

**Impact of the Maternity Benefit
(Amendment) Act, 2017 in the
IT/ITES Industry**

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Dr. Shashi Bala



V.V. Giri National Labour Institute

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Dr. Shashi Bala



V.V. Giri National Labour Institute
(Ministry of Labour & Employment, Govt. of India)
Sector -24, Noida

* Fellow, V.V. Giri National Labour Institute, Noida
Email ID: balashashi.vvgnli@gov.in

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CONTENTS

| | | |
|---|---|-------------|
| Foreword | | vii |
| Preface | | viii |
| Acknowledgment | | ix |
| Executive Summary | | xi |
| CHAPTER - 1 | | |
| Introduction | | 1 |
| CHAPTER - 2 | | |
| 2.1 | Objective | 3 |
| 2.2 | Output | 3 |
| 2.3 | Methodology | 3 |
| 2.4 | Timeline | 3 |
| 2.5 | Limitations of the Study | 3 |
| CHAPTER - 3 | | |
| Literature Review | | 5 |
| 3.1 | Organic Demand for the Enhancement of Maternity Benefits in India | 5 |
| 3.1a | Current Law in India | 8 |
| 3.1b | The Juridical Journey to the Maternity Benefit Act, 2017 | 9 |
| 3.1c | The Role of Research Analysts, Legal Investigations and Policy Advisors | 11 |
| 3.2 | The Amendments | 12 |
| 3.2a | Lok Sabha Debates | 12 |
| 3.2b | The Amendment Act 2017 | 13 |
| 3.2b1 | Key Highlights | 13 |
| 3.2b2 | New Provisions Added | 15 |
| 3.3 | Reception of the Amended Act | 15 |
| 3.4 | Critique and Concerns | 16 |
| CHAPTER - 4 | | |
| Data and Analysis from Employer and Employee's Perspective | | 24 |
| CHAPTER - 5 | | |
| Data and Analysis from Stakeholder's Perspective (NGO's / Advocates / Trade Unions /Labour Officials) | | 38 |

| | | |
|--------------------------------------|---|-----|
| CHAPTER - 6 | | |
| Case Studies | | 42 |
| CHAPTER - 7 | | |
| Conclusion and Policy Recommendation | | 47 |
| 7.1 | Conclusions from responses from the employers/ representatives (Human Resource Practitioners) of the Employers of the IT / ITES Organizations | 47 |
| 7.2 | Conclusions from responses from the women employees of the IT / ITES Organizations | 49 |
| 7.3 | Conclusions from the responses from the male employees of the IT / ITES Organizations | 50 |
| 7.4 | Conclusions from responses of pressure groups (Lawyers/ NGOs/Unions) | 51 |
| 7.5 | Conclusions from the responses of Labour Officials | 52 |
| 7.6 | Recommendations for Policy Intervention | 52 |
| References | | 59 |
| Annexure I: | a) Employer Questionnaire | 62 |
| | b) Female Employee Questionnaire | 69 |
| | c) Male Employee Questionnaire | 75 |
| | d) Labour Officials Questionnaire | 81 |
| | e) NGO's / Trade Unions / Advocates Questionnaire | 87 |
| Annexure II: | MBA Act (Principal) 1961 | 92 |
| Annexure III: | MBA Act (Amendment) 2017 | 103 |
| Annexure IV: | a) Company's appointment letters including information regarding maternity leave | 107 |
| | b) Advantages or Disadvantages occurring in an organization while providing maternity relief to its employees | |
| | c) Female colleagues availing maternity leave | |
| | d) Employers providing crèche facilities | |

LIST OF TABLES

| Table No. | Details | Page No. |
|-----------|--|----------|
| 3.1 | Comparison of Amendments to the Act | 14 |
| 4.1 | Employers Respondent City | 24 |
| 4.2 | Employers Type of Establishment / Organization | 24 |
| 4.3 | Employers having policy on Maternity leave and benefits. | 24 |
| 4.4 | Awareness about MBA (Principal) Act 1961 and MBA (Amendment) Act, 2017 | 25 |
| 4.5 | Duration of maternity leave | 26 |
| 4.6 | Women related policies in IT/ITES Industry | 26 |
| 4.7 | Applicability of amended MBA Act 2017 to regular/adhoc/probationary/casual/daily workers | 26 |
| 4.8 | Period of Paternity leave | 27 |
| 4.9 | Attitude towards the benefits under the Maternity Benefit (Amendment) Act, 2017 | 27 |
| 4.10 | Increase in the financial liability of the employer due to Increase of Maternity leave from 12 to 26 weeks | 28 |
| 4.11 | Management of work during the Maternity leave of female employee. | 28 |
| 4.12 | Impact of the paternity leave on maternity leave | 28 |
| 4.13 | Female Respondent City | 28 |
| 4.14 | Female Type of Establishment / Organization | 29 |
| 4.15 | Male Respondent city | 29 |
| 4.16 | Male Type of Establishment / Organization | 29 |
| 4.17 | Awareness about key Benefits of H.R. Policy related to women | 29 |
| 4.18 | Awareness about MBA 1961 and its key features | 30 |
| 4.19 | Awareness about MBA 2017 and its key features | 31 |
| 4.20 | Duration of maternity leave availed | 33 |
| 4.21 | Nature of maternity leave availed | 34 |
| 4.22 | Nature of assignment post-maternity leave | 34 |
| 4.23 | Crèche facility at workplace | 35 |
| 4.24 | Flexibility to work from home | 35 |
| 4.25 | Grievance mechanism | 36 |
| 4.26 | Awareness on legal provisions available | 37 |
| 5.1 | Awareness about MBA 1961 | 38 |
| 5.2 | Awareness about MBA 2017 | 38 |
| 5.3 | Availability of crèche facilities in establishments | 39 |
| 5.4 | Attitude of employer towards maternity leave and benefits | 39 |
| 5.5 | Incidence about termination of women employee on account of her pregnancy | 40 |
| 5.6 | Officials responsible for grievance handling related to MBA Principal Act 1961 & MBA Amendment Act 2017 | 41 |

FOREWORD

The Constitution of India is the foremost law in the country. It contains, *inter alia*, the rights and duties of citizens, the legal and political structure and fundamental principles according to which the nation is to be governed. It is of note that Article 15(3) expressly reflects the principle of 'substantive equality' and empowers the government to make special laws to protect women and children; and Article 21 (a fundamental right) which upholds the right to life and liberty, recognizes the freedom of a person to practice a livelihood of his or her choosing. Therefore, the notion of gender equality is clearly envisaged in the most paramount law of India.

Significantly, India is also a signatory to numerous treaties on the upliftment of women's rights - another obvious indicator of the country's testament to ensuring the equal rights and bettering the lives of women. Hence, from time to time, India has had enough opportunity to reiterate its understanding on gender equality at the international level. Whilst the Constitution stresses on gender equality and the right to employment free from discrimination, women in India continue to battle patriarchy and oppression in the workplace.

It has been recognized that key factors that can push up women's workforce participation rates include higher education and skill(s) development of women, reduction in the time spent on housework, optimal child bearing and child care arrangements, safety in workspaces and in public spaces (transport, lighting etc.). Accordingly, significant effort has been put by the Government of India to develop laws and policies that encourage women in the workforce. Amendments to the maternity act are key in this. It is the hope and endeavor that these changes have a positive impact on countless female lives.



Dr. H. Srinivas
Director General,
V.V. Giri National Labour Institute, Noida

PREFACE

The Maternity Benefit Act, 1961 is an important legislation for providing maternity benefit to the woman workforce in the organized sector. The Act regulates the employment of women employees in certain establishments and provides maternity and certain other benefits. The 44th, 45th and 46th Indian Labour Conferences had recommended enhancement of the mandatory benefits under the Act. Consequently, the Act was amended in 2017 and paid maternity leave increased to 26 weeks as against 12 (twelve) weeks. Also, provision of crèches by the employer was introduced in the law with a prerequisite that every establishment having 50 (fifty) or more employees have a mandatory crèche facility within a prescribed distance from the establishment, either separately or along with other common facilities. It further provisioned that the woman is also to be allowed 4 (four) visits a day to the crèche, which will include the interval for rest allowed to her. In order to ensure awareness, a mandatory aspect of prior information of all benefits at the time of initial appointment itself has become obligatory upon the employer.

In 2011, the VV Giri National Labour Institute had conducted a detailed study on the Maternity Benefit Act and its implementation. Some of the outcomes of the study have, in a very positive consequence, been reflected in the amendments that have come about to the law in 2017. These amendments have placed India at third rank in the list of countries that provide the maximum duration of paid maternity leave.

It is only pertinent that one year post the amendment coming into effect, the VVGNI conduct afresh, research to understand the reception of the amendment act, the levels of knowledge and awareness around it as well as the attitude that is developing towards its provisions in order to assess implications for women participation in the labour force in the coming years. I commend Dr. Shashi Bala, Fellow & Project Director and her team for their efforts.



Dr. H. Srinivas
Director General,
V.V. Giri National Labour Institute, Noida

ACKNOWLEDGEMENT

It is said that giving birth is one of the most beautiful moments in a woman's life. Yet, it is also a time when a woman's body goes through insurmountable stress, hormonal and physical changes.

Post natal care is critical not just for the new born but the mother as well. These aspects make the Maternity Benefit Act as perhaps one of the most critical legislations under the labour law.

Our endeavour with this rapid assessment and report is to highlight the impact of the recent amendments in the Maternity Benefit Act on specific sectors in an effort to support and augment the beneficial provisions of this law.

I would like to express my deepest appreciation to the Dr. H. Srinivas, Director General, V.V. Giri National Labour Institute for providing me the opportunity to initiate this rapid assessment study and to all those in the Administration who have supported my efforts to conduct and complete this study. Guidance of the various Labour Officials particularly in various training programme at V.V. Giri National Labour Institute is beyond words as their help to connect with labour officials in the respective states was very facilitating.

I would also like to express my sincere gratitude to Shri Rajan Verma, Additional Chief Labour Commissioner (Central), Smt. Shakuntala Patnaik, Dy Chief Labour Commissioner (Central), (SP), Shri Onkar Sharma, Chief Labour Commissioner (Central), (OS) for their valuable contributions towards connecting us with labour officials in respective states which further helped us in smoothly conducting the present study. I would further like to express my gratitude for Dr. Ugin Gomez, Deputy Labour Welfare Commissioner and Mr. Nikhil Walke, Assistant Commissioner of Labour Pune, Mr. Balasaheb Wagh, Assistant Commissioner of Labour Pune, and Shri G.P. Bhatia, Former CLS New Delhi for all the support they provided in framing the questionnaires and our entry in various IT/ITES companies located in different region.

A special thanks to the entire project team - Advocate Tanu Bhardwaj (Maharashtra), Dr. D. John Paul (Telangana), Advocate Devika Singh (Karnataka), Advocate Arjun Singh (Haryana), Dr. Puja Singhal, Devendar Ambala, Tabassum Sheikh, Bollam Dileep Kumar, Minal Mehta, Shradha Trivedi, Sushil Gaglani, Chetan Sangwan, Dhanya Nair, Shivakami Kumaramangalam, Santosh Kumari and Shruti Garg. A special mention is merited for my office team and for the efforts of Mr. Rishabh Bajpai for his hard work and dedication towards this report in the present form.

Here , I also express my gratitude towards all the respondents who participated in this study and enriched it with their thoughts and views and particularly the female and male employees, employer's, labour officials, Trade Unions, advocates & N.G.O. representatives who contributed their life experiences to the case studies collated in this report.

Thanks giving is incomplete without thanking my pillars of support - my family, who has always been with me and supported me especially when I extend my work beyond office hours. Their personal compromises mean a lot to me. I owe my pen to them.

I remember that personally I have not availed official crèche and day care facility for my children – my son who is now 18 (and was born with several medical complications requiring regular medical attention) and my daughter who is now 11 year. It was my mother in law and my father who looked after their needs. Their emotional motivation helped me remain in job and employment and their efforts for helping me keep my place in my workplace are incomparable. Even now, it is my spouse who takes care of the children when my work extends on account of office work. At times I have felt guilty because the time spent by him with them is much more than mine and this was not possible without compromise on his career. Yet we have been true partners and have made compromises for each other. While our careers have been equally important for the both of us but it is not at the cost of the lives we have brought together. The social and emotional cost borne by family, friends and my team is not measurable.

Therefore, it is essential to understand the importance of work life balance especially in the tech-world and it is important to achieve this by providing for day care, crèche facilities, maternity leave and flexi working hours by employers and organisations. While analysing each questionnaire, I went through the life cycle of each employee and was able to feel the situation they were going through. I am indebted to them for sharing their world with me to make the workplace more inclusive for sustainable growth and development. As an employer also, it is our responsibility to make our employees happy when they go back home in the evening, so that they come back more energetic next morning by contributing in attaining their work-life balance. This welfare piece of legislation will be a stepping stone in this direction and I hope the findings of this report will help policy makers frame this Act more robust and pertinent for all.

Dr. Shashi Bala

Fellow, V.V. Giri National Labour Institute, NOIDA

EXECUTIVE SUMMARY

The objective of this study is to analyze the implications of the Maternity Benefit (Amendment) Act, 2017 to address maternity protection as a matter of legal compliance for workplaces. It is essential to study the impact that the amendments to the legislation have had on workplaces and understand the status of knowledge, attitude and practices on the same and this study is envisaged as a rapid assessment to understand key trends that may better aid implementation of the amended law.

A. FIELD AREA

Four states were covered for a rapid situational analysis through the dissemination of a questionnaire by post/email to relevant Labour Commissioners, Assistant Commissioners and Additional Commissioners through the Ministry of Labour and Employment, GOI. This was simultaneously followed by an in-depth examination of the situation in one city of each of the four states identified. The research associates along with the team of field investigators were deputed in each city who conducted semi-structured interviews with identified IT and ITES employers and their employees. As there were constraints in collecting information from IT/ITES companies, the data was then collected through Survey Monkey from IT/ITES, which was further analyzed through SPSS for meaningful interpretation. For stakeholders direct interviews were conducted. Four states were identified for this study, which are Haryana, Maharashtra, Telangana and Karnataka termed as the Subject States.

B. RESPONDENTS

From the Subject States, responses were sought from employers, employees, (male and female), the representatives of the office of the Labour Commissioners and representatives from Civil Society Organizations and lawyers, termed as Stakeholders.

12 Employers, 32 Male employees, 64 Female employees, 10 Labour Officials and 18 NGOs / Advocates / Trade unions from the Subject States participated in the rapid assessment, which was conducted through online and offline structured and semi-structured interview tools between July-September 2018. This amounted to a total respondent size of **136 respondents**.

C. FINDINGS

- Overall, the reception to the Maternity Benefit Amendment Act, 2017 has been positive from both employers and employees.
- 83.33% of employers described their attitude towards maternity leave as supportive. None of them said that they have come across instances of termination of employment of women on account of pregnancy.
- More than 50% of the employers said that the increase of maternity leave from 12 to 26 weeks has increased the financial liability of the employer.
- In the sectors examined during this study implementation of what can be construed as the most significant amendment of the 2017 Act – the increased duration of paid maternity leave from 12 to 26 weeks – has been implemented with many employers offering ‘Work From Home’ options where possible.
- The work of the new mother is divided up among the rest of the team members. With most employers reporting that they endeavor to provide a supportive workplace for their employees who avail of these benefits.
- The concept of paternity leave however does not seem have met with encouragement with fathers being given only 7-10 days paternity leave at the most. Normative perceptions and societal attitudes condoning women’s roles as the primary domestic caregiver seem to be at the heart of the lack of support for this type of parental leave; although across the world the concept of shared childcare and therefore leave for both parents is being given importance.
- Employers Suggested that the government should share financial responsibility with them with respect to such costs borne.
- However, comprehensive knowledge of the Act’s benefits is lacking. Awareness of positive new facts of the legislation including leave for adoptive and surrogate mothers etc. does not seem to have been disseminated among all as are the avenues for redressal of complaints. There is a need for employers to be educated on all facets of the Maternity Benefit Amendment Act, 2017 so that they may enforce these benefits.
- Approximately 75% of employers are aware about Maternity Benefit Act (Principal) 1961, but only 58 % employers are aware about its amendment.

- Both female and male employees were interviewed for this study and once again the responses regarding awareness of the Act's benefits and application were largely positive among the participants.
- Most of the female and male employees with children interviewed stated that they had availed of maternity leave during their careers and returned to work at the same pay grade i.e. without an obvious/negative impact to their roles in the organizations but the nature of work and total pay was different.
- However, what was worrying was that only a small percentage of employees worked or had even previously worked in an organization that had provided crèche facilities and as a direct consequence could/did provide nursing breaks. This lacunae in the application of the law needs to be addressed.
- 75% of the employers interviewed said that there are no crèche facilities provided in their establishments. Table 4.6 clearly reflects that none of the employer respondent shared about provisions pertaining to nursing breaks and pick and drop facility for women. Breast-feeding facility cannot be availed by women unless and until it is within the premises of establishments.
- A very positive discovery of the study was that most of the employees were aware of other such legally mandated welfare provisions such as sexual harassment (prevention, prohibition and redressal) etc., work from home options, provision of transport etc. as the organizations were implementing these ameliorative rules at the workplace.
- 25% employers were unaware of the mandatory requirement under the amended act of including such information in the appointment letter itself.
- Return to the same assignment is essential for carrier growth but 18.8 % respondent reported that they are shifted to entirely different task which in future hinders their growth in the organization.
- Both women and men employees however were not well aware of the distinctive features/amendments of the new Act except of the extension of the maternity leave period.
- Employees were also not aware of the redressal mechanism available to them under the law and this is worrying.

- Overall, this study has revealed that the positive application and encouragement of female and male employees during the time of pregnancy and six months post child birth resulted in less attrition and the focused contribution of employees upon their return to work.
- On being asked how work is managed in the absence of the resource, 75% of the employers said that the person's work is distributed amongst the existing team members.
- 75% said that the formalities of availing maternity leave are not getting complicated. However, when asked about how male employees feel about maternity leave, only 50% employers responded that male employees were supportive. Though 66.67% described their managers as being supportive.
- 50% identified a need for paternity leave. On being asked if provision of paternity leave make it easier for employers to provide maternity leave – only 16.67% employers denied this.
- More than 50% of the employers said that the increase of maternity leave from 12 to 26 weeks has increased the financial liability of the employer.
- When asked of the advantages or disadvantages accrue to an organization when it provides maternity relief to its employees, only 25% identified advantages such as more women in leadership roles, higher retention and trustworthy long serving employees. **It is troubling that 75% employers were unable to identify any advantage of increased maternity leave.**

D. RECOMMENDATIONS

- Ministry of Labour and Employment and the Ministry of Women and Child to give a high priority to convergent efforts and take serious measures to percolate down to Authorities.
- Sustained circulation of written literature and information on MBA amongst Authorities on MBA and the role of the Authorities in its implementation and redressal.
- Large-scale training programmes for the Authorities across the country including refresher courses and spot training.
- Raising general awareness for all Stakeholders either through efforts within organizations or through a popular media campaign.
- Conduct focused awareness campaigns for the general public.

