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Maternity Benefits in India: Rights of Women as a Mother

SAMRIDDI KAPOOR¹ AND TANVI SALUJA²

ABSTRACT

Maternity laws in India are intended to protect working women's health and well-being during and after pregnancy. The Maternity Benefit Act, first introduced in 1961 and revised multiple times since then, is the most important law controlling maternity benefits in India. The Act provides for up to 26 weeks of paid maternity leave for women working in the organised sector, which includes both government and private firms. The Act, in addition to paid leave, provides for other benefits such as medical allowances, nursing breaks, and the freedom to work from home for a set length of time. Employers are also prohibited from firing a pregnant woman or when she returns from maternity leave under the Act. These provisions, however, only apply to women who work in the organised sector, leaving a major portion of the female workforce, including women in the informal sector, domestic workers, and self-employed women, without any protection or benefits. Despite these constraints, the Maternity Benefit Act is an important step towards ensuring that women have access to vital maternity benefits and are protected from job discrimination. India may become a more egalitarian and friendly environment for working mothers with additional reforms in the law and increased awareness among businesses and employees.

Keywords: *Maternity Benefit, pregnant woman, informal sector, Code on Social Security, 2020.*

I. INTRODUCTION

India is a developing nation with a patriarchal society in which women lack many rights. Women have been performing household duties including cooking, cleaning, and childcare for a long time while working unpaid. Following India's independence, women began to enter the workforce because of urbanisation, industrialization, and shifting societal attitudes around economic hardship and employment options. But this change also brought forth brand-new problems, such as discrimination and inadequate working conditions for women. Pregnancy was one of these problems, and women were frequently fired from their occupations or made to leave to take care of their children. In most communities throughout history, giving birth and

¹ Author is a student at University of Petroleum and Energy Studies School of Law, India.

² Author is a student at University of Petroleum and Energy Studies School of Law, India.

caring for young children have traditionally been seen as being the job of women.

The Maternity Benefit Act was first passed in 1961 with the intention of protecting working pregnant women's employment status. It offers financial support to women during pregnancy or after childbirth in the form of a payment or allowance. Pregnant women who are employed are the only ones who can take use of the perks. act guarantees that expectant mothers have the right to paid time off before and after giving birth, allowing them to balance professional and personal obligations. Only businesses with ten or more employees are subject to the Maternity Benefit Act, which offers pregnant women security for a defined period of twenty-six weeks.³ This time frame is in line with the World Health Organization's recommendation, which stresses the crucial importance of exclusive breastfeeding during the first few months following childbirth, giving health advantages for both the mother and child.⁴

The main goals of maternity benefits are to maintain women's self-worth, safeguard their health, and guarantee the entire protection of their offspring. By offering complete healthcare to mothers and their children when they are unable to fulfil their obligations due to illness, the goal of maternity benefits is to protect the dignity of motherhood. To be able to spend meaningful time with her child without worrying about her work or source of money, a mother needs maternity benefit.

This study attempts to offer an in-depth examination of the social justice-based evolution of women's roles in contemporary society as shown in Indian legislation and judicial decisions.

II. HISTORICAL BACKGROUND OF MATERNITY BENEFIT LAWS: IN INDIA

The Maternity Benefits law was first established in India for the province of Bombay through the Bombay Maternity Benefit Act of 1929,⁵ which provided maternity benefits to female factory workers both before and after giving birth. Later, similar laws were extended to other provinces.

The Central Government subsequently enacted three statutes, namely The Mines Maternity Benefit Act of 1941,⁶ The Employees State Insurance Act of 1948,⁷ and The Plantations Labour Act of 1951.⁸ However, these legislations varied significantly in terms of eligibility period of

³ The Maternity Benefit Act, 1961 (Act 53 of 1961) as amended by The Maternity Benefit (Amendment) Act, 2017 (Act 6 of 2017), s. 5 (3).

⁴ World Health Organisation, "Infant and young child nutrition: Global Strategy on infant and young child feeding" (April 16, 2002).

⁵ The Bombay Maternity Benefit Act, 1929 (Bom. Act VII of 1929)

⁶ The Mines Maternity Benefit Act, 1941 (Act 19 of 1941).

⁷ The Employees State Insurance Act, 1948 (Act 34 of 1948)

⁸ The Plantations Labour Act, 1951 (Act 69 of 1951).

employment, benefit rates, leave duration, and other aspects.

III. APPLICABILITY OF MATERNITY BENEFIT LAWS IN INDIA

Factory, plantation, government-owned, and any other establishment with ten or more employees that complies with the definition of a shop or establishment under the Maternity Benefit Act, 1961. The Act also applies to businesses that hire individuals to perform equestrian, acrobatic, or other acts⁹.

