

## MATERNITY BENEFIT ACT 1961 AT A GLANCE

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### INTRODUCTION

India is the world's second largest country in terms of population. But it is still included in the category of underdeveloped countries. Is it because of the growing technology or the growing economy and India's contribution in it? Maybe. But one of the biggest reasons behind this is the disparity in the working condition between men and women.

Previously, when the labour and trade union was in its infant stage, the working condition of women and children in the establishments was very critical. After the regulations of certain acts, such as Industrial Disputes Act, 1947, things started to get regulated for the greater part. But what about the specific conditions faced by the women such as maternity? What was there to protect their rights and benefits before, during and after the maternity period or in the case of miscarriage?

Therefore, in 1961, The Maternity Benefit Act was enacted. It was done so as to regulate the employment of women before, during and after the maternity period and to provide various benefits as well. This act covers whole of India. Earlier the words "except the state of Jammu & Kashmir" was also there which was later on omitted. <sup>1</sup>

The basic object of bringing this act into existence is to do social justice to women workers. This act applies to all such establishments coming under the criteria of mines, factories and plantations except those to which Employees' State Insurance Act, 1948 applies. The fundamental purpose is to protect the health of mother and the safety of the child.

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<sup>1</sup>By Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970 (51 of 1970)

## UNDERSTANDING THE MATERNITY BENEFIT ACT, 1961

According to Section 2 of the act, this act will apply to all the establishments whether factories, plantations or mines. This also includes those establishments or shops which are shops within the meaning of law where 10 or more than 10 persons are (or were at any time within preceding 12 months). A proviso is given that if the government is of the intention, it can add any establishment or class of establishments, agricultural, commercial or otherwise within the boundaries of this act or any section thereof. It shall be done by giving two month's prior notice in the official gazette. Also this act will not contradict any provisions of the Employees' State Insurance Act, 1948.

In the case of *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*<sup>2</sup> it was held that provisions of this act shall entitle maternity leave and benefit even to the women engaged on casual basis or on muter roll basis on daily wages and not only those in regular employment.

Section 3 of the act includes various definitions such as appropriate government, maternity benefit, establishment, wages, miscarriage etc.

According to Section 4 of the act, neither any woman shall work nor shall any employer knowingly employ any woman into establishment for work immediately 6 weeks after her delivery, medical termination of pregnancy or miscarriage. Also, she will not work for a period of 1 month preceding her delivery or the period of 6 weeks if the nature of the work is of exhausting or requires long hours of standing.

Maternity benefit had been defined in the Section 5 (1). It says that maternity benefit is the benefit for which every woman is entitled and every employer is liable. It is actually the amount payable to her at the rate of average daily wage for her absence period. For this purpose, average daily wage is the wage which she received immediately three months before her absence which should come under the purview of wage settled by Minimum Wages Act, 1948 or Rupees 10 whichever is highest. But she won't be entitled to this benefit if she had not worked for the employer in the establishment in the last 12 months for at least 80 days.

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<sup>2</sup>AIR 2000 SC 1274: (2000) 3 SCC 224

However, if the woman was laid off or there was any holiday declared under law, than those days will be included in the said period of 80 days. This benefit shall be given only for 26 weeks.<sup>3</sup> But if the woman already has two or more surviving children then this period will be only of 12 weeks. If she dies within this period then benefit will only be given of the period up to her death. If she dies immediately after giving birth and the child survives then the benefit will be given for the entire duration. If the child does not survive then benefit will be for the period up to the death of the child.

A woman legally adopting a child below the age of three months or is a commissioning mother, then she will be entitled for a benefit of 12 weeks. It may be mutually agreed by both the parties if the woman works from home.

In the case of *B. Shah vs. Presiding Officer, Labour Court Coimbatore*<sup>4</sup> in the context this section, the term “week” will signify a cycle of seven days including Sundays.

In the case of *Ram Bahadur Thakur Pvt. Ltd. Vs. Chief Inspector of Plantations*<sup>5</sup> the issue was while calculating the 160 days for determination of maternity benefit for any woman, the work on half days can be included or not. It was held that as explained in explanation given to Section 5, period of laid off shall also be included. But she is not expected to work during lay off and therefore actual work for 160 days cannot be insisted as a condition precedent for claiming maternity benefit.

According to Section 6 of the Maternity Benefit Act, if a woman wants to claim maternity benefit under this act then she will have to give a notice to her employer in written stating the period for which she will be absent and also the amount for which she will be entitled to. She will have to give the name of her nominee as well in the said notice and she will also have to state that she will not be working in any establishment for the said period.

She will have to give the notice when she is pregnant, if she did not do this, she will have to give notice after the delivery as soon as possible. If she fails to give notice, that will not disentitle her from this claim and will depend upon the discretion of the inspector.

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<sup>3</sup>Earlier 12 weeks, amended by Amendment Act of 2017.

<sup>4</sup>AIR 1978 SC 12

<sup>5</sup>(1989) II LLJ 20 (Kerela)

The nominee mentioned under Section 6 (1) will be entitled to the benefit or any other amount. If there is no person nominated then the legal representative of the woman will be entitled for the benefit under this act as given under Section 7.

If there is no pre natal confinement or post natal care is provided by the employer to the woman for free of charge, then she will also be entitled to medical bonus apart from the maternity benefit of Rupees 1000, which may be increased by the Central government every three years by notifying it in the Official Gazette as mentioned in Section 8.

According to Section 9, if a woman gives proof of her miscarriage or medical termination of pregnancy, she will be entitled to leave and the maternity benefit for a period of 6 weeks effective immediately after as the case may be. In the case of tubectomy, the duration will be of 2 weeks.