- Conduct legal study of powers of the Labour Commissioners that can be utilized to ensure compliance of the MBAs and how they need to be augmented and highlighted for effective action to implement the law.
- Conduct gender sensitivity programmes to imbibe positive attitudes amongst Authorities.
- As this was a rapid assessment, which could at best identified the problems there is a need to conduct in-depth audit within the states to understand the reasons for gaps that exist between Authorities actions and Stakeholders reactions on MBA.
- Develop regular self-assessment mechanism for Authorities to enable them to conduct a self-audit on a regular basis.
- Create and delineate informal and formal mechanisms of redress within the system with counseling for victims on the actions available to the organization and against the accused in the absence of a written complaint.
- Maintain anonymized records of women employed, MBA records, leave provided, numbers etc. and have display of the same on websites of companies.
- Conduct wider debate and discussion on the amendments to MBA and enlarge the focus of discussion groups on the subject by involving employers and authorities.
- Greater sensitization with an emphasis on gender parity is required and of utmost importance particularly to reduce the negativity towards employing more women.

Outcomes

Key outcomes of this rapid assessment study are:

1. Development of modules and training workshops for employers, HR personnel, officials of the labour machinery and further training of pressure groups such as NGO's / trade unions/ lawyers.
2. Need for development of radio commercials and TV commercials about the key features of the amended law on maternity.
3. Discussions with relevant ministries for tax breaks or incentives can be made available to employers who are employing returning mothers in flexi work arrangements and employers that have more than 35% women employees and are complaint with the law.

4. Fast tracking of notification and scheme of decision of Government to pay 50 % of the salary of 14 weeks to women on maternity leave.
5. Urgent need for rules and notifications for crèches for proximity, facilities and timings.
6. Provision of at least 4 weeks paternity leave to be considered at the policy level by the ministry.
7. Notifications for employers to furnish annual returns and display the details pertaining to maternity benefit provided to its employees (anonymised information & numbers) on their website and in their company reports.
8. Legal study of powers of the labour officials that can be utilized to ensure compliance of the MBA and to determine number of inspections and visits to organisation falling within jurisdiction of Labour officials as part of the law.
9. MOL&E to come up with online portal to deal with grievance of women employees on implementation of MBA.
10. Convergence efforts with Ministry of Women & Child Development & National Commission for Women to percolate measures down to the stakeholders.
11. A more detailed sector wise research study on the amended law and its implementation.
12. Revising the law to have universal application for women employees regardless of the kind of establishment they are engaged in or the nature of their engagement.

CHAPTER 1

INTRODUCTION

'There is no tool for development more effective than the empowerment of women'

... Kofi Anan

Maternity protection is recognized as an essential pre-requisite for women's rights and gender equality, with the right to maternity protection enshrined in International Human Rights Instruments (for example: International Covenant on Economic, Social and Cultural Rights 1966), International Labour Conventions (No. 3, No. 102, no. 103, and no. 183) and in national legislations in several countries. In 1975, International Labour Organization (ILO) adopted Declaration on Equality of Opportunity for Women Workers expressing the belief that equality of opportunity and equal treatment of women require the elimination of maternity as a source of discrimination and the protection of employment during pregnancy and maternity.

In India, Article 42 of the Constitution contains the directive that the State shall make provision for securing just and humane conditions of work and maternity benefits.

Lack of maternity protection and supportive enabling environment pushes women into high degrees of vulnerability. Maternity protection is a significant intervention that recognizes women's reproductive rights whether they are in the formal or in the informal sector or "non-workers". It is a key instrument in promoting equal opportunity for women and removes vulnerability due to market pressures. The Maternity Benefit Act, 1961 extends to the whole of the Indian Union and applies to every factory, mine, plantation and circus industry including any such establishments belonging to government but excluding all the establishments covered under the provisions of the Employees State Insurance Act, 1948. The State Governments are, however, empowered to extend the provisions of the Act to any other establishment subject to the prior approval of the Central Government. The Act also applies to Shops and Commercial Establishments in which 10 or more persons are employed or were employed on any day of the preceding 12 months, and establishments wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. Every woman entitled to the payment of maternity benefit under the Act shall, notwithstanding the application of the Employees State Insurance Act, 1948 to the factory or other establishments in which

she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under Section 50 of the Act. There is no age limit for coverage under the Maternity Benefit Act provided a woman is not covered under the Employees State Insurance Act, 1948.

The Act regulates the payment of maternity benefits to women employees in certain establishments for certain specified periods before and after the child birth and prescribes for the payment of maternity benefits to them at the rate of average daily wage for the period of their actual absence from duty. The maximum period for which any woman was entitled to maternity benefit was twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day.

Recently, in 2017, the Act was amended and a substantial increase in the fully paid maternity period was introduced. It has been suggested in new reports that the amendment may have unintended consequences.

- Increased maternity leave could also have an adverse impact on job opportunities for women
- Full payment of wages during maternity leave could increase costs for employers
- It could result in increased hiring for male employees
- The provision regarding the applicability of the act in unorganized sector is not clear
- Crèche: the amendment act is silent in relation to the period up to which the arrangement of the crèche facility could be extended to concerned women.

Hence, it is essential to study the impact that the amendments to the legislation have had on workplaces and understand the status of knowledge, attitude and practices on the same.

CHAPTER 2

RESEARCH METHODOLOGY

2.1 Objective of the Research Study

To analyze the implications of the Maternity Benefit (Amendment) Act, 2017 and to address maternity protection as a matter of legal compliance.

2.2 Output of the Research Study

This research study is in the form of a consolidated report, and it provides a comparative situational analysis of different states in the context of responses or processes that have been implemented as a consequence of the Maternity Benefit (Amendment) Act, 2017 and showcases the existing knowledge, attitude and practices prevalent amongst key stakeholders.

2.3 Methodology

Four states were covered for a rapid situational analysis through the dissemination of a questionnaire by post/email to relevant Labour Commissioners, Assistant Commissioners and Additional Commissioners through Ministry of Labour and Employment, GOI. This was simultaneously followed by an in-depth examination of the situation in one city of each of the four states identified. The research associates along with the team of field investigators were deputed in each city who conducted semi-structured interviews with identified IT and ITES employers and their employees. As there were constraints in collecting information from IT/ITES companies, therefore data was collected through Survey Monkey from IT/ITES, which was further analyzed through SPSS for meaningful interpretation. For stakeholders direct interviews were conducted. Four states were identified for this study, which are Haryana, Maharashtra, Telangana and Karnataka. The study is also supplemented by data from secondary sources.

2.4 Timeline

Four months from June – September 2018 (Survey period July-Sept 2018)

2.5 Limitations

1. Post identification of Stakeholders, the teams started engagement with various IT/ITES companies. Several constraints arose. On account of strict security and entry requirements in most IT/ITES companies, field investigators require permissions from top HR or legal heads. This was time consuming task. Despite issuing letter of reference

through MOL & E, DG, VVGNNLI, the team was not allowed to enter the companies. For collecting the nature of information and through in depth survey the period of study was very less.

2. Women employees largely gave their responses anonymously. They were very concerned about matters getting back to their HR. It took multiple engagements with the Field Investigators to get them to open up. This was a time-taken process.
3. In order to overcome delays in on site collection of data due to delayed permissions from employers – the questionnaires for women and men respondents have been electronically made available through an online survey portal. However, this has also led to employees who are not from IT/ITES to answer the surveys and the present data collection is suggesting that there are areas of concern in compliance with the law in sectors other than IT/ITES. Responses suggested that there is a need to look at more sectors in this study and this is also desired by the ministry in the latest executive council meeting of VVGNNLI, after completing this rapid study.
4. As the present study focused only on implementation part, impact on employment could not be measured in such a short period. Since, this Act was enacted in 2017, it is too early to look at this aspect. However, in the next study this aspect will be looked in detail.

CHAPTER 3

LITERATURE REVIEW

3.1 Organic Demand for the Enhancement of Maternity Benefits in India

Inequality between the sexes is embedded more into the cultural fabric of our nation, rather than in the traditions and practices of ancient India. The oldest Vedas do not suggest that women are inferior or subordinate to men. According to the scripture of Manu 'the mother is revered a thousand times more than a father'. The Vedic conception of the Mother Goddess is best represented in *Aditi*, who is mentioned no less than eighty times in the Rig Veda. She is the mother, not only of the gods - Dev - Mata - but also of kings, heroes, men and women; of entire nature. She is the mistress of the moral order that governs the universe and also the giver of freedom. This tradition of Aditi being the mother of gods is continued even in the Puranas¹.

Modern India is unique and like no other, in the sense that it faces a dichotomy in nearly all aspects of its vibrant democracy. The constitutionally guaranteed equality for women is juxtaposed by harsh societal reality where women are considered inferior to men and battle patriarchy.

Post independence, it was in this backdrop, that the need of enacting special legislation and enforcing legislations to secure the rights of women evolved. Legislations such as the Factories Act, 1948, Employees State Insurance Act, 1948, Employees Provident Fund & Miscellaneous Provisions Act, 1952, Mines Act, 1952 and Equal Remuneration Act, 1976, are some of the welfare legislations enacted to protect the rights of working people in India. The Maternity Benefit Act, 1961 also being one such legislation.

However the International Labour Organization revealed in 2017 that India's labour force participation rate (LFPR) for women in India was 28.5%, compared to the significantly higher 82% for men². In comparison, in developed countries such as Sweden the female LFPR is 88%. Economists surmise that the share of women in India's workforce has fallen dramatically – from about 35% to 25% since 2004 and continues to fall³.

¹ Women & Laws in India - LiveLaw.in

² http://www.ilo.org/newdelhi/whatwedo/publications/WCMS_568701/lang-en/index.htm; Last accessed on September 30th, 2018

³ "Reversing women's decline in the Indian labour force" by Ajit Ranade (2018); <https://www.livemint.com/Opinion/v80I9EwDz6oyk1ST8ebqMM/Reversing-womens-decline-in-the-Indian-labour-force.html>; last accessed on October 11th, 2018

Among the most common reasons for women to leave their jobs in India are the abysmal maternity leave policies which appear to augment the normative challenges that women who work as well as those wish to work (especially outside of the home) face. “Historically, maternity has been treated as a state of disability in women workers from undertaking any work during the few weeks immediately preceding and following child birth. With the emergence of the system of wage labour in the industrial undertakings, many employers tended to terminate the services of the women workers when they found that maternity interfered with the performance of normal duties by women workers. Many women workers, therefore, had to go on leave without pay during this period in order to retain their employment. Many others had to bear a heavy strain to keep their efficiency during the periods of pregnancy, which was injurious to the health of both, the mother and the child.”⁴ Thus the maternity welfare laws, not just in India, but across the world play a pivotal role in the economic empowerment and well-being of women.

More disconcerting than all this however, is the fact that most highly skilled women workers who do not receive appropriate benefits and encouragement at work never return⁵ to the formal workplace⁶. Many new mothers who have left their jobs have taken to social media and parenting blogs to share their personal experiences of limited organizational support and the lack of mentorship offered to women and new mothers in private companies⁷. A limited number of them also turn to starting small home-based businesses or take up under-paying work from home opportunities for which they are clearly overqualified for an extra source of income.

Such antediluvian practices also do not take into consideration the vital contribution of women to the global economy, the country’s GDP and to the

⁴ Implementation of Maternity Benefit Act – Dr. Shashi Bala, V.V Giri National Labour Institute, 2012

⁵ “A report by Indian Women’s Network of the Confederation of Indian Industry, reveals that 37% of working women in India opted out of their jobs due to maternity or childcare issues.” <https://timesofindia.indiatimes.com/life-style/relationships/work/All-you-need-to-know-about-increased-maternity-leave/articleshow/50622146.cms>; Last accessed on September 30th, 2017

⁶ NASSCOM- TRILEGAL Maternity Benefits Report, March 2016 “...one reason (for women leaving work) is that in the absence of a supportive environment, the childcare responsibilities that women have make it difficult for them to return to work after having children. As a result, the number of employees returning and continuing to work post-maternity is usually not very high.”

⁷ <https://www.womensweb.in/2013/09/tough-life-working-mothers-india/> Last accessed on September 30th, 2018, among others.

income at individual homes. “In modern day society, economic pressures have increased the need for families to have dual incomes. Though these should ideally have combined with egalitarian norms to radically alter attitudes toward working women this has not been the case.”⁸ Author further surmises accurately that “Career paths that lead to top-echelon positions generally require long work hours and uninterrupted work histories. Mothers cannot fulfill these requirements, unless they have partners who choose to forgo careers and take care of family responsibilities or unless they hire others (almost always women, at low pay) to care for their children and households.”⁹

This corollary between parental benefits and economic growth was at the forefront of a high-level discussion¹⁰ between UN Women and the Nordic Council of Ministers in 2017. Norway, which has been a leader in the sphere of, paid parental leave (for both women and men) with along with representatives from other countries highlighted that investment in parental care would yield more economic benefits “Economic growth depends on optimal use of the workforce. Getting women back to work, affordable child care and paid parental leave makes it possible for both parents to go back to work.” said Børge Brende, Minister of Foreign Affairs of Norway. In India a 2016 study conducted by NASSCOM¹¹, shortly before the amendments to the Act were introduced, reported that “Interestingly, the feedback from the companies that we spoke to, indicated that the experience of companies that offer higher maternity benefits and implemented innovative practices to facilitate return to work post maternity has been quite different.” i.e. increased maternity leave policies, flexible ‘work-from-home’ options, supportive managers all contributed to over 75% of new mothers returning to work after availing of their maternity benefits. In fact the positive impact of well-enforced maternity legislations – including paid leaves – resulted not only in women returning to work but advancing in their careers, in higher productivity across the world¹² and sustained breastfeeding keeping in line with WHO’s breastfeeding recommendation¹³.

⁸ Implementation of Maternity Benefit Act – Dr. ShashiBala, V.V Giri National Labour Institute, 2012.

⁹ Ibid.

¹⁰ ‘Parental leave is the key to economic prosperity’, <http://www.unwomen.org/en/news/stories/2017/9/news-parental-leave-is-the-key-to-economic-prosperity>; last accessed on October 12th, 2018

¹¹ NASSCOM- TRILEGAL Maternity Benefits Report, March 2016

¹² ILO – Maternity Protection in SMEs – An International Review, 2014

¹³ The WHO recommends exclusive breastfeeding for six months.

Another important point to be made is that the legitimate implementation of maternity welfare laws should also invest women in India with steady and sustainable sources of income. Access to funds will free women from domestic violence and the need to submit to patriarchal norms. For instance, in lower income households¹⁴ in urban India it is often women who take up the burden of providing for the family's needs¹⁵.

It is also of note during this study to mention that while the present Indian government moves positively towards strengthening maternity benefits and working towards the implementation of the same, from an international perspective governments and workplaces are moving towards enabling gender-neutral parental leave emphasizing the care giving roles of both mother and father after the birth of a child. "For one, women continue to disproportionately bear the responsibilities of caring for sick children or parents, even when they work full time." Facebook COO Sheryl Sandberg has remarked¹⁶. Such progressive HR and leave policies seek to dispel gendered norms and inequalities concerning parenting responsibilities and care giving which are surprisingly prevalent even among international development agencies such as the UN¹⁷.

3.1a Current Law in India

The rights and protection offered to women in India find a prominent place in the country's Constitution both among fundamental rights and among

¹⁴ In lower income households across urban and semi-urban locations in India, men engaged in blue-collar processes such as factory work or driving local transportation (bus drivers, auto rickshaw drivers etc.) often indulge in alcoholism while neglecting their family responsibilities. Civil society movements and public protests across the southern state of Tamil Nadu for example cited a need for prohibition of alcohol for this very reason. The women, who are often employed as domestic workers in individual homes, are often left to fend for themselves and their children taking care of their food, education and other basic needs.

¹⁵ Similar case studies have been conducted across the world. In Ecuador, south America (2018) for example a rural woman and local leader reflects on similar experiences about working in the chocolate factories and having the right to a life free from violence. "From where I stand: "Women have the right of an income of their own"; <http://www.unwomen.org/en/news/stories/2018/3/from-where-i-stand-marianela-galarza> last accessed on October 11th, 2018

¹⁶ 'Facebook's new paid leave policy isn't just for moms and dads' by Jena McGregor, https://www.washingtonpost.com/news/on-leadership/wp/2017/02/08/facebooks-new-paid-leave-policy-isnt-just-for-moms-and-dads/?noredirect=on&utm_term=.8af7b104967f; last accessed on October 12th, 2018

¹⁷ 'Push to Reform Parental Leave Gains Speed' by Amy Lieberman, <https://www.devex.com/news/push-to-reform-parental-leave-gains-speed-at-un-90092>; Last accessed on October 11th, 2018

the directive principles¹⁸. It is pertinent however that India has not ratified the latest ILO Convention on maternity benefits - the Maternity Protection Convention, 2000 (No.183)¹⁹.

The primary legislation presiding over maternity welfare in India is the Maternity Benefit Act, 1961. The most recent amendment to the law was in 2017 when crucial amendments to the Act, including increased maternity leave from 12 weeks to 26 weeks, maternity leave for adoptive mothers and the 'work-from-home' option, were confirmed by both houses of Indian Parliament and the President by March 27th, 2017. This law applies to women working in shops, factories, mines, factories, plantations and government, amongst others, in India. Fundamentally the Maternity Benefit (Amendment) Act, 2017 (also the Act) could be understood to be a labour law containing crucial welfare provisions regarding maternity leave, nursing breaks, time off from work for miscarriages and tubectomies, even limited monetary benefits to those who cannot afford healthcare under the ESI (Employee's State Insurance Scheme), etc. Given the rising participation of women in the workforce however, many of the old Act's provisions had come under criticism and deemed to be both draconian and incomplete. It was also not taken seriously by many employers, with pregnancy and childcare historically and normatively deemed as a 'woman's issue' alone. Thus lack of enforcement of the old Act was at the crux of the challenges faced in its implementation.