Any shop or establishment that meets the criteria for a shop or establishment law and has ten or more employees—or had ten or more employees on any given day in the 12 months prior—is also subject to the Maternity Benefit Act, 1961.¹⁰ If the state intends to include any additional establishments or classes of establishments under this Act, the state must give two months' notice.¹¹

All factories, as defined by the Factories Act of 1948, are covered by the Maternity Benefit Act of 1961. This means that the Act is advantageous to any business that employs at least ten people who were employed there on any day during the previous year and engages in manufacturing with the use of power,¹² or at least twenty people who were employed there on any day during that year and engage in manufacturing without the use of power.¹³

Mines as defined by the Mines Act of 1952, mobile units of the Union armed forces, railway running sheds, hotels, restaurants and eating establishments are exempt from the Maternity Benefit Act of 1961. The fact that this Act applies to all women working in establishments covered by it, regardless of their salaries, is a key aspect of the law.

A female employee must have worked for the employer for at least 80 days in the 12 months prior to her expected due date in order to be eligible for benefits. This requirement only pertains to maternity benefits; it does not apply to any other Act-covered benefits or payments. For instance, regardless of how long she has worked, a woman who miscarries is entitled to leave and payment of wages for six weeks following the date of the miscarriage.

As per Schedule 1 of The Code on Social Security, 2020:

The maternity benefits set out in the code only apply to the above-mentioned points (1), (3), and (4), and not to places where people are hired to perform equestrian, acrobatic, or other

⁹ The Factories Act, 1948 (Act 63 of 1948) s. 2 (1) (a).

¹⁰ Id. s.2(1)(b).

¹¹ *Ibid.*

¹² The Factories Act, 1948 (Act 63 of 1948), s. 2 (m)(i).

¹³ Id., s. 2 (m)(ii).

activities. The Code also makes no provision for the state government to declare maternity benefits applicable to any establishment it considers appropriate.

IV. WHO CAN AVAIL MATERNITY BENEFIT LAWS

The Maternity Benefit Act, 1961 and the Code on Social Security 2020 state that any woman who has been employed in a company for a minimum of 80 days in the 12 months before her expected delivery date is entitled to receive maternity benefits. This includes days when she was laid off or when there were public holidays. The benefits are available under Section 5(2) of the Maternity Benefit Act, 1961 and SECTION 60(2) of the Code on Social Security 2020.¹⁴

The Maternity Benefits Act of 1961, as amended in 2017, does not apply to unorganized workers, which leaves 95 percent of India's female workforce without coverage. However, the Code on Social Security, in Chapter IX, includes provisions for unorganized workers, requiring the Central Government to create and implement laws and welfare schemes related to issues such as life and disability insurance, health and maternity benefits, old age protection, education, and other benefits as deemed appropriate by the government. In addition, the Code also contains provisions for providing maternity benefits to gig and platform workers under Section 114.

V. DEVELOPMENT OF MATERNITY BENEFIT LAWS : AN ANALYSIS FROM THEN & NOW

In India, the Maternity Benefit Act was first passed in 1961, requiring employers to offer maternity benefits to female employees working there. The original Act guaranteed expectant mothers 12 weeks of leave, the right to maternity benefits for female employees, leave for miscarriage, and leave for illnesses related to pregnancy, delivery, or preterm birth of a child. A bill to amend the Maternity Benefit Act was put forth by the government in 2016 after nearly 50 years, with the goal of advancing social justice in both the organised and unorganised sectors and recognising the critical role that women play in society.

The Maternity Benefit Act was amended and received the President's assent on March 27, 2017. The Maternity Benefit (Amendment) Act, 2017 came into effect on April 1, 2017, making significant changes to the Maternity Benefit Act, 1961. The key provisions and major changes introduced by the Amendment Act are as follows:

- The duration of paid maternity leave has been increased from 12 weeks to 26 weeks.

¹⁴ <https://www.livewlaw.in/top-stories/maternity-benefits-in-india-a-look-at-the-well-intended-but-misguided-law190683?from-login=265961>

- The period of accessibility to paid leave has been extended from six weeks to eight weeks before the expected due date. Commissioning and adoptive mothers are also entitled to this benefit.
- Employers must negotiate the terms and conditions of a "work from home" option for new mothers after the expiration of their paid leave period.
- Establishments with more than 50 employees are required to have an in-house crèche facility.
- Women can use the crèche facility a maximum of four times a day.
- Education and awareness of women's rights to maternity benefits are now mandatory.

