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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.
TITLE – MATERNITY BENEFIT ACT: AN ANALYTICAL STUDY

Written by- Vivek Ranaut

ABSTRACT:
Maternity benefits are an important step that can be taken to attain equality between men and women especially at work place. There is much need of such benefits as it helps not only in facilitating safe birth of child but also in protecting the good health and development of the mother as well as child. Indian parliament passed legislation on maternity benefits in 1961. The act was most recently amended in 2017 increasing the maternity leave period from 12 to 26 weeks and providing some more benefits like crèche facilities, option of work from home and maternity benefits to adopting mother and commissioning mother. After the amendment, the act has become a very progressive one but it is still far from perfect. Numbers of female workers covered under the act are still very few and it seems as if there is not much awareness about the maternity benefits especially about the amendment. There is one strange clause in this act which is often criticised that the maternity leave will remain 12 weeks for females who have 2 or more children. The courts have taken a very liberal view when dealing with maternity benefits cases. They have applied the act in expanded form since it is a social legislation and have granted relief to large number of female workers. This article discusses about the provisions of the Maternity Benefit Act, 1961 and its 2017 amendment. The author also discusses about some landmark and recent case laws relating to the act along with criticism of the act and also suggests some recommendations.

INTRODUCTION
Motherhood is a beautiful and the most natural phenomenon in a woman’s life. The employer should be sympathetic and considerate towards an employed pregnant lady. The employer must realize the physical and mental difficulties which a working woman would face at the workplace, during both pre and post-natal phases. Maternity benefits should be provided to every woman, which is the amount payable to her at the rate of the average daily wage for the period of her actual absence. Maternity benefits are important for a woman to give quality time to her child without worrying about whether she will lose her job and her source of income. Women should
be able to withdraw themselves from workforce during late pregnancy until few weeks after the birth of child to preserve her health and take care of her child. During this period, they also need some income for medical expenses etc., therefore a law should be made for maternity benefit so that women can ensure their productivity as well as reproductivity. The existence of such a law is very important for women’s rights and women’s economic security.

MATERNITY BENEFIT ACT, 1961

The Maternity Benefits Act, 1961 was enacted by the Indian government to provide women a level playing field and an equitable environment in work places. This act is aimed at securing the well-being of women. The objective of the act is “to regulate the employment of women in certain establishments for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.”

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. This was reiterated by the Delhi High Court in Dr. Ankita Baidya vs. Union of India & Ors. The Court noted that that the Maternity Benefit Act, being in the nature of a piece of social welfare legislation, it’s reach and sweep has to be as expansive as possible, rather than limited by any pedantic considerations of word or phrase.¹

The Maternity benefit act extends to the whole of India and covers female employees in any shop or establishment employing 10 or more persons. The definition of establishment includes factories, mines, plantations and establishments where people are employed for the exhibition of equestrian, acrobatic and other performances.² Further, casual and daily wage workers are also covered by the Act. A woman is eligible for maternity benefits if she has been employed 80 days or more in the 12 months preceding delivery.³

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² Maternity Benefit Act, 1961 (Act 53 of 1961), s. 3(e)
According to the original act, a female employee is entitled to 12 weeks of maternity leave. Not more than six of these weeks shall precede the date of delivery. In case of miscarriage or medical termination of pregnancy, the Maternity benefit act entitles an employee to leave for six weeks following the miscarriage\(^4\), and in case of tubectomy operation, the employee is entitled to leave for two weeks after the operation.\(^5\) In addition, a female employee suffering from illness arising out of pregnancy is entitled to a maximum one month of additional leave.\(^6\)

Concerning payment, the act states that a female employee shall be paid at the rate of her average daily wage by her employer when she is on maternity leave.\(^7\) The average daily wage shall also be paid in cases of leave following miscarriage, tubectomy operation or illness arising out of pregnancy. Further, a woman has the right to 3500 rupees in medical bonus\(^8\) and two nursing breaks per working day until her child attains the age of 15 months.\(^9\)