3.1b The Juridical Journey to the Maternity Benefit Act, 2017

Since the inception of the Maternity Benefit Act, 1961 courts in India have strived admirably to expand and increase the scope of this welfare law with judgments that yielded positive impact for women and their workplaces. However, a study of a few cases examining the law clearly reveals the frustration of working mothers in the country. This is primarily due to courts' inability to extend the duration of the maternity leave as this was limited by the law. Other issues that came up before the courts include the extension of maternity benefits to temporary female employees (not on the rolls of the company).

¹⁸ Article 14 accords equality under law to all whilst Article 15 pertains to the right to social equality and Article 16 deals with the right to social equality in employment. The 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] also have a place in the Constitution of India.

¹⁹ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312328:NO; Last accessed on October 12th, 2018

1. The Supreme Court of India, in the case of *Municipal Corporation of Delhi vs. Female Workers' (Muster Rolls) & Anr.*²⁰, was faced with a condition where the Municipal Corporation of Delhi (MCD) was granting maternity leave only to its regular female workers while the said benefit was not awarded to the daily wage female workers on the muster rolls, despite the fact that there was negligible difference in the work, which was allotted to female workers who were regular and the ones who were on a daily wages, which as they argued before the Apex Court was unjust and unfair. The Hon'ble Supreme Court was pleased to hold that the female workers had a right to be granted a maternity leave and thereby extending the benefit of the Act to daily wagers.
2. In a similar matter the Central Administrative Tribunal examined the case of a petitioner who was a guest lecturer at the school and was denied her maternity leave with her services orally terminated on account of her request for the same. The pregnant petitioner was required to take unsanctioned leave thereby restricting the benefit of the Act to its regular employees and suggesting that the guest lecturers were not entitled for such benefit. The CAT ruled in favor of the Petitioner (*Anuradha Arya v. The Principal, Government Girls' Senior Secondary School*²¹) and directed the school to reinstate her and directing the school to pay her back wages as well as the relevant consequential benefits. The judgment in essence opined that temporary, contract, as well as ad-hoc staff, were entitled to maternity leave and such other benefits as are provided to regular staff members.
3. The Hon'ble Delhi High Court in *Dr. Artiben R. Thakkar vs. Delhi Pharmaceuticals, Science & Research University & Anr.* was confronted with a situation where despite the contractual employment of the Petitioner having come to an end, the Petitioner sought for the benefit of paid 26 weeks leave under the Amendment Act, reliance was also placed on the clarification issued by the Ministry of Labour & Employment vide S-36012/03/2015 dated 12.04.2017. The Hon'ble High Court after taking into consideration the amended Act and the clarification dated 12.04.2017 duly concluded that the benefit attached to a service comes to an end once the service tenure is completed. Thus, it was neither prudent nor reasonable to assume or presume that benefit of social enactment to flow even after the service tenure comes to an end and accordingly, the said Petition was dismissed.²²

²⁰ 2000 (2) SCR 171

²¹ Case No. O.A/3734.2015

²² W.P.(c) No. 10514 of 2017 Justice Sunil Gaur

3.1c The Role of Research Analysts, Legal Investigators and Policy Advisors

Research analysis and independent investigations conducted among women employees prior to the amendment of the Act contributed vital insight into the need for the evolution of the law. Over time the role of women in semi-urban and urban Indian society – both at home and at the workplace has changed considerably with women having to bear both familial and financial responsibilities. Therefore the grant and enforcement of the full period of maternity leave is imperative so working women are better equipped to return to work after giving birth.

Studies conducted by the V. V. Giri National Labour Institute in 2011 set out that most women workers entitled to maternity benefit of at least 12 weeks of leave with pay as mandated by the subject Act. Research revealed that most women availed of or were provided less than 12 weeks or less of maternity leave with pay did not receive the mandated leave of 3 months/12 weeks. Approximately 73% of women received maternity leave with pay with the highest percentage being received in the ITES sector (87.5%). Organizations in the health sector performed the worst on this count with only 58% of women in this sector enjoying leave with pay. Out of all the women interviewed during the research a mere 4% said that they received nursing breaks in between their working hours. However, with the study illustrating that hardly any establishment has provided crèches, it is not difficult to understand that the provision for nursing breaks to be availed of by mothers exists only on paper. The study conducted by VVGNI indicated a strong need for the duration of leave to be extended, especially post the birth of the child, in order to allow the mother to fully recuperate from pregnancy and birth as well as nurse and care for her new-born.

Furthermore, at the 44th Indian Labour Conference, held in February, 2012, it was recommended that maternity leave under the Maternity Benefit Act be increased from the present level of 12 weeks to 24 weeks.

In July 2013, the National Mission for Empowerment of Women conducted a national consultation on the Maternity Benefit Act. The outcome recommendations included that Maternity leave should be increased from the present 84 days (12 weeks) to 180 days (6 months) and made equivalent with what the Central Government provides to central government employees. This would be supportive of exclusive breast-feeding as recommended by WHO.

In 2014, the National Commission for Women conducted a study on the effectiveness of the implementation of the Maternity Benefit Act. The

foremost outcome of that investigation was a reiteration for the law to be amended to increase the number of days of leave. It was also understood that there was great need to improve the implementation of the Act with regard to access to medical bonus and nursing breaks. Awareness about the law also had to be increased.

Based on the decision taken in the consultation meeting on 2nd July 2013, at Vigyan Bhavan, New Delhi the task force members met on 3rd October 2013 and finalized the recommendations pertaining to the Maternity Benefit Act. Consequentially, the Maternity (Amendment) Bill, 2017 was introduced before the Parliament. The very objective of the Bill was to increase maternity benefits both for the welfare of a new born child during the most formative period of its life and for the post-natal recovery of the mother.

3.2 The Amendments

3.2a Lok Sabha Debate on the Amendment Bill – March 09, 2017

The participation of woman workforce in the formal or organized sector has rapidly increased since the passing of the original Maternity Benefit Act. The Maternity Benefit Act, 1961 is a pivotal legislation in India for providing maternal protection to working women in India. The Act regulates the employment of women employees in specified establishments and provides maternity and other benefits. The 44th, 45th and 46th Indian Labour Conferences had recommended for enhancement of this mandatory benefit of medical bonus.

It was in light of the above that the Maternity Benefit Bill was introduced in parliament and it was proposed that maternity leave is increased from 12 weeks to 26 weeks for two surviving children and 12 weeks for more than two children. As for commissioning mothers and adopting mothers, the maternity benefit was earmarked as 12 weeks. Another major point that was sought by way of the said Bill was to letting women work from her home, if the job permits her to do so. These amendments to the existing Act were made in concurrence with the guidelines of the World Health Organization, which recommended exclusive breast-feeding for the first six months of a child's life.

The concept crèche facility evolved from the initiative taken by the Maharashtra Government which were first to setup a special room at Government setups and offices called '*Hirkani Kaksh*' a mother could nurse her child taking a short break from work.. Accordingly, a crèche facility at every establishment with 50 or more employees was proposed.

With respect to the application of the new provisions of the Act in the unorganized sector the primary concern of policy makers, local

government and civil society remains spreading awareness of the Act among women in rural India working in the unorganized sector such as agriculture and cottage industries. Given the country's large population, several thousands of them being unaccounted for in government records as well, implementation also proved a monumental challenge and different techniques had to be enabled to ensure that such welfare measures were enforced. Thus other welfare measures such as *Janani Surakhsha Yojna* and *Matritva Sahyog Yojna*, were introduced which would entitle mothers to be provided with Rs. 6000 on the birth of her child and the implementing agencies were required to ensure strict compliance.

3.2b The Amendment Act 2017

The Maternity Benefit amendment Act of 2017 finally received assent from the President of India on March 27, 2017 which was a step aimed at benefiting over more than 1.9 million²³ women in the organized sector, as well as increasing strength of the workingwomen force. With the amendment in place, India stands third along with Serbia after Norway (46 weeks), Bulgaria (46 weeks) in terms of length of fully paid maternity leave.

3.2b1 Key Highlights of the Maternity Benefit (Amendment) Act, 2017

The key highlights are as follows:

(a) Paid Maternity Leave:

Paid maternity leave stands increased to 26 weeks as against 12 (twelve) weeks. Further, the Act previously allowed pregnant women to avail this maternity benefit for only 6 (six) weeks prior to the date of expected delivery. Now this period is increased to 8 (eight) weeks before the birth of the child²⁴.

(b) No increased benefit for third child:

The increased Maternity Benefit is only available for the first two children. The Amendment provides that a woman having two or more surviving children shall only be entitled to 12 (twelve) weeks of Maternity Benefit of which not more than 6 (six) shall be taken prior to the date of the expected delivery.

²³ 'All you Need to Know about the Maternity Benefit (Amendment) Bill (2016) <https://economictimes.indiatimes.com/slideshows/work-career/all-you-need-to-know-about-the-maternity-benefit-amendment-bill/maternity-leave/slideshow/53668605.cms>; last accessed on 30th November, 2018

²⁴ Clarification by GOI/ Ministry of Labour& Employment vide no. S-36012/03/2015-SS-I dated 12.04.2017

(c) Adoption/ Surrogacy:

A woman who adopts a child below the age of 3 (three) months, or a commissioning mother (biological mother, who uses her egg to create an embryo implanted in any other woman), will be entitled to maternity benefit for a period of 12 (twelve) weeks from the date the child is handed over to the adopting mother or the commissioning mother.

(d) Crèche Facility:

Every establishment having 50 (fifty) or more employees are required to have a mandatory crèche facility within a prescribed distance from the establishment, either separately or along with other common facilities. The woman is also to be allowed 4 (four) visits a day to the crèche, which will include the interval for rest allowed to her.

(e) Prior Intimation:

Every establishment will be required to provide the woman, at the time of her initial appointment, information about every benefit available under the Act.

This amendment became effective from April 01, 2017. However, provision on crèche facility (Section 11 A) became effective from July 01, 2017.

3.1 Comparison of Amendments to the Act

| SECTIONS | OLD | NEW |
|------------------------|--|--|
| SECTION 5(3) | Maximum period of leave -12 weeks 6 before delivery and 6 after delivery | Maximum -26 week 8 before deliver and 18 after delivery |
| Section 8 | Provide for maternity bonus Rs 3500 per maternity | No change |
| Section 9 and 9 (A) | Leave for mischarge of medical termination of pregnancy - 6 weeks Female undergo tubectomy operation -2 week | No change |
| Section 10 | Additional 12 week leave in case of illness arise due to pregnancy | No change |
| Section 11 | After leave when employee came than employer should provide 2 breaks of prescribed duration for nursing the child until child attains age 15 months | In section of 11 (A) women employee permitted to visit the crèche 4 times a day |
| Section 21 | Penalties: imprisonment minimum 3 months extended to 1 year and fine 2000 to 5000 | No change |

3.2b2 New Provisions Added

- Sec 5(3) expended benefits limited only up to 2 children
- 5(4) commissioning mother: A biological mother who uses her egg to create an embryo implanted In any other women

“Surrogacy: 12 weeks from the date child is handed over to her

* Section 5(4) adopting mother – 12 weeks from the date child is handed over to her

* Section 11 (A) 1 Crèche facilities

*Mandatory for every establishment employing 50 or more employees within such distance as may be prescribed either separately or along with common facilities Women employee should be permitted to visit 4 times a day.

- Section5(5) provision for the working from home (effect 01 July 2017)
- The amended act makes it compulsory for employer to educate women about the maternity benefits available to them at the time of appointment.

3.3 Reception of the Amended Act:

The amendments to the Maternity Benefit Act, 1961 have been received well by women, civil society among others; the rationale behind the new changes have been endorsed by the United Nations and the International Labour Organization – that the six months of maternal care and breast-feeding for babies has a disproportionate impact on human capital. Besides more paid leave, the Act specified a mandatory crèche facility in organizations with more than 50 employees, work-from-home options and a maternity bonus. These intentions could deliver both health and welfare for the child and the mother but also endorse India as a truly emerging leader among the developing industrialized nations of the world.

A Team Lease study suggests the post-maternity attrition rate is expected to fall from 56% to 33% in the medium term (one to four years). But, according to the study, women could lose 11-18 lakh jobs in FY18-19 across the 10 sectors surveyed. India has a generous maternity leave policy – it is 12 weeks in USA, 17 weeks in Canada, 16 weeks in France, 14 weeks in China, 16 weeks in Singapore and 17 weeks in Brazil. India is also probably the only country where the financial burden is supposed to be borne by the employer fully. In most countries, the government, employer, insurance agency and other social security programs share the cost of maternity leave. In Singapore, for example, the employer bears the cost for 8 weeks and public funds for 8 weeks. In Australia and Canada, public funds bear the full cost. A social insurance scheme bears the cost in France. In Brazil, it shared by the employer, employee and the government.

While large companies with deep pockets may be able to afford the 26-week paid-leave policy, most Indian organizations, which includes about 36.2 million (according to statista.com) micro, small, and medium enterprises and start-ups, can't afford this, given their growth challenges, resource constraints and margin pressures. According to the study, post-maternity retention could cost 80-90% of the annual salary in the case of white-collar employees and up to 135% of annual cost in the case of blue-collar employees.

Additional requirements like crèche facilities require more capital and operating expenditure. It won't come as a surprise that some companies in India might shy away from hiring young women. When they do, the women might face a reduction in compensation as firms compensate for higher lifetime costs. There are some remedial options. The government could share the cost of maternity leave with employers – say, employer pays for 13 weeks.

The government can amplify tax rebates for maternity wages or set up an insurance scheme to pay maternity wages, sharing the premium with the employer. Another option could be breaking up the 26 weeks into 13 months of maternity and 13 months of paternity leave, to negate any possibility of gender bias. This has the additional upside of work being shared equally by both parents.

But these interventions will never be as effective or scalable as the structural reform of formalization, financialization, urbanization, industrialization and human capital. It is nobody's case that women's empowerment does not need strong policy interventions or that employers should not step in to help solve the problem. But policy interventions need sustainability and scalability. As Renaissance physician Paracelsus said: "The dose makes the poison."

3.4 Critique & Concerns

The Maternity Benefit (Amendment) Act, 2017 was a bold policy action taken in order to tackle the declining women's labour force participation which had struck its lowest. The amendment was a recognition that reversing the decline in labour force participation – it dropped to 27% in 2017 from 35% in 1990 – was a social, political and economic imperative.

Countries like USA offer leave of 12 weeks, Canada 17 weeks, France 16 weeks, China 14 weeks, Singapore 16 weeks and Brazil 17 weeks. It is only India that offers a substantial period of 26 weeks leave.

The very purpose of the Act is to protect women's employment, and women and children's well being during maternity with paid absence and related benefits. Though the step taken by the government is supported, the very concern that raises consideration is that the increased number of paid leaves also brings about a discomfort to companies while employing women employees as India is the only country where the financial burden is to be borne by the employer alone. In several countries the government, employer, insurance agency and other social security programmers share the cost of maternity leave.

Most Indian organizations, which includes about 36.2 million²⁵ micro, small and medium enterprises and start-ups are not in a position to afford such paid leaves, given their growth challenges, resource constrains and margin pressures. Requirements such a crèche facility require more capital and operating expenditure.

It is expected that the recent changes in the Maternity Benefit (Amendment) Act, 2017 may have an impact India's labour policy with respect to better Labour - Management Relations through proper implementation of the labour laws in general and legislations concerning the women labour force. The widening division between the formal and informal sector, which has been interpreted as a proneness to a conflict, can be minimized to a greater extent as well as compelling the state to respond to the various issues and challenges faced by the parties affected by various issues. The proposed research study would benefit the government at the Centre to implement the schemes and frame policies with regard to the Directive Principles of State Policy. According to the Article 42 of the Directive Principles of State Policy, "The state shall make provisions for securing just and humane conditions of work and for maternity relief. In every country the state plays some role in the field of Industrial Relations, though the degree of state intervention is determined by various factors such as the political complexion of the ruling party or group. In view of the weak bargaining position of the trade unions, the Industrial Disputes Act, 1947 empowered the appropriate government to actively intervene in the settlement of industrial disputes through conciliation and adjudication.

On pregnancy of a workingwoman a new chapter begins since motherhood brings with it new expectations and unexpected challenges. The lack of support systems is forcing many workingwomen to quit their job. Almost half of the women in junior level jobs quit before reaching middle management. While the choice to leave is out of love - for the child, for the family - the monetary aspects of decision also merit consideration.

²⁵ statista.com

Expected responses over the recent changes in the M.B.(A). Act, 2017:

The object of the Maternity Benefit Act, 1961 is to protect the dignity of motherhood by providing for the full and healthy maintenance of woman and her child when she is not working. As the number of women employees is growing, maternity leave and other maternity benefits are becoming increasingly common. In 1961, the Maternity Benefit Act was passed aiming at a uniform maternity benefit all over the country. The Maternity Benefit Act applies in the first instance, to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed on any day of the preceding twelve months.

According to Census 2011, nearly 15 crore women constitute 26% of India's total workforce. While bulk of the working women's population is engaged in the unorganized sector; at about 60 lakhs (Labour Ministry, New Delhi), the number of women employed in the organized sector; both public and private, is also quite significant. With one of the world's highest malnutrition rates, India is at the bottom of the heap among South Asian countries in breast-feeding practices. Only 47% children are breastfed in India as opposed to 70% in Nepal and 76% in Sri Lanka. Around 48% children in India have stunted growth and 46% are underweight. Therefore, around 14.5 million children of the 26 million children born every year are deprived of optimal feeding practices in the first year of their life.

The gender gap in India is quite high, with women picking up the brunt of household work, putting in an average of 352 minutes each day – as opposed to just 52 minutes by them. Also looking beyond leave to care for new – born, there is need to upgrade the overall office structure so that it better reflects the realities of the 21st century where it is increasingly common for both parents to be working – this means, for example, more flexi-timings and mandating crèches in every office.