Enhancement of the Maternity Leave: - The duration of paid maternity leave has been increased to 26 weeks for women working in firms with 10 or more employees. However, only up to 8 weeks of leave can be taken before the expected delivery date.¹⁵ Women with two or more children will not be eligible for the extended maternity leave and will be entitled to only 12 weeks of paid maternity leave, with a maximum of 6 weeks allowed before the expected delivery date.¹⁶

Surrogacy/Adoption Leave - Under the Amended Act, working women who adopt a child before the age of three months as well as commissioning mothers who use a surrogate to have a child will both be entitled to 12 weeks of maternity leave. A biological mother who uses her egg to create an embryo that is implanted in any other woman is referred to as a "commissioning mother" under section 3(ba) of the Act.

Introduction of Work from Home option -After 26 weeks of maternity leave, employers may consider a "work from home" option for nursing mothers, depending on the job profile and parameters mutually agreed upon by the company and the concerned woman employee.¹⁷

Medical Bonus :- The qualifying female employees' medical bonus of Rs. 2,500-3,500 stays constant.

Obligation of the Employer:- The employer must offer all female employees with written and electronic notification of maternity benefits and business policy. Companies might consider inserting these terms as a matter of policy in their employee handbooks/HR manuals.¹⁸

¹⁵ Section 5(3) of the Maternity Benefit Act, 1961.

¹⁶ Proviso after sub section 3 of section 5 of the Act, 1961.

¹⁷ Section 5(5) of the Maternity Benefit Act, 1961.

¹⁸ Section 11 A (2) of the Maternity Benefit Act, 1961.

Protection from termination during the pregnancy:- Any dismissal or discharge of a pregnant woman is illegal, and the employer can be held accountable.¹⁶ In the case of wilful wrongdoing, however, the employer has the ability to impose appropriate disciplinary action in accordance with the Company's disciplinary policy.¹⁹

VI. MANDATORY CRECHE FACILITY: A MAJOR ADDITION TO THE MATERNITY BENEFIT LAWS

A crèche is a place where parents can leave their children while they go to work and where youngsters are given a stimulating atmosphere for their overall development. This clause became effective on July 1, 2017. The Maternity Benefit Act of 2017 made significant changes to the law to ensure the child's adequate care. The Maternity Benefits Act introduced Section 11A. The Creche Facility, i.e., any establishment with fifty or more employees shall have a crèche facility at such distance as may be prescribed, either individually or in conjunction with common facilities:

Provided, however, that the employer allows the woman four trips to the creche every day, including the rest intervals. This section includes the word 'employees,' which means both men and women. The Maternity Act does not define the gender ratio for providing a creche.

However, Section 48 of the Factories Act of 1948 mandates the provision of a crèche in factories with more than 30 female employees. The Maternity Act offers no guidance for the creation or operation of a crèche in a business. However, on November 17th, 2018, the Social Security Division and the Ministry of Labour and Employment issued a circular requesting state governments to draw and publish guidelines detailing the facilities and services that must be provided in a crèche.

VII. MATERNITY BENEFIT LAWS & THE CONSTITUTION OF INDIA

The Constitution of India grants several rights and privileges to improve the status of women. These include the right to equality (Article 14), the right to social equality (Article 15), the right to equality of opportunity in public employment (Article 16), the guarantee of sufficient means of livelihood (Article 39(a)), the guarantee of equal pay for equal work (Article 39(d)), and the prohibition of the exploitation of workers' health and strength (Article 39(e)). Additionally, Article 42 provides for the right to just and humane working conditions and maternity leave, while Article 46 aims to improve working women's employment opportunities and conditions. Article 15(3) of the Indian Constitution empowers the government to provide specific measures

¹⁹ Section 12 of the Maternity Benefit Act, 1961.

for women. The primary purpose of Article 15 (3) is to prohibit "protective discrimination" based on women's physical disadvantage. This is because "women's physical structure and performance of maternal functions placed her at a disadvantage in the struggle for survival, and her physical well-being became an object of public interest and care in order to preserve the race's strength and vitality." This clause has given the state the authority to create special legislation expressly for the benefit of women.

Article 42, a directive principle of State Policy, mandates that the State must ensure that working conditions are reasonable and humane and that maternity relief is provided. The Right to Life and Personal Liberty under Article 21 guarantees not only the right to protect one's body but also a broader range of rights, including the ability to live a full, meaningful, and dignified life. This right encompasses more than just mere existence and is available to all citizens of the country. Therefore, the State must provide all necessary facilities and services to pregnant working women, ensuring the protection of their employment and the health of both mother and child.