The Act stipulates that an Employer can neither dismiss a woman on account of leave as per the directions of the Act\(^10\), nor deny her the benefits under the Act because of procedural irregularities.\(^11\) It is also unlawful for an employer to give notice of discharge or dismissal on such day that the notice will expire during an employee’s maternity leave.\(^12\) In addition, it is of value to note that the act allows the State Government to extend the Act to any other establishment.\(^13\)

If a woman is deprived of maternity benefit or medical bonus, or discharged or dismissed during or on account of maternity leave, she can appeal against the decision within sixty days.\(^14\) For doing this, she can approach an Inspector appointed under the Act. If she is not satisfied with the orders of the Inspector, she can appeal against the orders to the prescribed authority within thirty

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\(^4\) Maternity Benefit Act, 1961 (Act 53 of 1961), s. 9  
\(^5\) Maternity Benefit Act, 1961 (Act 53 of 1961), s. 9A  
\(^6\) Maternity Benefit Act, 1961 (Act 53 of 1961), s. 10  
\(^7\) Maternity Benefit Act, 1961 (Act 53 of 1961), s. 5(1)  
\(^8\) Maternity and work, available at https://paycheck.in/labour-law-india/maternity-and-work (last visited on 3 January, 2021)  
\(^9\) Maternity Benefit Act, 1961 (Act 53 of 1961), s. 11  
\(^10\) Maternity Benefit Act, 1961 (Act 53 of 1961), s. 12  
\(^11\) Maternity Benefit Act, 1961 (Act 53 of 1961), s. 6(6)  
\(^12\) Supra note 10  
\(^13\) Maternity Benefit Act, 1961 (Act 53 of 1961), s. 2  
\(^14\) Maternity Benefit Act, 1961 (Act 53 of 1961), s. 12(b)
days.\textsuperscript{15} She can also file her case in court within one year if she is unsatisfied with the orders passed by the Inspector, or if a larger question of law is involved.\textsuperscript{16}

In \textit{B. Shah} Case, it was held that “While interpreting beneficial pieces of legislations such as Maternity Benefits Act, emphasis must be granted to its objectives which in this case happen to provide much needed social justice to women workers employed in certain work establishments. The Court further added that a beneficial legislation effectively exists within the purview of Article 42 of the Constitution and a Beneficent Rule of Construction doctrine must be applied to such Acts”. This rule of construction would enable the woman worker 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.\textsuperscript{17}

The goal of providing such benefits is to preserve the efficiency of the working women which is beneficial to the long term interest of both the employers and employees.

**MATERNITY BENEFIT AMENDMENT ACT, 2017**

The recent amendments to the Act in 2017 are the consequence of revolutionary steps that were taken by women’s rights groups and labour justice unions to include women laborers.\textsuperscript{18} Some of the major amendments that were brought in were the provisions of the Sixth Central Pay Commission (For Maternity and Child Care Leave) and the Central Civil Services (Leave) Rules, 1972 (CCSL Rules); which for the first time implemented a “Six Months Paid Leave Policy” for the Central Government Employees. Globally, the ILO formulated the Maternity Protection Convention in 2000, which mandated that no less than 14 weeks is to be granted to women as maternity leave. Additionally, the United Nations has recognized Maternal Health as one of the Sustainable Goals. According to article 25(2) of Universal Declaration of Human Rights, mother and child are entitled to special care and assistance.\textsuperscript{19}

\begin{flushleft}
\textsuperscript{15} Maternity Benefit Act, 1961 (Act 53 of 1961), s. 17(3)
\textsuperscript{16} Centre for Social Research, New Delhi, Analysis on Effectiveness of the Implementation of the Maternity Benefit Act, 1961, May 2014
\textsuperscript{17} Supra note 1
\textsuperscript{18} Ibid.
\textsuperscript{19} Ibid.
\end{flushleft}
The Act which came into effect on 1st April 2017, applies to all women workers who are employed in both the organized and unorganized sectors, if the establishments are covered under section 2 of the Act. The amendments will help around 1.8 million women employed in organized sector.20

The amendments made to Maternity Benefit Act, 1961 are as following21:

- Maternity Benefit period increased to 26 weeks from 12 weeks for two surviving children.
- 12 weeks of Maternity Benefit for 'adopting mother' and 'commissioning mother'.
- Option of ‘Work from home’ which may be exercised after the expiry of the 26 weeks' leave period.
- Mandatory provision of Crèche (day care) facilities in respect of establishment having 50 or more employees.