Status of Implementation:

The primary objective of the Maternity Benefit Act, 1961 is to protect the dignity of motherhood and the dignity of a new person's birth by providing for the full and healthy maintenance of the woman and her child at this important time. These maternal welfare measure may be availed of by all

women employees either employed directly or through a contractor except for domestic women employees employed in mines, factories, plantations and also in other establishments, if the respective state government so decides. The amended provisions of section 11A(2) provide that every establishment shall intimate (in writing and electronically) every woman at the time of her initial appointment regarding every benefit available under the Maternity Benefit Act, 1961. Every woman shall be entitled to maternity benefit at the rate of the average daily wage for the period of her actual absence. No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months.

The amended Act is undoubtedly well intentioned but execution will be a challenging task for all stakeholders. Attitudinal change is critical. At present, even though the law provides for six months of maternity leave, many employers in the corporate sector deny women the full benefit by either not paying in full or by excluding benefits other than basic pay. Others may avoid appointing women in critical functions out of unwillingness to cope with women's life cycle changes, even seeking undertakings on avoiding pregnancy. Changing this cannot be achieved through legislation alone. This latest amendment is a splendid example of a proactive government seeking to make a difference in the lives of the people with affirmative legal reform, but it is accompanied by the fear of lack of enforcement. As it stands, Section 21 of the Act enumerates the punishment for contravention of the terms by an employer upto 1-year imprisonment or with fine which may extend to five thousand rupees or with both.

The Act also provides for the appointment of inspectors. Their roles include visiting the premises of the establishments that fall under the purview of this Act, inspecting the requisite registers, calling for an inquiry in the event of a perceived violation and more. But, what keeps a large multi-national corporation from bribing an inspector to cover up a violation? Who in the company will pay the price for a violation under the Act? What's to stop them from committing the same violation again? **Legislators need to re-examine the existing punishments under the Act and impose more duties on employers for which they can be held accountable.**

Important Cases Post Amendment:

Subsequent to the amendment coming into force, the High Court of Bombay in *Laxmi Subash Yadav vs. Office of Directorate through Water & Sanitation Support Organization (WSSO) Water Supply & Sanitation Department & Ors.* was confronted with a situation where the Petitioner was appointed

on a contractual basis as a Document Consultant for a consolidated sum of money. In terms of the contract entered into by the Petitioner, the Petitioner was eligible for total 08 days of casual leave (C.L.) and 10 days of Medical/sick leave for a year or equivalent thereof for the proportionate length of the service rendered. However, for any assignment less than 3 months, no Medical/Sick leave will be entitled. Further, not more than 3 days of C.L. will be allowed at a time. In case of fresh agreement signed with the contractual person, the leave shall not carry over to the new contract period. No other kind of leave shall be admissible to the consultant. The Petitioner absented herself from work from 30th December, 2013 and on 8th January, 2014 she submitted an application for leave addressed to the Director, Water and Sanitation Support Organization, Belapur, thereby intimating that she was unable to attend the office since 1st January, 2014 due to her ill health. It was also informed that she had developed certain complications in her pregnancy and doctor had advised her complete bed-rest for next three months. Therefore, she requested for grant of medical leave from 1st January, 2014 to 7th April, 2014 considering the pregnancy complications. The said application was accompanied by certificate from a private Maternity Hospital at Navi Mumbai, where it was diagnosed that the Petitioner was carrying two months pregnancy and she was advised three months rest from 8th January 2014. The Hon'ble High Court duly took into consideration, the Maternity Benefits Act, 1961 which was enacted in the backdrop of the fact that number of women are employed in various establishments and it is necessary to confer certain benefits on such women who need certain special treatment in a phase when they are rearing the child in their womb and also required to nurture the child after his birth. Article 42 of Constitution of India, in form of Directive Principle mandates the State to make provisions for securing just and humane condition of work and for maternity relief. In furtherance of the said duty the cast on the State Government, the Parliament had enacted the Maternity Benefits Act, 1961 and the benefits available under the Act have been made available to various classes of the employees by the State Government by making enactment applicable to them. The Act regulates the employment of women in certain establishments for certain periods before and after childbirth and provide for maternity benefit and certain other benefits. The said Act ensures the right to payment of maternity benefits, which means the payment referred to in sub-section 1 of Section 5. Further, the said Act also entitles a woman for payment of medical bonus, leave for miss-carriage etc. The said enactment by virtue of Section 10 entitles a woman suffering from illness arising out of pregnancy, delivery, premature birth of a child to be entitled to leave with wages at the rate of maternity benefit for maximum period of one month. This beneficial piece of legislation also prevents an employer from dismissing the employee when

she absents herself from work during or on account of such absence. There is no quarrel about the proposition that the said piece of legislation is beneficial legislation and is based on the principle of fair-play to the women employee by recognizing the fact that motherhood is the most important phase in the life of a woman and she needs special treatment during the said period. However, from reading of the provisions of the Act in terms of the benefits to which an employee is entitled under the provisions of the Act, it is clear that the benefit conferred upon a woman employee in terms of the maternity benefit is the payment referred to in subsection 1 of Section 5. The said Section recognizes the factum that a women needs rest preceding the crucial phase before delivering a child and another critical face after the delivery, when she has to care and nurture the child and therefore, it prescribes the maximum period for which the women shall be entitled for maternity benefit by the Maternity Benefits (Amendment) Act of 2017, the said period has been permitted to be 26 weeks out of which not more than 8 weeks shall precede date of her expected delivery. Section 6 prescribes the manner in which the maternity benefit and payment thereof can be availed and it requires a woman employed in the establishment to give notice in writing in such form as prescribed stating that her maternity benefit and the amount to which she may be entitled under the Act may be paid to her or to a person nominated by her and she will not work during the said period for which she received the maternity benefit. Further it also mandates that a woman who is pregnant should state in the notice the date from which she will absent from work not being a date earlier than six weeks from the date of her expected delivery. It is also permissible to give such a notice after delivery, if such notice is not given when she was pregnant and on receipt of such notice the employer shall permit such women employee to absent herself from the establishment during the period when she receives the maternity benefit. Section 7, Section 9(a) and Section 10 are the different instances of maternity benefits which entitles a woman to certain benefits arising out of pregnancy, delivery, miscarriage, premature birth etc. Section 10 entitles a woman suffering from illness arising out of pregnancy, delivery, premature birth of a child, miscarriage, medical termination of pregnancy to be entitled to leave with wages at the rate of maternity benefit for maximum period of one month which is in addition to the period of absence allowed to her under Section 6 or as under Section 9. Thus, the woman can avail maternity benefit for period of one month in total, in addition to the period i.e. prescribed in Section 6. These are the special benefits, which are available under the Maternity Benefits Act, 1961, to a woman employee. However, the Hon'ble High Court placed reliance on the fact that the Petitioner was appointed as a contractual employee and the terms and conditions of her appointment were governed by the contract, which she had signed on 2nd April, 2013. As

per the said contract, she was eligible for 8 days casual leave and 10 days of medical leave. The Petitioner preferred an application for leave on 8th January, 2014 after absenting herself from duty from 30th December, 2013 and sought medical leave for period of three months as per doctor's advice. As a contractual employee she was not entitled for medical leave of three months, which she applied for. At the relevant time in her application she did not claim they said leave as maternity benefit on account of illness arising out of pregnancy. Her claim was for medical leave, which she was not entitled as per terms and conditions of the contract. In view of her absenteeism from 30th December, 2013 the employer issued an order of termination with effect from date of her absence i.e. 30th December, 2013. The Hon'ble High Court duly took into cognizance of the fact that the Application of the Petitioner came to be rejected with a remark from Director, that since the Petitioner was working on contractual basis, she is not entitled for leave of three months and therefore, in absence of such leave to her credit her absenteeism from 30th November, 2013 without availability of leave period necessitated the department to terminate the services of the Petitioner. Further the Hon'ble High Court placing reliance on a circular which the Petitioner has referred to, was issued on 20th March, 2015 by which the benefits of the maternity leave were extended to the contractual employees working with the Respondent-department, however, the said circular does not operate retrospectively and till the time of issuance of the said circular the contractual employees were entitled for a limited casual leave and medical leave during the period of contract which did not include the maternity leave. The Hon'ble High Court did not entertain the plea of the Petitioner on the ground that the Petitioner was on a contractual obligation whereby she was not entitled to leave sought for and further the Maternity Benefit Act is only entitled for medical leave for limited period and the leave sought was during the early stage of pregnancy. The Hon'ble High Court thus proceeded to hold that the policy contained in the social legislation intends to grant benefit to women workers to have a safe pregnancy and to develop a bond with the child and nurture the child immediately after delivery, expects the benefit to be conferred on the eve of delivery of a child and therefore, it has bifurcated the period into two terms namely first term, preceding the delivery and the second term post-delivery. However, the said benefit is not available on the eve of pregnancy and the woman is not entitled to claim the said benefit since the time when a woman conceives and during her entire gestational period. If the maternity benefit is to be conferred in this manner, it would rather defeat the whole purpose, since the employee will also have to look at it from the angle of running the administration and the woman employees may not claim such privilege for such entire period of pregnancy, but necessarily have to regulate themselves in

accordance with the provisions of the Maternity Act. In any contingency, the Petitioner was not entitled for extension of the benefits of maternity leave in terms of her order of appointment and she is not entitled to claim benefit of the Government Circular dated 20th March, 2015, when her services were already terminated with effect from 30th December, 2013 and in light of the above the Petition of the Petitioner was dismissed.²⁶

The Hon'ble Supreme Court of India in *National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) vs. Union of India & Ors* has duly taken into consideration the difficulties faced by the women in the unorganized sector and has time and again laid down guidelines to ensure strict compliance of the Act.

Similarly, the Calcutta High Court was confronted with a situation where the Library Clerk (Casual) pursuant to delivering the child in September 2016 sought to resume services from March 2017, as her appointment was alive till 29th June, 2017. Since there was no formal communication with regards to rescinding her engagement, the court was of the opinion that the Petitioner was entitled for Maternity Leave Benefit in accordance with the law and since there was no formal communication with regards to rescinding her engagement, the Petitioner was entitled to resume services.²⁷

Further, a number of Writ Petitions were filed before the Hon'ble High Court of Kerala challenging the non-implementation of 180 days maternity leave and insisting on 135 days leave. Accordingly, placing reliance on the judgment passed by the Kerala High Court in *Mini vs. Life Insurance Corporation of India*, the court was pleased to order modification accordingly.²⁸

²⁶ W.P.(c) No. 2402 of 2016; Judgment delivered on 13.10.2017

²⁷ Smt. Popi Paul @ Popi Das Paul vs. State of West Bengal & Ors (W.P. 11415 (w) of 2017)

²⁸ Rakhi P.V. & Ors. vs. State of Kerela & Anr. (Date of decision – 27.02.2018)

CHAPTER 4

ANALYSIS FROM EMPLOYER'S AND EMPLOYEE'S PERSPECTIVE

This chapter provides the employers and employees perspective about amendment in MBA Act. 12 Employer's, 32 Male employees and 64 Female employees shared the information pertaining to this important piece of legislation.

Employer's Perspective

4.1) Employers Respondent City

| S. No. | Region's | Percent |
|--------|--------------|---------|
| 1. | Bengaluru | 33.3 |
| 2. | Gurugram | 16.7 |
| 3. | Hyderabad | 25.0 |
| 4. | Mumbai& Pune | 25.0 |
| | Total | 100.0 |

4.2) Employers Type of Establishment / Organization

| S. No. | Type of Organisation's | Percent |
|--------|------------------------|---------|
| 1. | Proprietorship | 8.3 |
| 2. | Public Ltd | 16.7 |
| 3. | Pvt Ltd | 75.0 |
| | Total | 100.0 |

12 employers participated in the rapid assessment from Bengaluru, Gurugram, Hyderabad and Mumbai & Pune. 9 of these were private limited companies with 2 being public limited and 1 being a proprietorship. 8 stated that they had HR policies specifically for women, 4 did not have of these. 7 confirmed that the policies were on protection of women from sexual harassment while only 4 confirmed that these policies concerned maternity leave. However when specifically asked, the responses were different.

4.3) Employers having policy on Maternity leave and benefits

| S. No. | Response | Response Percentage |
|--------|----------|---------------------|
| 1. | Yes | 83.3 |
| 2. | No | 16.7 |
| | Total | 100.0 |

Table 4.3 reflects that mostly IT/ITES companies responded that they have Maternity leave policies. However, their responses did not align with other responses on HR policies for women.

When asked if their company appointment letters include information on the maternity leaves, only half the employers responded positively. 25% employers were unaware of the mandatory requirement under the amended act of including such information in the appointment letter itself (Refer Annexure IV).

50% of the employers had conditions in place for availing of maternity leave and it did not become available from the day of employment.

4.4) Awareness about MBA (Principal) Act 1961 and MBA (Amendment) Act,2017

4.4(i) Awareness about the Maternity Benefit Act (Principal) 1961

| S. No. | Response | Response Percentage |
|--------|----------|---------------------|
| 1. | Yes | 75.0 |
| 2. | No | 25.0 |
| | Total | 100.0 |

4.4(ii) Awareness about the recent amendment in the Maternity Benefit Act, 2017

| S. No. | Response | Response Percentage |
|--------|----------|---------------------|
| 1. | Yes | 58.3 |
| 2. | No | 41.7 |
| | Total | 100.0 |

Data of table 4.4(i) reflects that approximately 75% of employers are aware about Maternity Benefit Act (Principal) 1961, but as shown in table 4.4(ii) only 58.3% employers are aware about its amendment. Even in terms of this awareness, while there may be awareness about the increased leave for maternity, there was little awareness on the other provisions concerning crèche facilities.

75% of the employers interviewed said that there are no crèche facilities provided in their establishments. This was despite the fact that all employers had stated that they had more than 50 employees (Refer Annexure IV).

On the duration of the maternity leave under law, 58.33% of the employers were able to correctly identify the period as being 26 weeks. But they were unaware that even if child is still- born or dies during the period of

maternity leave, still the woman would be entitled to the full leave with wages.

There is a dire need to generate awareness amongst employers about new provisions of this Act.

4.5) Duration of maternity leave

| S. No. | Response | Response Percentage |
|--------|---------------------|---------------------|
| 1. | Less than 4 weeks | 8.3 |
| 2. | 12 weeks - 26 weeks | 83.3 |
| 3. | More than 26 weeks | 8.3 |
| | Total | 100.0 |

Table 4.5 shows that most of the companies are in the trend of providing maternity leave in the range of 12 weeks to 26 weeks. Establishments providing more than 26 weeks are unpaid in nature. However, on being asked on the quantum of leave available before delivery and after, most employers were unclear on the quantum and some even responded that it depends on the employee.

4.6) Women related policies in IT/ITES Industry

| S. No. | Response | Response Percentage |
|--------|-----------------------------------|---------------------|
| 1. | Protection from Sexual Harassment | 58.3 |
| 2. | Maternity Leave | 33.3 |
| 3. | Crèche facilities for children | 25.00 |
| 4. | Work from home | 75.00 |
| 5. | Pick and drop facility for women | 0.00 |
| 6. | Nursing breaks/Visits to Crèche | 0.00 |
| 7. | Any other | 8.3 |

Table 4.6 clearly reflects that none of the employer respondent shared about provisions pertaining to nursing breaks and pick and drop facility for women. Breast-feeding facility cannot be availed by women unless and until it is within the premises of establishments.

4.7) Applicability of amended MBA Act 2017 to regular/adhoc/probationary/casual/daily workers

| S. No. | Response | Response Percentage |
|--------|----------|---------------------|
| 1. | Yes | 33.3 |
| 2. | No | 66.7 |
| | Total | 100.0 |

Table 4.7 stated that 33.3% of the employer reported that they are extending the leave to regular / adhoc / probationary / casual / daily workers who are meeting the criteria of MBA (Principal), 66.7% employers are not providing this benefit. Since majority of workers are casual/ contractual basis (appointed for project) they are unable to fulfill 80 days criteria. It is suggested that minimum number of working days requirement for availing this benefit may be removed because it is discriminatory towards women who are pregnant at time of interview or joining. There is a dire need for sensitizing employer on this aspect of the Act.

4.8) Period of Paternity leave

| S. No. | Response | Response Percentage |
|--------|--------------------|---------------------|
| 1. | Less than 10 days | 75.0 |
| 2. | 10 days to 30 days | 16.7 |
| 3. | 30-40 days | 0 |
| 4. | More than 40 days | 0 |
| 5. | Not reported | 8.3 |
| | Total | 100.0 |

Table 4.8 reflects that most of the employers are providing paternity leave for less than 10 days. In this patriarchal mindset is reflected. As no clear guidelines for availing paternity leave to the employer, it is at the discretion of the employer. Therefore, parental leaves are suggested like in Finland and in Norway. In Finland there is a provision of parental leave until child starts 2nd Grade. In Sweden the father gets 90days leave with objective of bonding between child and father.

4.9) Attitude towards the benefits under the Maternity Benefit (Amendment) Act, 2017

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Excellent | 16.7 |
| 2. | Very Good | 25.0 |
| 3. | Good | 41.7 |
| 4. | Fair | 8.3 |
| 5. | Poor | 8.3 |
| | Total | 100.0 |

4.10) Increase in the financial liability of the employer due to Increase of Maternity leave from 12 to 26 weeks

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Yes | 50.0 |
| 2. | Can't Say | 50.0 |
| | Total | 100.0 |

Table 4.10 reflects that more than 50% of the employers said that the increase of maternity leave from 12 to 26 weeks has increased the financial liability of the employer.

When asked of the advantages or disadvantages accrue to an organization when it provides maternity relief to its employees, only 25% identified advantages such as more women in leadership roles, higher retention and trustworthy long serving employees. It is troubling that 75% employers were unable to identify any advantage of increased maternity leave (Refer Annexure IV).

4.11) Management of work during the Maternity leave of female employee

| S. No. | Response | Response Percentage |
|--------|---|---------------------|
| 1. | A backup resource is hired/ Moved to the team | 25.0 |
| 2. | The persons work is distributed amongst the existing team members | 75.0 |
| | Total | 100.0 |

Table no. 4.11 shows that 75% of employers said that the persons work is distributed amongst the existing team members.

4.12) Impact of the paternity leave on maternity leave

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Yes | 50.0 |
| 2. | No | 16.67 |
| 3. | Can't say | 33.33 |
| | Total | 100.0 |

Table no. 4.12 shows that 50.0% of the respondent need for paternity leave. On being asked if provision of paternity leave make it easier for employers to provide maternity leave - only 16.67% employers denied on this.

