations and denial of other benefits like medical leave, maternity leave, casual leave, and so forth. The Court noted that ad hoc teachers are unfairly denied summer vacations, salary and benefits, and all other benefits provided to all government employees, such as medical, maternity, and casual leaves, because of the State Government's unjust appointment system.
- **Vandana Katari vs. University of Delhi**: According to the court, any act by a university or college that excludes or holds back a female student for any semester on the sole reason that she was unable to attend classes because she was in a later stage of her pregnancy or because she gave birth to a child completely violates not only the conscience of the Constitution but also the rights of women and the idea of gender equality.
- **Tata Tea Ltd. vs. Inspector of Plantations**<sup>5</sup>: An employer cannot require a worker who is receiving maternity benefits under the terms of the Maternity Benefit Act to report for duty on holidays. Additionally, it was decided that the maternity benefit to which employees are entitled under the Maternity Benefit Act should not be reduced

<sup>3</sup> Govt. of India, Ministry of Education, <https://www.education.gov.in> (last visited on 13 June 2024)

<sup>4</sup> Rattan Lal and Ors. vs. State of Haryana, AIR (1987) 478 SC 1985

<sup>5</sup> Tata Tea Ltd. vs. Inspector of Plantations, AIR (1978) 12 SCR 1978

by contributions that the employer has previously provided toward salaries under the National and Festival Holidays Act.

As a result, it is clear from analyzing the Act's numerous provisions as well as those of other maternity benefit-related laws that the Maternity Benefit Act has benefitted working women by preventing employment insecurity during their pregnancy. It may be said that the Maternity Benefit Act has been successfully implemented, despite several issues that still require clarification.

## **DRAWBACK OF THE MATERNITY BENEFIT ACT:**

Adding a childcare facility to the business will require additional funding. Many businesses won't be able to sustain their finances long enough to offer such a facility. This could also be a deterrent for employers not to appoint young women. This will then result in prejudice against women during the hiring process. The time spent on maternity leave reduces productivity. The employer bears all of the expenses. In addition to compensating for the task that is not completed, the employer pays the female worker while she is on break. Someone else works in place of the absent employee, who might not be the best candidate for the position. The employer is now under more pressure as a result. Due to their demands for maternity leave and benefits, many women lose their jobs.

## **WHAT NEEDS TO BE DONE:**

**1.Extending Paternity Leaves:** It is important to minimize the distinction between maternity and paternity leaves and to stop treating child care as exclusively the responsibility of women. This will level the playing field for men and women in the workplace and in social situations, without deterring the recruitment of women.

**2.Government cost sharing:** If the government contributes, businesses are less likely to discriminate against women. In accordance with ILO Convention 183, the government must pay for maternity benefits up to a minimum of two-thirds of the total cost, as highlighted in the 2018 ILO report on Care Work and Care Jobs.

**3.Flexibility in work schedules for both genders:** This will support the preservation of the work-life equilibrium. Businesses in western regions that provide this kind of freedom report higher worker productivity—and both sexes take advantage of these flexibilities.

It is imperative that society and the government take a broad stance in support of women who manage job and motherhood, viewing childrearing as a shared obligation rather than a burden that women must shoulder at the expense of their ability to advance in their careers.

## **Comparison of Labor Laws in India with the Aforementioned**

### **Countries: i. Singapore**

Singapore has highly strict maternity rules. It fluctuates depending on the woman's marital status and the child's citizenship. The mother does not receive the full benefits of the legislation if the child is not a Singaporean citizen. The following conditions must be met, according to Singapore's Ministry of Manpower, in order for the mother to get her entire 16 weeks of paid maternity leave<sup>6</sup>:

1. The child is a Singaporean citizen.

2. The mother and the child's father are lawfully wed.
3. At least three months before to the child's birth, the mother worked for the employer or as a freelancer.

## **ii. Malaysia**

In Malaysia, a woman is entitled to 60 days of fully paid maternity leave under the Employment Act of 1955, provided she worked for at least 90 days in the four months before to beginning her leave. The employer must be informed at least four months before the maternity leave. The expectant mother is entitled to more than two months of paid leave in the following situations:

1. Maternity leave is up to ninety days long for bank employees and certain state government employees.
2. Some international corporations offer maternity leave that is even longer than ninety days.
3. Some businesses let workers take longer than ninety days off without getting paid.

## **iii. Philippines:**

Through a new law known as Republic Act No. 11210, the maternity benefits in the Philippines have just been increased from 60 to 150 days. Regardless of the child's legal

<sup>6</sup> Ministry of Manpower, <https://www.mom.gov.sg/employment-practices/leave/maternity-leave/eligibility> (last visited on 13 June 2024)

status or civil status, miscarriage, or other circumstances, the legislation applies to all workers, including those in the informal economy. The following advantages are provided to the staff:

1. Any or all working mothers can purchase one paid maternity leave.
2. After filing for a leave of absence, employees in the private sector receive their entire compensation within 30 days.
3. Employees who notify their employer 45 days in advance of the start of their absence may request a 30-day extension.

## **CONCLUSION:**

It is a question that every working woman should have asked herself whether to quit or stay in her job throughout her pregnancy. There, the challenge is to decide between her personal life and her career. Maternity schemes were therefore introduced to assist pregnant women and their unborn child in order to improve their health and lessen the stress and negative

feelings that accompany pregnancy. Permitting the father to go on a brief leave of absence can provide him with an opportunity to provide excellent care for the infant and provide the mother with a suitable setting in which to feed him.

The Maternity Benefit Act of 1961 seeks to honourably and peacefully enable working women to transition into parenthood without fear of retaliation for being compelled to miss work during the prenatal or postpartum period.<sup>7</sup> It does this by offering all these amenities to them in a dignified manner. The act over the years has demonstrated this. The Maternity Benefit Act has outperformed other labor laws by safeguarding the rights of workers, particularly women employees, notwithstanding a few minor shortcomings. A woman cannot be forced to choose between being a mother and working.

<sup>7</sup> Municipal Corporation of Delhi vs. Female Workers, 2000 (3) SCC 224