Under the original act, the maternity benefit should not be availed before six weeks from the date of expected delivery. The amendment changes this to eight weeks. However, for a woman who has two or more children, the maternity leave will remain 12 weeks only, which can be availed not before than six weeks before the date of the expected delivery.

The act also provides 12 weeks of maternity leave to: (i) a woman who legally adopts a child below three months of age; and (ii) a commissioning mother. A commissioning mother is a biological mother who uses her egg to have a surrogate child. The 12-week period of maternity leave will be calculated from the date the child is handed over to the commissioning or adoptive mother.22

Every establishment has to inform a woman at the time of her appointment of the maternity benefits available to her in written form as well as in electronic form.23 The Act also extends an exclusive opportunity to the working women to work from home.24 Crèche facilities are provided

22 Maternity Benefit Act, 1961 (Act 53 of 1961), s. 5(4)
23 Maternity Benefit Act, 1961 (Act 53 of 1961), s. 11A(2)
24 Maternity Benefit Act, 1961 (Act 53 of 1961), s. 5(5)
to the women employees within 500 meters of the establishment. Moreover, with the number of crèche visits amounting to four and nursing breaks amounting to two, a woman is allowed a total number of six breaks.

CASES

1. Municipal Corporation of Delhi v. Female Workers (Muster Roll)

The Municipal Corporation of Delhi, appellant herein, used to grant maternity leave only to its regular female workers and not to the female workers on muster roll. Female workers of the latter category raised a demand for grant of maternity leave and the union concerned espoused their cause. The Corporation contended that the benefits contemplated by the Maternity Benefit Act, 1961 could be given only to workwomen in an "industry" which does not include the muster-roll women employees of the Municipal Corporation.

The court said that the provisions of the Act indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in article 39, article 42 and in other articles. A woman employee, at the time of advanced pregnancy should not be forced to perform hard labour as it would be injurious to her health and also to the health of the unborn child. This is the reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. The court held that there is nothing contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily-wage basis.

The Supreme Court said that, "A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honored and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. 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,

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25 Maternity Benefit Act, 1961 (Act 53 of 1961), s. 11A
26 Supra note 1
27 2000(3) SLJ 369
undeterred by the fear of being victimized for forced absence during the pre or post-natal period."

2. Dr. Rachna Chaurasiya vs. State of U.P. and others

In this case, Division Bench of Allahabad High Court directed the State Government of Uttar Pradesh to grant maternity leave to all female with full pay of 180 days, notwithstanding the nature of employment, i.e., permanent, temporary/ad hoc or contractual basis. State respondent was also directed to grant 730 days of Child Care Leave to all female employees, who are appointed on regular basis, contractual basis, ad hoc or temporary basis having minor children provided that the child should not be more than 18 years of age or older.

3. Manisha Priyadarshini vs. Aurobindo College – Evening and others

The appellant was working as an ad-hoc assistant professor in respondent college. She requested the college to grant her maternity leave and other benefits under the Maternity Benefit Act, 1961, from 14.01.2019 till 24.05.2019. But the college did not respond to her request. She reiterated her request on 16.01.2019, seeking permission to proceed on maternity leave from 21.01.2019 onwards. The appellant was blessed with a daughter prematurely on 03.02.2019. However, on 24.05.2019 when she reported to the college for joining her duties, she was informed that there was no question of her joining back on duty as she was terminated from service.