Employee's Perspective

4.13) Female Respondent City

| S. No. | Region's | Percent |
|--------|--------------|---------|
| 1. | Bengaluru | 31.3 |
| 2. | Gurugram | 18.8 |
| 3. | Hyderabad | 18.8 |
| 4. | Mumbai& Pune | 31.1 |
| | Total | 100.0 |

4.14) Female Type of Establishment / Organization

| S. No. | Type of Organisation's | Percent |
|--------|------------------------|---------|
| 1. | Partnership | 9.4 |
| 2. | Proprietorship | 9.4 |
| 3. | Public ltd. | 28.1 |
| 4. | Pvt. ltd. | 53.1 |
| | Total | 100.0 |

4.15) Male Respondent city

| S. No. | Region's | Percent |
|--------|---------------|---------|
| 1. | Bengaluru | 34.4 |
| 2. | Gurugram | 43.8 |
| 3. | Hyderabad | 12.5 |
| 4. | Mumbai & Pune | 9.1 |
| | Total | 100.0 |

4.16) Male Type of Establishment / organization

| S. No. | Type of Organization's | Percent |
|--------|------------------------|---------|
| 1. | Partnership | 6.3 |
| 2. | Pvt ltd. | 65.5 |
| 3. | Proprietorship | 6.3 |
| 4. | Public ltd. | 21.9 |
| | Total | 100.0 |

4.17) Awareness about key Features of H.R. policy related to women

a) Female Respondents

| S. No. | Response | Response Percentage |
|--------|-----------------------------------|---------------------|
| 1. | Protection from Sexual Harassment | 82.8 |
| 2. | Maternity Leave | 84.4 |
| 3. | Pick and Drop Facility | 39.1 |
| 4. | Crèche Facilities | 28.1 |
| 5. | Nursing Breaks or Visit to Crèche | 26.6 |
| 6. | Work from Home Facility | 34.4 |
| 7. | Any other | 9.4 |
| 8. | No Cannot Recall | 1.6 |

Table 4.17(a) suggested that Maximum number of women were aware of the Maternity leave policies. Approximately 28% women were aware of crèche facilities and 26.6% were aware of nursing break and 34.4% were of work from home. As per MBA Act 2017 it is the duty of the employer to inform women about the Act at the time of appointment. This needs to be visible in appointment letter.

b) Male Respondents

| S. No. | Response | Response Percentage |
|--------|-----------------------------------|---------------------|
| 1. | Protection from Sexual Harassment | 46.9 |
| 2. | Maternity Leave | 34.4 |
| 3. | Work from home | 3.1 |
| 4. | Any other: | 9.4 |
| 5. | Not Aware | 6.3 |

Table 4.17(b) identified that among male only 34% were aware about maternity leave provisions. Need is felt for more awareness for sharing of responsibilities in advance.

4.18) Awareness about Maternity Benefit Act 1961 and its key features

a) Female Respondent

Aware about the Maternity Benefit Act 1961

| S. No. | Response | Response Percentage |
|--------|----------|---------------------|
| 1. | Yes | 68.8 |
| 2. | No | 31.3 |
| | Total | 100.0 |

Key features

| S. No. | Response | Response Percentage |
|--------|----------------------------------|---------------------|
| 1. | Maternity Leave Given | 51.6 |
| 2. | Paternity leave Given | 17.2 |
| 3. | Employer Provide Crèche Facility | 6.3 |
| 4. | None of the Above | 4.7 |
| 5. | All of the Above | 39.1 |

Table 4.18(a) shows that only 68.8% women are aware about MBA 1961(Principal) and only 6.3% are aware about Crèche facility. So, more awareness is required.

b) Male Respondent

Awareness about the Maternity Benefit Act 1961

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Yes | 62.5 |
| 2. | No | 31.3 |
| 3. | Not Aware | 6.3 |
| | Total | 100.0 |

Key features of the Maternity Benefit Act, 1961

| S. No. | Response | Response Percentage |
|--------|--------------------------------|---------------------|
| 1. | Maternity Leave Given | 12.5 |
| 2. | Paternity leave Given | 40.6 |
| 3. | Employer Provide Nursing Break | 3.1 |
| 4. | None of the Above | 3.1 |
| 5. | All of the Above | 34.4 |
| 6. | Not Aware | 6.3 |

Table 4.18(b) reflects that only 62.5% women are aware about MBA 1961(Principal) and only 3.1% are aware about Crèche facility. So, there is a need to sensitise males also.

4.19 Awareness about Maternity Benefit Act 2017 and its key features

a) Female Respondent

Period of maternity leave under the Amended Maternity Benefit Act 2017

| S. No. | Response | Response Percentage |
|--------|---|---------------------|
| 1. | 12 weeks paid leave | 9.4 |
| 2. | 18 weeks paid leave | 4.7 |
| 3. | 26 weeks paid leave | 71.9 |
| 4. | 12 weeks paid leave and 12 weeks unpaid leave | 3.1 |
| 5. | None of the above | 9.4 |
| 6. | Not Aware | 1.6 |
| | Total | 100.0 |

Table 4.19 (a) shows that due to financial implications still organisations are not providing 26 weeks paid leave.

Awareness on leave provisions pertaining to maternity leave

| S. No. | Response | Response Percentage |
|--------|-------------------------------------|---------------------|
| 1. | At Anytime | 18.8 |
| 2. | Only During Pregnancy | 23.4 |
| 3. | Only After Delivery | 7.8 |
| 4. | During Advanced Stages of Pregnancy | 43.8 |
| 5. | Birth of First Child | 26.6 |
| 6. | Birth of Second Child | 20.3 |
| 7. | Birth of Third Child | 4.7 |
| 8. | Adopting a Baby of 3 Months | 20.3 |
| 9. | Adopting a Baby Older 3 Months | 15.6 |
| 10. | Taking a baby from Commissioned | 12.5 |
| 11. | All of the Above | 18.8 |
| 12. | None of the Above | 1.6 |

b) Male Respondent

Awareness on leave provisions pertaining to maternity leave

| S. No. | Response | Response Percentage |
|--------|---|---------------------|
| 1. | 12 weeks paid leave | 15.6 |
| 2. | 18 weeks paid leave | 6.3 |
| 3. | 26 weeks paid leave | 56.3 |
| 4. | 12 weeks paid leave and 12 weeks unpaid leave | 6.3 |
| 5. | None of the above | 6.3 |
| 6. | Not Aware | 9.4 |
| | Total | 100.0 |

Data of table 4.19(b) reflects that men are also aware about amendment in MBA Act 2017

Stages under which maternity leave availed under the amended Maternity Benefit Act

| S. No. | Response | Response Percentage |
|--------|---|---------------------|
| 1. | At anytime | 18.8 |
| 2. | Only during pregnancy | 37.5 |
| 3. | Only after delivery | 3.1 |
| 4. | During advanced stages of pregnancy and post delivery | 25.0 |
| 5. | For birth of first child | 3.1 |
| 6. | Not Aware | 12.5 |

4.20) Duration of maternity leave availed

a) Female respondents

| S. No. | Response | Response Percentage |
|--------|---------------------|---------------------|
| 1. | Not Reported | 31.3 |
| 2. | 12 Weeks - 26 Weeks | 25.0 |
| 3. | 4 Weeks -8 Weeks | 3.1 |
| 4. | 8 weeks -12 Weeks | 12.4 |
| 5. | Less than 4 weeks | 11.0 |
| 6. | More than 26 Weeks | 17.2 |
| | Total | 100.0 |

Table 4.20(a) shows that only 25% of female respondents availed 12-16 weeks, it is too early to comment on this, as 26 weeks leave is applicable only after 2017. Yet there are women who have not even availed 12 weeks leave and 17.2% availed more than 26 weeks. This all depends on duration of employment.

b) Male Respondent:

| S. No. | Response | Response Percentage |
|--------|--------------------|---------------------|
| 1. | Less than 10 days | 62.5 |
| 2. | 10 days to 30 days | 3.1 |
| 3. | More than 40 days | 9.4 |
| 4. | Not Aware | 25.0 |
| | Total | 100.0 |

Table 4.20(b) suggest that among males also very few availed 15 days paternity leave.

71.9% male respondents work with female employees said that their female colleagues have availed maternity leave. (Refer Annexure IV)

4.21) Nature of paid maternity leave

a) Paid Maternity leave availed by Female respondents

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Yes | 50.0 |
| 2. | No | 10.9 |
| 3. | Not Aware | 39.1 |
| | Total | 100.0 |

As reflected in table 4.21(a), approximately only half of the female respondents have availed paid leave and there is 10.9% women respondent who did not availed paid leave.

b) Paid paternity leave availed by the male respondent

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Yes | 28.1 |
| 2. | No | 6.3 |
| 3. | Can't Say | 46.8 |
| 4. | Not Aware | 18.8 |
| | Total | 100.0 |

Data of table 4.21(b) shows that males are also availing paid paternity leave.

4.22) Nature of assignment post maternity leave**a) Female Respondent**

Return to the same assignment / nature of work

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Yes | 51.6 |
| 2. | No | 18.8 |
| 3. | Not Aware | 29.7 |
| | Total | 100.0 |

Return to the same assignment is essential for carrier growth but table 4.22(a) shows that 18.8% respondent reported that they are shifted to entirely different task which in future hinders their growth in the organisation.

b) Male Respondent

Return to the same assignment / nature of work after availing paternity leave

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Yes | 50.0 |
| 2. | Can't Say | 31.3 |
| 3. | Not Aware | 18.8 |
| | Total | 100.0 |

Table 4.22(b) shows that most of the men return to the same assignment others may not as many have not availed leave yet.

4.23) Crèche facility at workplace

a) Female Respondent

Availed crèche facility provided by the employer

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Yes | 7.8 |
| 2. | No | 84.4 |
| 3. | Not Aware | 7.8 |
| | Total | 100.0 |

Crèche facility is the essential need for women for availing breast-feeding break. As seen in table 4.23(a) 84% women did not avail this facility.

b) Male Respondents

Availed crèche facility provided by the employer

| S. No. | Response | Response Percentage |
|--------|----------|---------------------|
| 1. | Yes | 18.8 |
| 2. | No | 81.3 |
| | Total | 100.0 |

Table 4.23(b) data shows that men are also availing crèche facility.

4.24) Flexibility to work from home

a) Female Respondent

System to 'work from home' has been developed in place of work

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Yes | 37.5 |
| 2. | No | 43.8 |
| 3. | Can't Say | 17.2 |
| 4. | Not Aware | 1.6 |
| | Total | 100.0 |

Few organisations have developed flexi work hour provision as shown in table 4.24(a). This is important for women with small children.

b) Male Respondent

System to 'work from home' has been developed in place of work

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Yes | 62.5 |
| 2. | No | 15.6 |
| 3. | Can't Say | 18.8 |
| 4. | Not Aware | 3.1 |
| | Total | 100.0 |

Table 4.24(b) shows that 62% men are also availing this facility so they can contribute at home also.

4.25) Grievance mechanism**Female Respondent**

Reporting to officials in case of Grievances

| S. No. | Response | Response Percentage |
|--------|---|---------------------|
| 1. | Labour Inspector | 25.0 |
| 2. | Company Management | 28.1 |
| 3. | Labour Commissioner | 20.3 |
| 4. | Ministry of Women and child Development | 50.0 |
| 5. | Ministry of Labour and Employment | 21.9 |
| 6. | Labour Courts | 26.6 |
| 7. | High Court | 14.1 |
| 8. | State Government | 14.1 |

Table 4.25 shows that female respondents are aware of grievance mechanism.

4.26) Awareness on legal provisions available**a) Female Respondent**

| S. No. | Response | Response Percentage |
|--------|--|---------------------|
| 1. | Employer can be sentenced for minimum 3 months (extendable up to one year) imprisonment and with fine (Rs. 2000 to 5000) | 48.4 |
| 2. | Under section 11 (A) OF Maternity benefits amendment act 2017, it is mandatory to provide crèche facilities | 18.8 |

| | | |
|----|---|------|
| 3. | Under the amendment act of 2017 that it is compulsory for employers to educate women about the maternity benefits | 29.7 |
| 4. | None of the Above | 29.7 |

From table 4.26(a) it can be identified that most of the female respondent are aware about imprisonment and fine but most of them are unaware of other legal provisions

b) Male Respondents

| S. No. | Response | Response Percentage |
|--------|--|---------------------|
| 1. | Employer can be sentenced for minimum 3 months (extendable up to one year) imprisonment and with fine (Rs. 2000 to 5000) | 34.4 |
| 2. | Under section 11 (A) OF Maternity benefits amendment act 2017,it is mandatory to provide crèche facilities | 28.1 |
| 3. | Under the amendment act of 2017 that it is compulsory for employers to educate women about the maternity benefits | 18.8 |
| 4. | Not Aware | 18.8 |

Table 4.26(b) shows that there is a need to spread awareness on crèche facility and provisions of maternity among male employees also.

CHAPTER 5

ANALYSIS-STAKEHOLDER'S PERSPECTIVE (NGOs / Advocates / Trade Unions/Labour Officials)

This Chapter provides the Stakeholder's perspective about amendment in MBA Act, 2017. 10 Labour Officials and 18 NGOs / Advocates / Trade unions shared the information pertaining to this important legislation.

5.1 Awareness about MBA 1961

| S. No. | Response | Response Percentage |
|--------|--------------------------|---------------------|
| 1. | NGO/Trade Union/Advocate | 100.0 |
| 2. | Labour Officials | 100.0 |

All the stakeholders are aware about MBA Act 1961.

5.2 Awareness about MBA 2017

| S. No. | Response | Response Percentage |
|--------|--------------------------|---------------------|
| 1. | NGO/Trade Union/Advocate | 100.0 |
| 2. | Labour Officials | 100.0 |

All the stakeholders are aware about amendment of MBA Act 2017.

NGO/Trade Union/Lawyers View

These groups were identified as pressure groups. On interacting with the individuals identified under the pressure groups, the lawyers/ advocates and the NGOs, it was borne out that the pressure groups were aware of the amendment brought about in the Maternity Benefit Act. The pressure group were aware about the amendment whereby the paid leave is stood extended to 26 weeks which is applicable for mothers during the period of pregnancy, generally during the later period of pregnancy and post pregnancy. The amendment also recognizes adoption and surrogacy, which was duly acknowledged and appreciated the increase benefit while availing this benefit. Further, the response of the pressure groups indicated about the crèche facility, the concept of work from home and allied benefits. However, this awareness is low. Awareness trainings are required for NGO/Trade Union/Advocate.

The response of the pressure group also indicates about the need of development of proper mechanism for ensuring proper mechanism for implementing the act as **most of the employees are working on project**

based position which is more or less like a situation in unorganized sector.

The group also indicated that a drawback of the amendment was that it was causing loss of opportunity for the working women as they were reluctant in employing women employees in light of the financial implication that were to be borne alone by the employer.

Labour Officials View

Labour Officials said that they are aware about legal provisions. Their responses to detailed questions also indicated a high knowledge. However, they were unclear on their role and said that they only inspect when there is a complaint. They are not involved in any awareness measures and did not perceive their role as a proactive one. An important need that comes out is that number of inspections and visits to organization falling within jurisdiction of Labour officials must be incorporated in the law. There should be a streamlining of grievance processes and there is a need for clear-cut guidelines for deputed officials to truly bring about implementation of the law.

5.3 Availability of crèche facilities in establishments

The law provides that Crèche facilities are to be provided near establishments at the cost of the employer. Awareness on this amongst the pressure groups and labour officials is high.

| S. No. | Response | Response Percentage |
|--------|--------------------------|---------------------|
| 1. | NGO/Trade Union/Advocate | 94.4 |
| 2. | Labour Officials | 100.0 |

There is an understanding that to avail breastfeeding breaks women required crèche facilities and location of crèche should be within the premises of the organization or close by. All the stakeholders are in favor of crèche facilities within the organization.

5.4 Attitude of employer towards maternity leave and benefits

5.4(i) NGO/Trade Union/Advocate View

| S. No. | Response | Response Percentage |
|--------|------------|---------------------|
| 1. | Supportive | 66.7 |
| 2. | Neutral | 33.3 |
| | Total | 100.0 |

5.4(ii) Labour Officials View

| S. No. | Response | Response Percentage |
|--------|--------------|---------------------|
| 1. | Supportive | 50.0 |
| 2. | Neutral | 10.0 |
| 3. | Unsupportive | 40.0 |
| | Total | 100.0 |

Most of the Stakeholders have noticed that employers are supportive towards maternity leave and benefits but as opposed to the high support suggested by the employers in their responses, pressure group see this only 50% of the time. Labour officials indicate even lower levels of support at 40%. Labour officials reported that employers are not too supportive in nature due to financial constraints.

5.5 Incidence about termination of women employee on account of her pregnancy**5.5(i) NGO/Trade Union/Advocate View**

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Yes | 22.2 |
| 2. | No | 61.1 |
| 3. | Not Aware | 16.7 |
| | Total | 100.0 |

5.5(ii) Labour Officials View

| S. No. | Response | Response Percentage |
|--------|-----------|---------------------|
| 1. | Yes | 60.0 |
| 2. | No | 30.0 |
| 3. | Not Aware | 10.0 |
| | Total | 100.0 |

All the stakeholders reported the case of incidence about termination of women employee on account of her pregnancy. In order to prevent such termination, it is required that frequency of visit of Labour Officials should be increased but due to their multiple duties they have very less time for the efficient inspection, therefore more Labour Officials need to be deputed. Training of NGO and Labour Officials on how to conduct the inquiry is also needed for their redeployment.

5.6 Officials responsible for grievance handling related to MBA Principal Act 1961 & MBA Amendment Act 2017

5.6(i) NGO/Trade Union/Advocate View

| S. No. | Response | Response Percentage |
|--------|---------------------------------------|---------------------|
| 1. | Labour Inspector | 52.9 |
| 2. | Company Management | 11.8 |
| 3. | Labour Commissioner | 58.8 |
| 4. | Ministry of Women & Child Development | 17.6 |
| 5. | Ministry of Labour& Employment | 17.6 |
| 6. | Labour Court | 70.6 |
| 7. | High Court | 29.4 |
| 8. | State Government | 17.6 |

52.9% of the pressure groups identified labour inspectors for grievance redressal and a high percentage of 70.6% identified the labour courts.