According to Section 10, the woman will also be entitled to leave with maternity benefit of period of one month in addition to previous mentioned periods (12 weeks or as the case maybe) if she is suffering from illness caused by pregnancy, delivery, miscarriage, tubectomy, premature birth of child etc.

Section 11A was added to the act by Amendment Act of 2017. It talks about crèche facility which means a nursery for supervision of preschool children while the parents work. According to this section, there must be a facility of crèche where the establishment has 50 or more than 50 employees within the prescribed distance and for which the woman shall be entitled to visit 4 times a day including her rest interval.

According to Section 12, no employer shall dismiss or discharge a woman taking benefit under this act or give her any notice for such matters, and if done she shall be entitled to medical bonus and maternity benefit both. These benefits can be curtailed only in the case of her gross misconduct which shall be noticed to her in writing. If she is deprived of any of the benefits or if she is discharged or dismissed then she may appeal before the prescribed authority within 60 days.

An inspector maybe appointed by the appropriate government under Section 14 who shall be a public servant under Section 16 and who shall have the power to enter the premises at reasonable times where the woman is working; to examine any person or any register or records

or may require the employer to give information about the address of woman or payment made to her etc. A proviso has also been given that no person shall be compelled to give answer to any question or give any evidence.

Under Section 17 the power of inspector to direct payments to be made is discussed. And further sections discuss about the maintenance of registers and records by the employer, abstract of act to be exhibited by the employer etc. If the employer fails to comply with any sections of this act without reasonable grounds then he shall be liable for imprisonment up to 1 year and fine up to Rupees 5000.

## CONSTITUTION AND THE MATERNITY BENEFIT ACT

Under the Constitution of India, following Articles are related to women employment-

- Right to equality in law [Article 14],
- Right to social equality [Article 15],
- Right to social equality in employment [Article 16]
- Right to adequate means of livelihood [Article 39 (a)],
- Right to equal pay for equal work [Article 39 (d)],
- Right that the health and strength of workers both men and women are not abused [Article 39 (e)],
- Right to just and humane conditions of work and maternity relief [Article 42], and
- Right to improvement in employment opportunities and conditions of the working women [Article 46].

A landmark case in this aspect is *Air India vs. Nargesh Mirza*<sup>6</sup>. In this case, there was a discrimination being made between the Air Hostesses and the Male Pursers who were part of the same cabin and crew. One of the 3 issues was the pregnancy clause of the Air India Corporation Act which said that if any of the air hostesses is pregnant then she will be forced to retire. The constitutional validity of this clause was challenged for which Supreme Court held that it was grossly unethical and violation of Article 14 and 15. The ability to

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<sup>6</sup>(1981) 4 SCC 335

work after pregnancy is the personal matter of the concerned air hostess for which she should not be forced.

## **AMENDMENTS MADE TO MATERNITY BENEFIT ACT**

### **Increased Paid Maternity Leave**

- The MB Amendment Act has increased the duration of paid maternity leave available for women employees from the existing 12 weeks to 26 weeks.
- Under the MB Amendment Act, this benefit could be availed by women for a period extending up to 8 weeks before the expected delivery date and remaining 18 weeks can be availed post childbirth.
- For women who are expecting after having 2 children, the duration of paid maternity leave shall be 12 weeks (i.e., 6 weeks pre and 6 weeks post expected date of delivery).
- The Act also provides for adoption leave of 12 weeks for a woman who adopts a child under the age of three months. A commissioning mother in case of surrogacy is also entitled to a 12-week leave from the date the child is handed over to her.
- A commissioning mother is defined as “biological mother who uses her egg to create an embryo implanted in any other woman” (the woman who gives birth to the child is called host or surrogate mother).

### **Work from Home option**

- The Amendment Act has also introduced an enabling provision relating to “work from home” for women, which may be exercised after the expiry of the 26 weeks’ leave period.
- Depending upon the nature of work, women employees may be able to avail this benefit on terms that are mutually agreed with the employer.

### **Crèche facility**

- The Amendment Act makes crèche facility mandatory for every establishment employing 50 or more employees. Women employees would be permitted to visit the crèche 4 times during the day.

### **Free Medical Care**

- A pregnant women worker is entitled to a maternity benefit (in the form of medical bonus) of one thousand rupees if no prenatal confinement and post-natal care is provided by the employer free of charge. It can be increased to a maximum limit of twenty thousand rupees.
- The Central Government is authorized to increase the basic amount every three years. In August 2008, the amount of medical bonus was 2500 Indian rupees which have been later raised in 2011 to 3500 Indian rupees.

### **Income**

- The maternity leave is awarded with full pay on completion of at least 80 days in an establishment in the 12 months prior to her expected date of delivery. The maternity benefit is awarded at the rate of the average daily wage for the period of a worker's actual absence from work. Apart from 12 weeks of salary, a female worker is entitled to a medical bonus of 3,500 Indian rupees.
- The amendments would ensure that full maternal care is provided during the full bloom period and will encourage more women to join the workforce in organised sector.

### **AMENDMENTS COULD HAVE BEEN MADE**

The amendments is lacking on few points like –

1. The women who are working in an unorganized sector are not included in this Act.
2. The rules does not provide a better clarity of the distance of crèche facility.
3. If the employer has to pay 26 weeks for paid leave then this might be an additional cost for him, to avoid which he may refrain from hiring women employees altogether, thus provisions should have been made for this aspect.

### **CONCLUSION**

Therefore, it can be concluded that the objective of maternity benefits is to protect the dignity of motherhood by providing the proper care to the woman & her child when she is not able to perform her duty due to her health condition. There is need for maternity benefits so that a woman is to be able to give quality time to her child without having to worry about whether she will lose her job and her source of income and should not feel compelled to do anything which can be harmful for her or her child's future.