The court said, "We decline to accept that as a legitimate ground for denying extension of tenure to the appellant/petitioner. Such a justification offered by the respondents for declining to grant an extension to the appellant/petitioner as she had highlighted her need for leave due to her pregnancy and confinement would tantamount to penalizing a woman for electing to become a mother while still employed and thus pushing her into a choiceless situation as motherhood would be equated with loss of employment. This is violative of the basic principle of equality in the eyes of law. It would also tantamount to depriving her of the protection assured under Article 21 of the Constitution of India of her right to employment and protection of her reproductive rights as a woman. Such a consequence is therefore absolutely unacceptable and goes against the
very grain of the equality principles enshrined in Articles 14 and 16”. While directing the College to reinstate the Professor within one week, the Court also imposed a cost of ₹50,000.

4. Dr. Ms. Pooja Jignesh Doshi vs. State of Maharashtra and another\(^{30}\)

Bombay High Court in this case held that even in case of birth by surrogacy the parents would be entitled to avail leave. The court observed: “A commissioning mother like the petitioner would have the same rights and obligations towards the child as the natural mother. Motherhood never ends on the birth of the child and a commissioning mother like the petitioner cannot be refused paid maternity leave. A woman cannot be discriminated, as far as maternity benefits are concerned, only on the ground that she has obtained the baby through surrogacy. A mother would include a commissioning mother or a mother securing a child through surrogacy. Any other interpretation would result in frustrating the object of providing maternity leave to a mother, who has begotten the child.”

5. Rasitha C.H. vs. State of Kerala & Another\(^{31}\)

The Kerala High Court reiterated that women-employees are entitled to maternity benefits, irrespective of the nature of their employment. In this case, 35-year old petitioner Rasitha was denied maternity leave by the Calicut University on the ground that the terms of her contract did not envision the grant of such leave. Justice A Muhamed Mustaq held, “The maternity benefit is not merely a statutory benefit or a benefit flowing out of an agreement. This court consistently held that it is attached with the dignity of a woman…. it was held that a woman employee cannot be denied maternity benefits merely because her status is a contractual employee. Therefore, the University is bound to grant such benefits notwithstanding anything contained in the agreement of contract.”

The court in the end directed the Calicut University to pay maternity benefits due to the Rasitha, as applicable in the case of other employees of the University, within two months.

6. K. Chandrika vs. Indian Red Cross Society and Another\(^{32}\)

\(^{30}\) 2019 SCC OnLine Bom 1433  
\(^{31}\) 2018 SCC OnLine Ker 7404  
\(^{32}\) 131 (2006) DLT 585, 2007 (3) SLJ 479 Delhi
High Court of Delhi in this case held that even if the benefits are adequately allotted to the employees consequentially, it does not mean that the employer would be at freedom to terminate or remove the employee illegally through arbitrary means.

7. **B. Shah vs. Presiding Officer, Labor Court, Coimbatore**

One of the issue dealt by the Court in this case was whether the ‘Computation of Days’ for granting the Maternity benefits by the appellant establishment in the case was detrimental to the welfare of the women and wrongful conduct on part of the establishment to exclude Sundays as non-payable leave. The court answered the question in the affirmative and held that “indeed the connotation of the term week inserted in the Act include Sunday for which the benefit amount must be paid irrespective of the fact that it is generally a wage less day.” It was further stated that it was the primary intention of the legislature that any future computation of benefits under this Act must be made for the entire period of the absence of the women worker i.e. for all the days including Sundays which are unpaid leave day. If the legislature intended to ward off wage less days from Computation, then they language used in construing the provisions would be different. This Act is promulgated to benefit the working women and not the employers, the aims of whom are to increase their own profits and resources. Hence if the benefits do not reach the targeted community, the purpose of the Act remains unsatisfied.

8. **Anshu Rani vs. State of U.P.**

In this case, District Basic Education Officer, Bijnor rejected the request of the petitioner for maternity leave for 180 days and instead granted her leave for a period of 90 days only. No reason whatsoever was provided as to why the request for grant of maternity leave for a period of 180 days was turned down and the maternity leave was given only for a period of 90 days. The aggrieved petitioner filed the writ petition and argued that she is entitled to the benefit of the provisions contained in the Maternity Benefit Act, 1961 as has been amended by Maternity Benefit (Amendment) Act, 2017.

Allahabad High Court held that there cannot be any curtailment of maternity leave period as prescribed under the Act and it is the woman's rights to get full six months maternity leave.