5.6(ii) Labour Officials View

| S. No. | Response | Response Percentage |
|--------|---------------------------------------|---------------------|
| 1. | Labour Inspector | 100.0 |
| 2. | Company Management | 10.0 |
| 3. | Labour Commissioner | 30.0 |
| 4. | Ministry of Women & Child Development | 10.0 |
| 5. | Ministry of Labour& Employment | 10.0 |
| 6. | Labour Court | 10.0 |
| 7. | High Court | 0 |
| 8. | State Government | 0 |

Labour Officials identified for themselves that they are playing vital role in handling the grievance. Therefore, strengthening of Labour Officials is required both in terms of skill and capacity.

CHAPTER 6

CASE STUDIES

Employees Perspectives

Case 1. *Reeta, an employee from reputed IT company, who had already availed her maternity leave shared that she was on maternity leave when the new amended law came into place, her company HR called her and informed her about the law amendment and advised her to avail the maternity leave as per the new law.

Her company provides 6 months' work from home option for the working mothers. She was given a counseling session once she joined back from maternity leave, asking her if she is facing any issues with her new born with regards to day care and provided with an option of crèche facility.

Case 2. *Nalini, an employee from another IT company who was currently on maternity leave shared Company and Colleagues provides full support for her. She has an option of work from home. The company provides Crèche facility and the cost is born by the company for three years. Staff Retention policy is very strong in the company hence all the aspect of Job satisfaction is taken care.

Case 3. *Geeta, an employee of reputed company shared that the company has a great Work From Home policy, and gave me the flexibility to leave early so that she could spend time with her daughter. They also feel strongly about prevention of workplace harassment, which reflects in the strict policy in place as many a time travelling is required for holding meetings apart from own workplace.

Case 4. *Malini, an employee from world recognized IT company, who also was planning on availing maternity leave shared that the Company supports her with the amended Maternity law. However, she informed that her colleagues were not that supportive. At the time of survey, she was on annual leave and planning to start her Maternity leave soon. She was having a facility of working from home. Once she joins back she has an option to only work for 4 hours a day. This facility is for one year and is provided by the company for new mothers.

Case 5. Another employee from the same above company shared that on paper, the policies are extremely women friendly, however based on her personal experience, it all depends on the immediate manager the employee

is reporting to. Positive aspect of this policy are: Work from home option is provided for quite a lot of projects, cab service is available for projects with shifts, paid maternity leave and unpaid yearlong sabbatical is provided. Negative aspects based on her experience are: work from home depends from on the project and clientele, cab isn't provided on individual basis and is dependent of availability of service respective to the location.'

Case 6. An employee from renowned IT Company who had already availed her maternity leave shared a mixed reaction with regards to the Company dealing with new amended maternity law. She felt that colleagues and team were not fully supportive towards women when they return to work after the Maternity leave. She was not very happy with the overall handling of Maternity leave.

**Note: Names of the employees have been changed in order to maintain their privacy.*

SUGGESTIONS:

- a) *For the projects, which require deadline and confidentiality incentive for in campus residence for dependent along with baby sitter (for that particular period) should be provided to the employees.*
- b) *Sensitisation towards creating conducive working environment for sustainable environment via conducting monthly one day training is essential in which participation of each division should be on rotational basis like birthday, anniversary and other religious celebrations to make workplace more conducive.*

Employers Perspective

Case Study 1.

Mr. X heading the Human Resources Division of reputed IT Company at Hyderabad, for the past many years. He shared his views on the working structure of the Maternity Benefit (Amendment) Act, 2017. In his organization, around one hundred women employees were engaged. He shared that, woman employee, covered under the Act, shall be eligible to claim maternity benefit for a confinement occurring or expected to occur in a benefit period, if the contributions in respect of her were payable for not less than seventy days in the immediately preceding two consecutive contribution periods. For getting the maternity benefit, i.e., maternity leave and cash benefits one has to obtain medical certificate from the dispensary and deposit the same with the local office and claim cash benefits, though most of the women in IT sector do not opt for the same. The employer sanctions maternity leave on the basis of medical certificate. In many of the

cases, women employees of the IT/ITES prefer to get medical treatment and deliver the child at Private hospitals instead of ESI, which increases the cost of delivery.

Case Study 2:

Mr. Y has been working with one of the India's best IT Company, for the last eight years and is currently heading the recruitment process. Many women workers are employed by the organization and shows Zero Tolerance towards gender disparity. The Maternity Benefit (Amendment) Act, 2017 has been brought into force to protect the dignity of motherhood and the dignity of a new person's birth by providing for the full and healthy maintenance of the woman and her child at this important time when she is not working.

Maximum period for which any woman shall be entitled to maternity benefit shall be 26 weeks for which no more than 8 weeks shall precede from the date of her expected delivery. An additional leave with pay up to one month if the woman shows proof of illness due to pregnancy, delivery, miscarriage, or premature birth.

It is good to know that the Maternity Benefit (Amendment) Act, 2017 insists every establishment having 50 or more employees to have crèche facility within such distance prescribed, along with common facilities. The employer needs to allow the mothers to make four visits a day to the crèche to nurture their babies.

In his personal opinion, this amendment will only benefit women in the organized sector, employed either by the government and its departments or by the corporate sector. They constitute just about 12.1% of all employed women.

Case Study 3:

Mr. Z belongs to Human Resources Wing of one of the famous IT Group and he is handling the work force for more than a decade. The object of the Maternity Benefit (Amendment) Act, 2017 is to provide women workers social justice and welfare amenities at work place. Special care and assistance for motherhood is one of the basic human rights contained on the Universal Declaration of Human Rights. Provisions for maternity protection are one of the programmes, which are being furthered by the International Labour Organization on a worldwide basis. In pursuance of this object, the I.L.O. has adopted two Conventions No. 3 and 103 and a recommendation No. 3 was adopted in the beginning of its constitution. India subscribes to the principles contained in these instruments though it might have ratified the conventions. It is one of the Directive Principles

of State Policy contained in the constitution of India that the state should make provision for maternity relief.

Among IT/ITES, HR's have a confusion whether the women employees in such a category of establishments are covered under the E.S.I., Act, 1948 or the Maternity Benefit (Amendment) Act, 2017. Most of the women employees do not know that they could avail the maternity benefit under the E.S.I. Act, 1948 provided the monthly wages of the employees are not exceeding Rs.21,000/- the ceiling for the coverage under the Act. But they could avail similar benefit under the Maternity Benefit (Amendment) Act, 2017.

SUGGESTIONS:

- a) *There is need to change the mindset of the people towards ESI hospitals and treatment.*
- b) *It has been observed that, considering the nature of work, many women postpone their pregnancy due to deadlines of the project. This is the need of the hour that nature of work should be such that, it should not create a negative impact on planning pregnancy.*

Stakeholder's Perspective

Case 1. Mr. X the labour official was to a large extent unaware of his responsibilities towards this act. He was shying away from rendering any information on the ground that he was not handling the said department, but shared the constraint in proper compliance of the Act and felt need for the training on procedure to conduct efficient enquiry.

Case 2. Mr X. which was currently working with matter relating to women workers and was very well aware of the provisions of the law specific to women, one of them maternity benefits act 1961 and recent maternity benefits amendment act 2017. Mr. X shared across one case whereby a woman has been terminated on account of her pregnancy. Her name is Mrs.Y, in this case she files a complaint to the labour department of Pune region and after the inspecting the whole case he passes an order in her favor. Under the Maternity benefit amendment act, 2017, a women employee gets 26 weeks leave and in Maharashtra region she will get Rs. 3500 bonus. He informed that increase of maternity leave from 12 to 26 weeks is very good step also shared that crèche facilities should be made compulsory in all the establishments. They are taking so various steps to spread awareness about the maternity benefits with help of several IT union and media. He mentioned that increase of maternity leave from 12 to 26 weeks, increased the financial liability on the employer but children and mother are both very important and if both are healthy then women can work effectively and efficiently. There is one disadvantage accrue to the organization when

it provides maternity relief to its employees is financial burden and hence they are facing problem during inspection is that, at times management or employers are not cooperative and they try to escape from the provision of law, and they are not aware about the laws.

He suggested that there is need for the improvement in this act, the Government should adopt some provision from other developed countries like Finland, Norway, Sweden where in parental leave is provided etc.

Case 3. Mr Y. who is currently working with matter relating to women workers and very well aware of the provisions of laws specific to women, one of them being maternity benefit act 1961. He is also familiar with the resent amendment in maternity benefits act 2017.

He come across many cases whereby a women employee has been terminated on account of her pregnancy .in such incidences, cases are filed to government labour officers for illegal termination under section 2A of I. D act. He feels that increase of maternity leave from 12 to 26 weeks has increased the financial liability of the employer, but it is also true that this initiative has increased level of satisfaction among women employees, which would ultimately lead to efficiency in work.

One major difficulty that he felt is that are faced by the labour department is overseeing the implementation of maternity benefits amendment act 2017 and employees state insurance act 1948 as too much area is covered by one government labour commissioner therefore, it is important to hire more man power for this purpose. This will help in spreading awareness amongst the employer and employee for the better implementation of the act in each of the industry falling under their jurisdiction.

SUGGESTIONS:

- a) *Training/Workshops for management and employer on provision of MBA and its recent amendment.*
- b) *We need to move a step further for maintaining work life balance via incorporating provision of parental leave like other developed nation, so that men also participate in childcare.*
- c) *Deputing more labour officials for effective enforcement of the MBA in states will help in strengthening the implementation of this Act in more efficient manner which will help in covering all the industries falling in their jurisdiction.*
- d) *It is felt that in order to check that the amendment is being implemented correctly, workshops, seminars and training should be conducted amongst states in order to ensure proper compliance and IT union and media should be involved in this process.*

CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS

In previous studies, compliance of laws was found to be very high amongst IT/ITES companies. In a study conducted by the VV Giri National Labour Institute earlier on maternity, approximately 87.5% of women receive maternity leave with pay in the ITES sector. This was one of the prime reasons for choosing to do this rapid assessment in the IT/ITES sector to understand if one year after the amendment of the maternity benefit act, compliance continues at similar levels. The following can be concluded from the rapid assessment:

7.1 Conclusions from responses from the employers/ representatives (Human Resource Practitioners) of the Employers of the IT / ITES Organizations:

1. Most IT/ITES companies responded that they have Maternity leave policies.
2. Approximately 75% of employers are aware about Maternity Benefit Act (Principal) 1961, but only 58.3% employers are aware about its amendment.
3. On the duration of the maternity leave under law, 58.33% of the employers were able to correctly identify the period as being 26 weeks. But they were unaware that even if child is still- born or dies during the period of maternity leave, still the woman would be entitled to the full leave with wages.
4. Only 25% employer was able to identify that the law requires that the employer provide crèche facility. 75% of the employers interviewed said that there are no crèche facilities provided in their establishments. This was despite the fact that all employers had stated that they had more than 50 employees.
5. Few organizations reported that they have flexi work provisions for women employees who recently delivered a child.
6. Most of the employers are unaware of the various circumstances under which maternity leave can be availed as per the Maternity Benefit (Amendment) Act, 2017.
7. Employers were unaware about the pre and postnatal benefits provided to women employees.
8. 83.33% described their attitude towards maternity leave as supportive. None of them said that they have come across instances

- of termination of employment of women on account of pregnancy. 75% said that the formalities of availing maternity leave are not getting complicated.
9. More than half of the employers said that the increase of maternity leave from 12 to 26 weeks has increased the financial liability of the employer.
 10. Several employers identified that the law should provide for paternity leave and this would make it easier for them to give maternity leave also.
 11. Very low levels of awareness were identified, when employers were asked about who can be complained to if an employee does not receive maternity relief under the Maternity Benefit Act, 1961.
 12. 50% employers were unaware of the mandatory requirement under the amended act of including such information in the appointment letter itself.
 13. On being asked how work is managed in the absence of the resource, 75% of the employers said that the person's work is distributed amongst the existing team members.
 14. 75% said that the formalities of availing maternity leave are not getting complicated. However, when asked about how male employees feel about maternity leave, only 50% employers responded that male employees were supportive. Though 66.67% described their managers as being supportive.
 15. 50% identified a need for paternity leave. On being asked if provision of paternity leave make it easier for employers to provide maternity leave – only 16.67% employers denied this.
 16. When asked of the advantages or disadvantages accrue to an organization when it provides maternity relief to its employees, only 25% identified advantages such as more women in leadership roles, higher retention and trustworthy long serving employees. **It is troubling that 75% employers were unable to identify any advantage of increased maternity leave.**

The major challenge faced by the IT/ITES companies in the implementation of the MBA (Amendment) 2017 in total spirit was due to the **financial implications** that they were bearing:

- a) **Paid Maternity Leave:** The period of 26 weeks of paid maternity leave that is to be borne by the **employer alone** is one of the major drawback for the employers.

- b) **Crèche Facility:** Introduction of a crèche facility comes with a substantial capital investment. The companies expressed their restraints in terms of space and capital that is required to be invested in terms of setting up a crèche facility.
- c) **Work Distribution:** The work-sharing concept at times becomes troublesome for the companies. The co-workers are often not willing to take the projects of their colleagues for the time being under the pretext that they are already over burdened. Under these circumstances the companies are forced to employ new individuals to cover up for their employees who are on leave. Resulting which the companies are constrained to face additional cost.

7.2 Conclusions from responses from the women employees of the IT/ ITES Organizations:

1. Women employees were not very open in sharing the details of working conditions and features of H.R. Policy of their respective organizations. They were very concerned about identifying themselves and were concerned on information going back to their organizations.
2. Nearly 80 % said that their organizations have HR policies for women of which the large majority identified these to be policies concerning maternity leave and prevention of sexual harassment.
3. Only 26-27% of the women recalled such policies to pertain to crèche facilities or nursing breaks.
4. More than 80 % said that their employer provides maternity leave and nearly 70% said they were aware of paid leave for the full duration.
5. More than 51% said that they returned to the same role after availing maternity leave, but lesser numbers identified returning to the same pay grade.
6. Most of the women employees were not aware of the prenatal and postnatal facilities while availing maternity leave.
7. Few employees shared that disclosing the employers do not encourage the news of pregnancy as it has a direct bearing on the project execution and its completion.
8. Nearly 70% of the women were aware about the Maternity Benefit Act 1961 and that it has been amended. However, knowledge of the provisions was comparatively lower though knowledge of the main amendment, which was increase of leave to 26 weeks was high.
9. Only 7.8% of the women availed crèche facilities. While 84.4% had

never availed crèche facilities provided by employers.

10. Only 26.6% were able to identify that their employer allowed nursing breaks / visits to crèche during work. More than 75% had never taken nursing breaks/visits to crèche during work.
11. Knowledge about the law's provisions for full benefit on stillbirth and provision of medical bonus was low.
12. Less than half of the women employees felt that their employers were providing them sufficient information about the availability of benefits under the Maternity Benefit Act, 1961, though more than half identified the attitude of their employer as supportive.
13. Troublingly, very few female employees knew about the redressal mechanisms under the law. More than 50 % of the women employees said that they could complain to the Ministry of Women & Child Development (Central Govt.) in response to "Who can you complain to if you don't receive maternity relief under the Maternity Benefit Act, 1961." Most were unable to identify the labour inspectors for redressal of grievances.
14. On suggestions regarding the law, some described the 80 day work condition precedent as wrong. Some wanted more details on the basic requirements in crèches. 1.6% respondent mentioned, "Equal paternity leave so that men are able to take up similar responsibilities as women, without the excuse of reduced leave." This was echoed by other women respondents also. 1.6% identified that, "Pregnant women should be provided with comfortable pregnancy friendly chair . Food pantry should be readily available."

7.3 Conclusions from the responses from the male employees of the IT/ITES. Organizations:

1. 28% of the respondents had availed paternity leave and who said that the law should provide for paternity leave. **The most preferred duration for this was 2-4 weeks.**
2. 71.9% male respondents work with female employees said that their female colleagues have availed maternity leave.
3. In terms of awareness, while more men were aware of the maternity benefit, lesser were aware of the amendment. They were unaware of the detailed legal provisions under the Maternity Benefit (Amendment) Act, 2017 but Male respondents were in support of the amendment brought forth in the Maternity Benefit Act. On the key features of the amendment there was lesser clarity, though more or the respondents knew that the maternity leave period has increased.

7.4 Conclusions from responses of pressure groups (Lawyers/NGOs/ Unions)

1. The pressure groups were aware of the amendment brought about in the Maternity Benefit Act 1961 (Principal).
2. The pressure group were aware about the amendment whereby the paid leave is stood extended to 26 weeks which is applicable for mothers during the period of pregnancy, generally during the later period of pregnancy and post pregnancy. The amendment also recognizes adoption and surrogacy, which was duly acknowledged and appreciated.
3. The response of the pressure groups indicates that they have knowledge about the crèche facility, the concept of work from home and allied benefits. However, this awareness is low. Awareness trainings are required for NGO/Trade Union/Advocate.
4. Few stakeholders reported the incidents of women employees having been terminated on account of their pregnancy though the genuineness of their responses need to be verified.
5. The group also indicated that a drawback of the amendment was that it was causing loss of opportunity for the working women as they were reluctant in employing women employees in light of the financial implication that were to be borne alone by the employer.
6. The response of the pressure group also indicates about the need of development of proper mechanism for ensuring proper mechanism for implementing the act.
7. Most of the Stakeholders have noticed that employers are supportive towards maternity leave and benefits but as opposed to the high support suggested by the employers in their responses, pressure group see this only 50% of the time.
8. 50% of the pressure groups identified labour inspectors or labour commissioners for grievance redressal and a high percentage of 70% identified the labour courts.

7.5 Conclusions from the responses of Labour Officials

1. Labour Officials said that they are aware about legal provisions. Their responses to detailed questions also indicated a high knowledge.
2. However, they were unclear on their role and said that they only inspect when there is a complaint. They are not involved in any awareness measures and did not perceive their role as a proactive one.

3. The law provides that Crèche facilities are to be provided near establishments at the cost of the employer. Awareness on this amongst the pressure groups and labour officials is high.
4. There is an understanding that to avail breastfeeding breaks women required crèche facilities and location of crèche should be within the premises of the organization or close by. All the stakeholders are in favor of crèche facilities within the organization.
5. Labour officials indicate even lower levels of support for maternity leave by employers at 40%. Labour officials reported that employers are not too supportive in nature due to financial constraints.
6. Labour Officials identified for themselves that they are playing vital role in handling the grievance. Therefore, strengthening of labour officials is required both in terms of skill and capacity.