VIII. MATERNITY BENEFIT LAWS & THE INDIAN COURTS

By interpreting the laws in favour of working mothers, Indian courts have played an important role in the establishment of maternity benefit laws. Some of the most noteworthy judicial decisions are summarised briefly below:

1. ***Rattan Lal and Ors. vs. State of Haryana and Ors***²⁰- The ad-hoc teachers in Haryana complained about not receiving salaries during summer holidays and being denied various benefits such as casual leave, medical leave, and maternity leave. The court noted that the state government's appointment system unfairly denied these benefits to ad-hoc teachers. The court strongly criticized this policy and ordered the government to pay these benefits, including maternity and medical leave, to eligible ad-hoc teachers.
2. ***Tata Tea Ltd. vs. Inspector of Plantations***²¹- According to the Maternity Benefit Act, an employer cannot require an employee who is receiving maternity benefits to work on holidays. Additionally, any payments made by the employer to the employee under the National and Festival Holidays Act should not be deducted from the maternity benefits the employee is entitled to under the Maternity Benefit Act.

²⁰ MANU/SC/0354/1985.

²¹ MANU/KE/0203/1990.

3. **Smt. Neetu Choudhary vs. State of Rajasthan and Ors.** ²² - Maternity leave cannot be refused to female employees solely on the basis of wage payment method.
4. **AIR India vs. Nargesh Meerza and Ors.**²³- According to the provisions on retiring age, an Air Hostess is required to retire at the age of 35 or upon marriage within four years of service or upon having her first child, whichever comes first. However, the Court declared the provision that an Air Hostess' services would be terminated upon her first pregnancy as unreasonable and arbitrary. This provision was found to be unfair and a display of naked despotism, violating Article 14 of the Constitution.
5. **Bombay Labour Union vs. International Franchises Pvt. Ltd.** ²⁴- A rule mandated that unmarried women had to resign from their job when they got married. The court pointed out that there was no evidence to suggest that married women were more prone to absenteeism than unmarried or widowed women. If the reason for higher absenteeism among married women was due to the presence of children, then this would apply equally to widowed women with children.
6. **K Chandrika vs. Indian Red Cross Society** ²⁵- The petitioner was fired from her job while she was on maternity leave, but she was not informed of it. After a hearing, the Industrial adjudicator found that the worker did not intend to re-join the management team and denied her reinstatement and related benefits. However, the Court ruled that the petitioner's termination was unlawful and unjustified. The Court ordered the petitioner to be reinstated in her job with continuity of service for the purpose of calculating service benefits.
7. **B. Shah vs. Presiding Officer, Labour Court, Coimbatore, and Ors.** ²⁶- The Supreme Court was asked if Sundays, which are wage-less holidays, should be counted while calculating maternity benefits for the period mentioned in Section 5. The Court ruled that Sundays should also be included, and explained that the Maternity Benefit Act, read in conjunction with Article 42 of the Constitution, is intended to provide not only for the woman worker's subsistence, but also for her recovery from childbirth, care for her child, maintenance of her efficiency as a worker, and upkeep of her previous efficiency and output. During this time, she is unable to work and requires additional funds to cover her medical expenses. The purpose of maternity benefits is to help the woman worker

²² MANU/RH/0841/2005.

²³ MANU/SC/0688/1981.

²⁴ MANU/SC/0247/1965

²⁵ MANU/DE/1807/2006.

²⁶ MANU/SC/0223/1977

survive and maintain her health so that she can effectively perform her productive and reproductive duties. The Court applied the rule of interpretation that favours the woman worker.

IX. CONCLUSION

Women have faced exploitation and inequality throughout history and are still struggling to maintain their position in society, which is patriarchal. Therefore, it is essential to provide some leverage to this disadvantaged group. A lack of good childcare is a crucial factor that discourages women from returning to work after having a child. The new changes should be helpful, but employers must be given clear instructions as soon as possible. The Social Security legislation plays a vital role in proving this point. Women's limited awareness of their rights and the limited remedies available to them is one of the reasons for their declining employment rates. The Maternity Benefit Act 1961 has been revised many times to enlarge its applicability and benefits to women employees, and the judiciary has also played an active role in expanding these entitlements and benefits, particularly for casual workers. Maternity schemes have been introduced to help women and their children during pregnancy, reducing the stress and negative thoughts of the mother and improving their health. Allowing fathers to take leave for a few days can give them a chance to take good care of the baby and provide the mother with a proper environment to feed the child. Maternity benefits prevent mothers from leaving their profession and protect children from developing negative feelings due to a lack of parental care in their initial stage. The maternity benefits law in India is now helping Indian mothers balance their profession and motherhood.