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33 1978 AIR 12, 1978 SCR (1) 701
34 (2019) 5 ALJ 286 (India)
Court thus ruled in favour of the petitioner and issued the mandamus granting her maternity leave with honorarium for 6 months.

**CRITICISM**

Unorganised women workers are not covered under the Act. The law will benefit only a minuscule percentage of women, while ignoring the majority who are working as contractual labour, farmers and self-employed women. About 90% of working women are in the unorganized sector and are not covered by the 1961 Act. In 2015, the Law Commission of India recommended that the provisions of the 1961 Act should cover all women, including women working in the unorganized sector. Women workers in the unorganized sector include agricultural labourers, seasonal workers, domestic workers or construction workers. They often work in unstructured conditions, and may have multiple employers. Due to such conditions, they may not be able to prove eligibility under the 1961 Act such as continuous employment for a period of 80 days in the one year prior to the date of delivery.\(^\text{35}\)

The Amendment has extended the period of maternity leave to 26 weeks from earlier 12 weeks. However, this increase in maternity leave is not applicable to women with two or more surviving children. Such women will be entitled to 12 weeks of leave only.

India does not provide for public disbursement of benefit under such social benefits Acts. Hence, the employer has to bear the cost of providing benefits which has the potential to significantly hamper the future employment opportunities for working women. With such hotchpotch, the economic burden only increases on the employer who would then try to indulge in unwanted activities such as lay-off, retrenchment or may try to evade the cost of crèche and subsequent taxation on the same which maybe potently negative for the women employability interests. It is worth noting that the principle of employer’s liability contradicts one of the general guiding principles in the ILO recommendation no. 67, which states that income security as far as possible should be organized on the basis of compulsory social insurance.\(^\text{36}\)

Even though the objective behind social legislations is to advance the welfare of the masses, provide improved access to justice and give impetus to reasonability, such primary constituents

\(^{35}\) Supra note 20

\(^{36}\) Supra note 1
of the great legislative intent in majority of these promulgations have failed to materialize in reality. The lack of access to these legislations to the vulnerable and marginalized group of women still remains a hurdle.

The Maternity Benefits Act is a step forward in increasing gender inclusivity but stereotypes can be observed in the Act. For instance, unlike progressive countries such as Norway, Sweden, Ireland and several others, India does not have a mandatory provision for paid paternity leave.

**RECOMMENDATIONS**

The scope of application of the Act must be made more expansive by removing the restriction of minimum 10 employees in an establishment under section 2 of the Act, for the establishment to be bound by the terms of the Act. Such a step is necessary to ensure that women employed as domestic helps or on farms are not excluded from the application of the Act.

Maternity leave period remains only 12 weeks for women who have more than 2 children. This is a discriminatory clause against the mother as well as the child. The government has stated that the 2017 amendment seeks to extend the period of maternity leave to 26 weeks to ensure maternal care to the child during early childhood. It has also noted that such early care is essential for the growth and development of the child. This objective could be defeated if sufficient maternity leave is not given in the case of a third born child.

Paternity benefits should also be provided under the Act, as this would reflect the gender neutrality of the legislation and create a level playing field. Burden on employer to provide benefit should be reduced either by providing benefit through insurance or by making the government responsible for contributing at least half of the cost of such benefits if not full.
CONCLUSION

Even though the legislature has been fundamental in enacting statutes like The Maternity Benefits Act, 1961, adequate access and implementation remains a distant dream for millions of women across the country. Going by the judgment of B. Shah v. Presiding Officer, Labor Court, Coimbatore and the amended provisions in The Maternity Benefits Amendment Act, 2017, it can be observed that women need to be given extraneous benefits, especially when they are vulnerable and the society should continuously thrive to reach a point when we can ensure a better space and living environment for all individuals of our diverse community.

With India being a developing nation and a budding superpower, it cannot be overlooked that a country’s economic, social and political development lies in the growth of its women. In order to have the desired effect, strong legislations like the Maternity Benefits Act must be followed by a strategic application of laws in its implementation by independent authorities.