7.6 RECOMMENDATIONS FOR POLICY INTERVENTION

According to World Bank estimates, the female workforce in India declined from 35% in 1990 to 27% in 2017. The gender gap at workplaces has become so appalling that 20 million Indian women quit jobs between 2005 and 2012, while 24 million men joined the workforce in the same period. In previous studies on the subject, some of the key recommendations borne out were that the duration of leave must be extended in order to allow a mother to fully recover and recuperate as well as efficiently nurse her newborn child.

This has now been done in the amendment and is a highly positive step. Unfortunately, negative press around it is creating a poor outlook. For example, a survey by the an employment services company Team Lease of 350 start-ups and Small and Medium Enterprises (SMEs) found that at least 26% said they prefer hiring a male candidate, given the cost of the six-month maternity leave benefit. This finding, which was only relevant to small and medium enterprises at best, generated headlines that improved maternity benefits could be counterproductive. The survey also found that 39% of organizations said the move will have a positive impact and will lead to a happier workforce.

It is seen from the study, that female employees have welcomed the maternity leave period being extended. 26 weeks of fully paid maternity leave places India as one of the most progressive countries in the world on maternity leave and this is not only a matter of pride but great progress for women's rights in the workplace.

To truly implement the law in spirit and letter, this rapid assessment throws up some key concerns that if addressed at the policy level will lead

to effective implementation of this most critical law and remove obstacles in its implementation.

1. The organized sector that the Maternity Benefit Act applies to is a source of employment to only about 10% of the women workforce at present. It is fact that women often move out of the formal workforce to the nature of work which is more or less in time with unorganized sector and to employment that has no social security in an endeavor to negotiate with their changed circumstances caused due to pregnancy, maternity and child care.

In my twenty year carrier including more than 16 years at NLI, I have not met a working mother, who has not made compromise either at personal or professional front for child rearing while many working father are not even aware of that child needs their time as well. They simply state that only mother can rear a child as this requires famine qualities. Time has changed father can also be trained in famine qualities like women from ages.

Hence, it is critical that all employers forming the organized sector are aware of their duties and responsibilities under the law. This can be achieved by undertaking awareness programmes and trainings for employers and human resource personnel. These can be achieved on a wider level by the V.V. Giri National Labour Institute conducting awareness and training workshops for employers, HR personnel, officials of the labour machinery and further training of pressure groups such as NGO's / trade unions/ lawyers.

2. The key features that have been introduced by the amendment require to be well publicized and this can be done by the Ministry of Labour & Employment by creating radio commercials and TV commercials about these key features.
3. It is seen that while employers know to a large extent the enhancement of maternity leave period to 26 weeks, they are still unaware of the mandatory requirement to provide crèche facilities. Hence, this feature needs to be separately highlighted by the labour machinery.
4. The amendments also stress on provision of flexi work provisions. While some employers have been providing this as a matter of their own internal policies, the law does not make this mandatory. Hence to encourage employers providing flexi work, some nature of tax breaks or incentives can be made available to employers who are employing returning mothers in flexi work arrangements.
5. It is a matter of concern that employers are unable to identify advantages in providing maternity leave. It is recommended that

employers achieving 35% women work force in their organization should be recognized and appreciated in government initiatives and provided tax breaks.

6. In previous studies, it had also been suggested that placing the entire burden of providing maternity benefit on the employer is akin to giving him an incentive to not provide any benefit at all. Thus, the cost of maternity protection should be shared amongst different agencies. It is matter of great importance that during the course of this rapid assessment, the Government of India has taken note of several reports which indicated a decrease in the recruitment of women workers owing to an increase in maternity leaves, and has decided to pay 50% of the salary of 14 weeks to women on maternity leave. Any women with a monthly salary of above Rs. 15,000 will be eligible for the benefit. It has been in the news that an official notification on this is shortly expected. It is suggested that this be fast tracked.
7. One concern that has come up is that team members and managers are often resentful of women colleagues availing long period of maternity leave. It is seen that most employers have said that despite getting sufficient notice from female employees of their intention to proceed on maternity leave, the usual method of managing work is to distribute it amongst the existing team members. This would certainly create resentment which would then be transmitted to the women employee availing maternity leave. It may also vitiate her environment when she returns and create a hostile work environment. It is recommended that employers and managers be trained in better ways to manage work during this period and that short term hires to provide maternity cover be encouraged to provide support to work processes.
8. Previous studies clearly showed that the provision of nursing breaks in the unamended law had been rendered useless in the absence of rest rooms and crèches at the workplace. The amendment has filled this lacunae by making crèche facility the responsibility of the employer where the establishment has more than 50 employees. One very positive side of this provision is that it is gender - unspecific. It is seen one year on that proper rules for crèches are still not in place and the present rules that are applying concern mines and are not at all relevant to formal workplaces such as the IT/ITES sector. Some states such as Maharashtra have come out with rules for proximity of crèches and facilities in crèches but several states are yet to do so. More instructions from the centre

are required in this regard to the states and also to the central machinery.

9. Establishments must be directed and assisted in setting up crèches in their premises so that nursing breaks can be made use of by breast feeding mothers effectively and easily. The Training Institute may consider conducting the orientation programme for the Inspectors, Employers, N.G.O's and the Trade Union representatives to play an active role in this direction. The Ministry may circulate clarification on provision pertaining to crèche facilities.
10. It has been seen that maternity leave alone does not prove helpful to a woman who chooses to become a mother while sustaining a career. It results in mounting a very huge pressure of family, child-care responsibilities as well as demands of workplace. A provision of paternity leave will allow the father to share the responsibilities and therefore truly give shape to the idea of aiding women in balancing their productive and reproductive roles. In this rapid assessment it is seen that not only is provision of paternity leave a huge demand, providing paternity leave makes it easier for employers to provide maternity leave and also for women to avail maternity leave. Hence, provision of at least 4 weeks paternity leave should be considered at a policy level with a mindset to extend the near nature of leave towards framing parental leave policy in future.
11. School timings and official timings need to be in coherence and parents (for involving fathers) should have option of flexi working hours for work life balance and reducing attrition rates, ultimately resulting in cost effect and increasing feeling of belongingness among employees.
12. It was seen in the rapid assessment that collection of data on women employed in an organization, availing maternity leave and any complaints on account of maternity were not figures that were easily available or shared. It is important for effective functioning of the law that this data should be transparent. At the policy level a notification requiring all companies to furnish annual returns and to mention this information on their websites would be very useful. Considering the limitation in entry to the industry and formal candid interaction with HR and employees on this subject. All the companies should be instructed to display the details pertaining to implementation of various labour laws on their website and annual reports regularly.

13. Considering the present era of globalisation financial implication (paid leave, crèche facility, work from home facility) as well as the need to mainstream women in the world of work, sharing of resources is essential. To start with this can be done in line similar to ESI model on Maternity Benefit, which can be elaborated in line with policies of other developed nation in future where in employer, employee and government contribution is made essential through comprehensive social security insurance. This will help our nation in covering all women in line with ILO Convention 183 on Maternity Benefit, which also cover home based women workers.
14. An important need that comes out is that number of inspections and visits to organisation falling within jurisdiction of Labour officials must be incorporated in the law. There should be a streamlining of grievance processes and there is a need for clear-cut guidelines for deputed officials to truly bring about implementation of the law. Sustained circulation of written literature and information on MBA amongst labour officials on MBA and the role of the labour authorities (Authorities) in its implementation and redressal is required.
15. All the stakeholders reported the case of incidence about termination of women employee on account of her pregnancy. In order to prevent such termination, it is required that frequency of visit of Labour Officials should be increased but due to their multiple duties they have very less time for the efficient inspection, therefore more labour officials need to be deputed. Training of pressure groups and labour officials on the mandatory features of the law, how to address grievances and how to conduct the inquiry is also needed for their redeployment.
16. There is need for a legal study of powers of the Labour Commissioners that can be utilized to ensure compliance of the MBAs and how they need to be augmented and highlighted for effective action to implement the law. There is also a need to develop regular self-assessment mechanism for Authorities to enable them to conduct a self-audit on a regular basis and this can be one of the outcomes of such a study.
17. Troublingly, one of the concerns raised in this rapid assessment is that very few female employees knew about the redressal mechanisms under the maternity benefit act. More than 50% of the women employees said that they can complain to the Ministry of Women

& Child Development (Central Govt.) in response to “Who can you complain to if you don’t receive maternity relief under the Maternity Benefit Act, 1961.” Most were unable to identify the labour inspectors for redressal of greivances.

It has been reported in the news that the National Commission for Women (NCW) has seen a spurt in complaints from women that they are being denied maternity benefits at the workplace.²⁹ As per data shared by NCW, Delhi has seen a progressive increase in complaints about being denied maternity benefits as mandated by the Maternity Benefits Act. Since 2013, Uttar Pradesh has accounted for 99 cases of the 352 complaints received by the commission. Maharashtra, Delhi and Haryana reported 21, 60 and 25 cases, respectively.

In view of this, extensive awareness generation around the grievance redressal machinery in the maternity benefit act needs to be done so that women employees are aware not only of their rights but also their remedies.

18. MOL&E should come up with online portal to deal with grievance of women employees on implementation of this Act directly. This can be on the line similar to She-box initiative of MOW&CD for dealing with complaints of sexual harassment and the Ministry may spread awareness on this.
19. Since women think of maternity as a women issue rather than a labour issue and are seen to be approaching the NCW or as the rapid assessment finds, consider the Ministry of Women and Child Development as the concerned ministry for grievance redressal, Ministry of Labour and Employment and the Ministry of Women and Child Development along with the NCW need to give a high priority to convergent efforts and take serious measures to percolate measures down to the stakeholders.
20. There is need to extend this study to other sectors. Tentative results are showing that regional variations are not making any significant contribution therefore it is proposed to have Sector specific study which will make it more meaningful as it will provide more clear picture of the implementation of the act and impact on recruitment.
21. Last but not the least, the maternity benefit law in India presently

²⁹ [//economictimes.indiatimes.com/articleshow/66583525.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst](http://economictimes.indiatimes.com/articleshow/66583525.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

covers only a small fraction of the workforce, given the growth of the informal economy (majority of the workforce in IT/ITES is engaged in project base employment, where condition of employments are similar to informal economy where only highly technical employees have scope of retention). Much more needs to be done to improve access for low wage workers in the informal sector to maternity benefit. It is highly desirable that the scope of the maternity benefit law be extended to become a universal protection for all women employees regardless on the kind of establishment they are engaged in or the nature of their engagement. These initiatives will also help us to be signatory to ILO convention on maternity leave of which India is a founding member and will be celebrating a century in 2019.

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ANNEXURES**a) Employer's Questionnaire**

**RESEARCH STUDY ON THE IMPACT OF
THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017
IN IT / ITES INDUSTRY
QUESTIONNAIRE FOR EMPLOYER'S**

| | | |
|---|--|-----------------|
| <i>NOTE: Your responses to this questionnaire will be treated in strict confidence and will not be revealed to your employer or to any other individual or organization. All data provided by you will be used in an anonymised manner and only for the purposes of research. (Please tick at appropriate box in the given grid or circle the appropriate response. Some questions may have multiple responses)</i> | | |
| Date of Interview: | | |
| Name of Field Investigator | | |
| Name of Respondent | | |
| Position / Designation in the present organization | | |
| DETAILS ABOUT ESTABLISHMENT | | |
| 1 | Type of Establishment / organization | |
| 2 | Name and address of establishment/ organization (location specific) | |
| 3 | Nature of owner-ship (proprietor-ship / partner-ship / pvt ltd / public ltd etc) | |
| 4 | Year of incorporation / establishment | |
| 5 | Details about total human resources including daily wagers, contract, adhoc workers etc. (location specific) | Female |
| | | Male |
| | | Transgender |
| 6 | No. of women availing maternity leave as of date (location specific) | |
| 7 | No. of women who have availed maternity and other related leave viz MTP, miscarriage etc | In 2016-17 (FY) |
| | | In 2017-18 (FY) |

| POLICY AND PRACTICES | | |
|----------------------|---|---|
| 8 | Do you have an H.R. Policy for women employees in your organization? | Yes / No If yes, please specify details of the policies and when they were implemented |
| 9 | Does your establishment have a policy on maternity leave and benefits? | Yes / No If yes, please specify details of the policies and when they were implemented |
| 10 | Can you recall some of the key features of the H.R. Policy that are specific to women. | Protection from Sexual Harassment |
| | | Paternity Leave |
| | | Maternity Leave |
| | | Pick and drop facility for women |
| | | Crèche facilities for children |
| | | Nursing Breaks / Visits to Crèche |
| | | Work from home |
| | | Any other: No, cannot recall |
| 11 | Do your company appointment letters include information on any of the above? If yes, please specify which information is specified. | Yes / No / Can't Say |
| 12 | Are any marriage or family planning related questions asked from candidates during interview processes | Yes / No If yes, please give examples |
| 13 | Is there any requirement for medical tests which include pregnancy tests at the time of joining? | Yes / No |
| 14 | Do you have any qualifications/ conditions in place for a person to avail maternity benefit or is it immediately available from the first day of employment | Yes / No If yes, please specify |
| 15 | What is the period of maternity leave provided? | Less than 4 weeks |
| | | 4 weeks - 8 weeks |
| | | 8 weeks - 12 weeks |
| | | 12 weeks - 26 weeks |
| | | More than 26 weeks |

| | | | |
|----|---|--|-----------------------------|
| 16 | Please specify duration of maternity leave provided before and after delivery. | Before | After |
| 17 | Please specify period of paid and unpaid leave available | | |
| 18 | Whether same period of leave is granted to regular / adhoc / probationary / casual / daily workers. If no, pls indicate | Yes / No If no, please specify | |
| 19 | What is the period of paternity leave provided? | Less than 10 days | |
| | | 10 days to 30 days | |
| | | 30 - 40 days | |
| | | More than 40 days | |
| 20 | Whether crèche facilities are provided in your establishment? | Yes / No If yes, please specify location of crèche | |
| 21 | Does your establishment make provision for nursing breaks/visits to the crèche during work? | Yes / No / Can't Say | |
| 22 | Whether any system to 'work from home' has been developed in your establishment post pregnancy? | Yes / No If yes, please specify | |
| 23 | Does your organization have a set procedure for making maternity/ paternity leave request | Yes / No / Can't Say | |
| 24 | What is the period of notice that a woman or man has to give to avail maternity / paternity leave | For maternity (no. of days) | For paternity (no. of days) |
| 25 | How is work managed in their absence? | A back up resources is hired / moved to the team | |
| | | The person's work is distributed amongst the existing team members | |
| | | Any other: | |
| 26 | Have you received any complaints from colleagues against a person or on account of work stress while they are availing maternity/paternity leave? | Yes / No If yes please share details | |
| 27 | Does your organization provide free medical care to pregnant employees? | Yes / No / Can't Say | |
| 28 | Do you also provided medical bonus to the women employees, if so, pls state the amount | Yes / No / Can't Say | |

| KNOWLEDGE & AWARENESS | | |
|-----------------------|---|---|
| 29 | Are you aware about the Maternity Benefit Act 1961? | Yes / No |
| 30 | Are you aware of the recent amendment in the Maternity Benefit Act, 1961? | Yes / No |
| 31 | Can you identify any key features of the Maternity Benefit Act, 1961? | Maternity Leave given |
| | | Paternity Leave given |
| | | Employer provides crèche facility |
| | | None of the above |
| | | All of the above |
| 32 | What is the period of maternity leave under the amended Maternity Benefit Act | 12 weeks paid leave |
| | | 18 weeks paid leave |
| | | 26 weeks paid leave |
| | | 12 weeks paid leave and 12 weeks unpaid leave |
| | | None of the above |
| 33 | In what circumstances can maternity leave be availed under the amended Maternity Benefit Act? | At anytime |
| | | Only during pregnancy |
| | | Only after delivery |
| | | During advanced stages of pregnancy and post delivery |
| | | For birth of first child |
| | | For birth of second child |
| | | For birth of third child |
| | | When adopting a baby below the age of 3 months |
| | | When adopting a baby older than 3 months |
| | | When taking a baby from a commissioned surrogacy |
| All of the above | | |
| None of the above | | |
| 34 | As per amended Act, how many weeks' leave with wages is granted to a women, up to two surviving children? | 26 weeks |
| | | 12 weeks |

| | | | |
|------------------|--|--|--|
| 35 | As per amended Act, how many weeks leave with wages is granted in case of two or more surviving children? | 26 weeks | |
| | | 12 weeks | |
| 36 | As per amended Act, how many weeks leave with wages is granted to an adoptive or commissioning mother, if she adopts a child up to the age of three months? | 26 weeks | |
| | | 12 weeks | |
| 37 | Do you know that even if child is still- born or dies during the period of maternity leave, still women would be entitled to the full leave with wages? | Yes / No. | |
| 38 | Do you know that apart from leave, a woman is also entitled to medical bonus of Rs. 1000/- only. | Yes / No | |
| 39 | Do you think as an employer you are providing sufficient information about the availability of benefits under the Maternity Benefit Act, 1961 to your employees? | Yes / No / Can't Say | |
| 40 | Describe the awareness generation steps taken by you. | | |
| 41 | As an employer how would you describe your attitude towards maternity leave and benefits? | Supportive | |
| | | Neutral | |
| | | Unsupportive | |
| | | Any other: | |
| 42 | Have you come across any instance whereby a woman employee has been terminated on account of her pregnancy? | Yes / No | |
| 43 | Are the formalities for getting maternity leave or benefits complicated? | Yes / No/ Can't Say | |
| 44 | Are you aware who can be complained to if an employee does not receive maternity relief under the Maternity Benefit Act, 1961 | Labour Inspector | |
| | | Company Management | |
| | | Labour Commissioner | |
| | | Ministry of Women and Child Development (Central Government) | |
| | | Ministry of Labour and Employment (Central Government) | |
| | | Labour Courts | |
| | | High Court | |
| State Government | | | |

| | | | |
|----|--|--|--|
| 45 | Which statements do you relate to on the amended Maternity Benefit Act, 1961 | Paid Maternity Leave is the duty of employers to provide as motherhood is a natural phenomenon. | |
| | | Paid Maternity Leave is a basic human right for women | |
| | | Maternity Leave discriminates between men and women employees and should not be there | |
| | | Maternity Leave should be unpaid as getting pregnant is the woman's choice, not the employers'. | |
| | | Paid Maternity Leave of 26 weeks is too long and unnecessary | |
| | | Paid Maternity Leave of 26 weeks is too short and should be increased | |
| | | Maternity Relief increases women's participation in the Labor work force | |
| | | Employers avoid employing women due to maternity relief | |
| | | Any other statement: | |
| 46 | Which of these legal provisions are you aware of? | if an employer does not pay the maternity benefits or dismisses the woman during maternity leave (other than dismissal for prescribed gross misconduct) he can be sentenced for minimum 3 months (extendable up to one year) imprisonment and with fine (Rs. 2000 to 5000) | |
| | | Under section 11 (A) OF Maternity benefits amendment act 2017, in every establishment employing 50 or more employees it is mandatory for the establishment to provide crèche facilities | |

| | | | |
|---|--|---|--|
| | | Under the amendment act of 2017 that it is compulsory for employers to educate women about the maternity benefits available to them at the time of appointment. | |
| 47 | How do you view the benefits provided under the amended Maternity Benefit Act? | Excellent / Very Good / Good / Fair / Poor / Can't Say | |
| 48 | How do male employees feel about maternity leave? | Supportive | |
| | | Neutral | |
| | | Unsupportive | |
| | | Any other: | |
| 49 | How do your managers feel about maternity leave provision? | Supportive | |
| | | Neutral | |
| | | Unsupportive | |
| | | Any other: | |
| 50 | Should there be a law for provision of paternity leave? | Yes / No | |
| 51 | Does provision of paternity leave make it easier for employers to provide maternity leave? | Yes / No / Can't Say | |
| OPEN ENDED QUESTIONS | | | |
| 52. Has the increase of maternity leave from 12 to 26 weeks increased the financial liability of the employer? If yes, please describe how. | | | |
| | | | |
| 53. What advantages or disadvantages accrue to an organization when it provides maternity relief to its employees? | | | |
| | | | |
| 54. Whether any improvement in the benefits or relief is required? If yes, please give your suggestions? | | | |
| | | | |
| 55. Any other info, comments or suggestions | | | |
| | | | |

b) Female Employee Questionnaire

**RESEARCH STUDY ON THE IMPACT OF
THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017
IN IT / ITES INDUSTRY
QUESTIONNAIRE FOR FEMALE EMPLOYEES**

NOTE: Your responses to this questionnaire will be treated in strict confidence and will not be revealed to your employer or to any other individual or organization. All data provided by you will be used in an anonymised manner and only for the purposes of research.

(Please tick at appropriate box in the given grid or circle the appropriate response. Some questions may have multiple responses)

| | | |
|---|---|-----------------------------|
| Date of Interview: | | |
| Name of Field Investigator | | |
| Name of Respondent | | |
| Age Group | 20 - 30 | |
| | 30 - 40 | |
| | 40 - 50 | |
| | 50 - 60 | |
| Name of Employer and address of establishment/ organization (location specific) | | |
| Type of Establishment / organization (proprietor-ship / partner-ship / pvt ltd / public ltd etc) | | |
| QUESTIONS | | |
| 1 | Total Professional Experience (yrs/ months) | |
| 2 | Period of service in the present organization | |
| 3 | Number of family members & children etc. | I am living with my parents |
| | | I am living with my spouse |
| | | I am living alone |
| | | I don't have children |
| | | I am pregnant |
| | | I have 1-2 children |
| | | I have more than 2 children |
| 4 | Have you ever availed maternity leave? | Yes / No |

| | | | |
|-----------------------------|--|---|-------|
| 5 | Have you availed maternity leave in the last 1 year | Yes / No | |
| POLICY AND PRACTICES | | | |
| 6 | Do you have a H.R. Policy for women employees in your organization? | Yes / No | |
| 7 | Can you recall some of the key features of the H.R. Policy that are specific to women. | Protection from Sexual Harassment | |
| | | Maternity Leave | |
| | | Pick and drop facility for women | |
| | | Crèche facilities for children | |
| | | Nursing Breaks / Visits to Crèche | |
| | | Work from home | |
| | | Any other: | |
| | | No, cannot recall | |
| 8 | Did your appointment letter include information on any of the above? If yes, please specify which information was specified. | Yes / No / Can't Say | |
| 9 | Does your present employer provide maternity leave? | Yes / No / Can't Say | |
| 10 | If you have availed maternity leave then what was the duration of the leave? | Less than 4 weeks | |
| | | 4 weeks - 8 weeks | |
| | | 8 weeks - 12 weeks | |
| | | 12 weeks - 26 weeks | |
| | | More than 26 weeks | |
| 11 | Please specify details, duration of leave before and after delivery. | Before | After |
| 12 | If you have availed maternity leave then were you paid for the duration of the leave? | Yes / No / Partly (If Partly then please specify paid/unpaid duration) | |
| 13 | After availing leave did you return to the same assignment / nature of work. | Yes / No / Can't Say | |
| 14 | If any change, whether the new role had the same pay grade? | Yes / No / Can't Say | |
| 15 | Did the new assignment have the same conditions of employment | Yes / No / Can't Say | |
| 16 | Whether new assignment affected your current and future perspectives in employment. | Yes / No / Can't Say | |
| 17 | Does your present employer provide crèche facility? | Yes / No / Can't Say | |

| | | | |
|-------------------|---|---|--|
| 18 | Have you ever availed crèche facility provided by your employer? | Yes / No | |
| 19 | Does your present employer allow nursing breaks/visits to the crèche during work? | Yes / No / Can't Say | |
| 20 | Have you ever taken nursing breaks/visits to the crèche during work? | Yes / No | |
| 21 | Are you aware about the Maternity Benefit Act 1961? | Yes / No | |
| 22 | Are you aware of the recent amendment in the Maternity Benefit Act, 1961? | Yes / No | |
| 23 | Can you identify any key features of the Maternity Benefit Act, 1961? | Maternity Leave given | |
| | | Paternity Leave given | |
| | | Employer provides crèche facility | |
| | | None of the above | |
| | | All of the above | |
| 24 | What is the period of maternity leave under the amended Maternity Benefit Act | 12 weeks paid leave | |
| | | 18 weeks paid leave | |
| | | 26 weeks paid leave | |
| | | 12 weeks paid leave and 12 weeks unpaid leave | |
| | | None of the above | |
| 25 | In what circumstances can maternity leave be availed under the amended Maternity Benefit Act? | At anytime | |
| | | Only during pregnancy | |
| | | Only after delivery | |
| | | During advanced stages of pregnancy and post delivery | |
| | | For birth of first child | |
| | | For birth of second child | |
| | | For birth of third child | |
| | | When adopting a baby below the age of 3 months | |
| | | When adopting a baby older than 3 months | |
| | | When taking a baby from a commissioned surrogacy | |
| All of the above | | | |
| None of the above | | | |

| | | | |
|----|---|--|--|
| 26 | As per amended Act, how many weeks' leave with wages is granted to a women, up to two surviving children? | 26 weeks | |
| | | 12 weeks | |
| 27 | As per amended Act, how many weeks leave with wages is granted in case of two or more surviving children? | 26 weeks | |
| | | 12 weeks | |
| 28 | As per amended Act, how many weeks leave with wages is granted to an adoptive or commissioning mother, if she adopts a child up to the age of three months? | 26 weeks | |
| | | 12 weeks | |
| 29 | Do you know that even if child is still- born or dies during the period of maternity leave, still women would be entitled to the full leave with wages? | Yes / No. | |
| 30 | Do you know that apart from leave, a woman is also entitled to medical bonus of Rs. 1000/- only. | Yes / No | |
| 31 | Whether any system to 'work from home' has been developed in your place of work? | Yes / No / Can't Say | |
| 32 | Do you think your employer is providing you sufficient information about the availability of benefits under the Maternity Benefit Act, 1961? | Yes / No / Can't Say | |
| 33 | What is the attitude of your employer towards maternity benefit? | Supportive | |
| | | Neutral | |
| | | Unsupportive | |
| | | Any other: | |
| 34 | Have you come across any instance whereby a woman employee has been terminated on account of her pregnancy? | Yes / No | |
| 35 | Are the formalities for getting maternity benefits complicated? | Yes / No/ Can't Say | |
| 36 | Who can you complain to if you don't receive maternity relief under the Maternity Benefit Act, 1961 | Labour Inspector | |
| | | Company Management | |
| | | Labour Commissioner | |
| | | Ministry of Women and Child Development (Central Government) | |

| | | | |
|----|--|---|--|
| | | Ministry of Labour and Employment (Central Government) | |
| | | Labour Courts | |
| | | High Court | |
| | | State Government | |
| 37 | Which statements do you relate to on the amended Maternity Benefit Act, 1961 | Paid Maternity Leave is the duty of employers to provide as motherhood is a natural phenomena. | |
| | | Paid Maternity Leave is a basic human right for women | |
| | | Maternity Leave discriminates between men and women employees and should not be there | |
| | | Maternity Leave should be unpaid as getting pregnant is the woman's choice, not the employers'. | |
| | | Paid Maternity Leave of 26 weeks is too long and unnecessary | |
| | | Paid Maternity Leave of 26 weeks is too short and should be increased | |
| | | Maternity Relief increases women's participation in the Labour work force | |
| | | Employers avoid employing women due to maternity relief | |
| | | There should be equal amount of maternity and paternity leave | |
| | | Any other statement: | |

| | | | |
|----|--|--|--|
| 38 | Which of these legal provisions are you aware of? | if an employer does not pay the maternity benefits or dismisses the woman during maternity leave (other than dismissal for prescribed gross misconduct) he can be sentenced for minimum 3 months (extendable up to one year) imprisonment and with fine (Rs. 2000 to 5000) | |
| | | Under section 11 (A) OF Maternity benefits amendment act 2017, in every establishment employing 50 or more employees it is mandatory for the establishment to provide crèche facilities | |
| | | Under the amendment act of 2017 that it is compulsory for employers to educate women about the maternity benefits available to them at the time of appointment. | |
| 39 | How do you view the benefits provided under the amended Maternity Benefit Act? | Excellent / Very Good / Good / Fair / Poor / Can't Say | |
| 40 | Whether any improvement in the benefits or relief is required? If yes, please give your suggestions? | Yes / No/ Can't Say | |
| 41 | Any other info, comments or suggestions | | |

c) Male Employee Questionnaire

**RESEARCH STUDY ON THE IMPACT OF
THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017
IN IT / ITES INDUSTRY
QUESTIONNAIRE FOR MALE EMPLOYEES**

NOTE: Your responses to this questionnaire will be treated in strict confidence and will not be revealed to your employer or to any other individual or organization. All data provided by you will be used in an anonymised manner and only for the purposes of research.

(Please tick at appropriate box in the given grid or circle the appropriate response. Some questions may have multiple responses)

| | | | |
|---|---|-----------------------------|--|
| Date of Interview: | | | |
| Name of Field Investigator | | | |
| Name of Respondent | | | |
| Age Group | 20 - 30 | | |
| | 30 - 40 | | |
| | 40 - 50 | | |
| | 50 - 60 | | |
| Name of Employer and address of establishment/ organization (location specific) | | | |
| Type of Establishment / organization (proprietor-ship / partner-ship / pvt ltd / public ltd etc) | | | |
| QUESTIONS | | | |
| 1 | Total Professional Experience (yrs/ months) | | |
| 2 | Period of service in the present organization | | |
| 3 | Number of family members & children etc. | I am living with my parents | |
| | | I am living with my spouse | |
| | | I am living alone | |
| | | I don't have children | |
| | | My spouse is pregnant | |
| | | I have 1-2 children | |
| | | I have more than 2 children | |

| | | | |
|-----------------------------|--|-----------------------------------|--|
| 4 | Have you ever availed paternity leave? | Yes / No | |
| 5 | Has your spouse ever availed maternity leave | | |
| 6 | Has your spouse availed maternity leave in the last 1 year | Yes / No | |
| POLICY AND PRACTICES | | | |
| 7 | Do you have a H.R. Policy for employees in your organization? | Yes / No | |
| 8 | Can you recall some of the key features of the H.R. Policy | Protection from Sexual Harassment | |
| | | Maternity Leave | |
| | | Paternity Leave | |
| | | Pick and drop facility for women | |
| | | Crèche facilities for children | |
| | | Nursing Breaks / Visits to Crèche | |
| | | Work from home | |
| | | Any other: No, cannot recall | |
| 9 | Did your appointment letter include information on any of the above? If yes, please specify which information was specified. | Yes / No / Can't Say | |
| 10 | Does your present employer provide maternity or paternity leave? | Yes / No / Can't Say Duration: | |
| 11 | If you have availed paternity leave then what was the duration of the leave? | Less than 10 days | |
| | | 10 days to 30 days | |
| | | 30 - 40 days | |
| | | More than 40 days | |
| 12 | If you have availed paternity leave then were you paid for the duration of the leave? | Yes / No / Can't Say | |
| 13 | After availing leave did you return to the same assignment / nature of work. | Yes / No / Can't Say | |
| 14 | If any change, whether the new role had the same pay grade? | Yes / No / Can't Say | |

| | | | |
|----|---|--|--|
| 15 | Did the new assignment have the same conditions of employment | Yes / No / Can't Say | |
| 16 | Whether new assignment affected your current and future perspectives in employment. | Yes / No | |
| 17 | Does your present employer provide crèche facility? | Yes / No / Can't Say | |
| 18 | Have you ever availed crèche facility provided by your employer? | Yes / No | |
| 19 | Does your present employer allow nursing breaks/visits to the crèche during work? | Yes / No | |
| 20 | Have you ever taken nursing breaks/visits to the crèche during work? | Yes / No | |
| 21 | Do you work with women employees? | Yes / No | |
| 22 | How many women employees are there in your team | 1-3 | |
| | | 4-7 | |
| | | 8-10 | |
| | | More than 10 | |
| 23 | Have any of your female colleagues availed maternity leave? | Yes / No | |
| 24 | If they have availed then what was the duration of the leave? | Less than 4 weeks | |
| | | 4 weeks - 8 weeks | |
| | | 8 weeks - 12 weeks | |
| | | 12 weeks - 26 weeks | |
| | | More than 26 weeks | |
| 25 | How was work managed in their absence? | A back up resources was hired / moved to the team | |
| | | Her work was distributed amongst the existing team members | |
| | | Any other: | |
| 26 | How would you rate your experience during your colleague's maternity leave? | Positive | |
| | | No change | |
| | | Negative | |
| 27 | Are you aware about the Maternity Benefit Act 1961? | Yes / No | |

| | | | |
|----|---|---|--|
| 28 | Are you aware of the recent amendment in the Maternity Benefit Act, 1961? | Yes / No | |
| 29 | Can you identify any key features of the Maternity Benefit Act, 1961? | Employer provides crèche facility | |
| | | Maternity leave given | |
| | | Paternity leave given | |
| | | None of the above | |
| 30 | What is the period of maternity leave under the amended Maternity Benefit Act | All of the above | |
| | | 12 weeks paid leave | |
| | | 18 weeks paid leave | |
| | | 26 weeks paid leave | |
| 31 | In what circumstances can maternity leave be availed under the amended Maternity Benefit Act? | 12 weeks paid leave and 12 weeks unpaid leave | |
| | | None of the above | |
| | | At anytime | |
| | | Only during pregnancy | |
| 32 | As per amended Act, how many weeks' leave with wages is granted to a women, up to two surviving children? | Only after delivery | |
| | | During advanced stages of pregnancy and post delivery | |
| | | For birth of first child | |
| | | For birth of second child | |
| | | For birth of third child | |
| | | When adopting a baby below the age of 3 months | |
| | | When adopting a baby older than 3 months | |
| | | When taking a baby from a commissioned surrogacy | |
| | | All of the above | |
| | | None of the above | |
| 32 | As per amended Act, how many weeks' leave with wages is granted to a women, up to two surviving children? | 26 weeks | |
| | | 12 weeks | |

| | | | |
|----|---|--|--|
| 33 | As per amended Act, how many weeks leave with wages is granted in case of two or more surviving children? | 26 weeks | |
| | | 12 weeks | |
| 34 | As per amended Act, how many weeks leave with wages is granted to an adoptive or commissioning mother, if she adopts a child up to the age of three months? | 26 weeks | |
| | | 12 weeks | |
| 35 | Do you know that even if child is still- born or dies during the period of maternity leave, still women would be entitled to the full leave with wages? | Yes / No / Can't Say | |
| 36 | Do you know that apart from leave, a woman is also entitled to medical bonus of Rs. 1000/- only. | Yes / No / Can't Say | |
| 37 | Whether any system to 'work from home' has been developed in your place of work? | Yes / No / Can't Say | |
| 38 | Do you think your employer is providing you sufficient information about the availability of benefits under the Maternity Benefit Act, 1961? | Yes / No / Can't Say | |
| 39 | What is the attitude of your employer towards maternity benefit? | Supportive | |
| | | Neutral | |
| | | Unsupportive | |
| | | Any other: | |
| 40 | Have you come across any instance whereby a woman employee has been terminated on account of her pregnancy? | Yes / No | |
| 41 | Which statements do you relate to on the amended Maternity Benefit Act, 1961 | Paid Maternity Leave is the duty of employers to provide as motherhood is a natural phenomena. | |
| | | Paid Maternity Leave is a basic human right for women | |
| | | Maternity Leave discriminates between men and women employees and should not be there | |

| | | | |
|----|---|--|--|
| | | Maternity Leave should be unpaid as getting pregnant is the woman's choice, not the employers'. | |
| | | Paid Maternity Leave of 26 weeks is too long and unnecessary | |
| | | Paid Maternity Leave of 26 weeks is too short and should be increased | |
| | | Maternity Relief increases women's participation in the Labor work force | |
| | | Employers avoid employing women due to maternity relief | |
| | | There should be equal amount of maternity and paternity leave | |
| | | Any other statement: | |
| 42 | Which of these legal provisions are you aware of? | if an employer does not pay the maternity benefits or dismisses the woman during maternity leave (other than dismissal for prescribed gross misconduct) he can be sentenced for minimum 3 months (extendable up to one year) imprisonment and with fine (Rs. 2000 to 5000) | |
| | | Under section 11 (A) OF Maternity benefits amendment act 2017, in every establishment employing 50 or more employees it is mandatory for the establishment to provide crèche facilities | |
| | | Under the amendment act of 2017 that it is compulsory for employers to educate women about the maternity benefits available to them at the time of appointment. | |

| | | |
|----|--|--|
| 43 | How do you view the benefits provided under the amended Maternity Benefit Act? | Excellent / Very Good / Good / Fair / Poor / Can't Say |
| 44 | Whether any improvement in the benefits or relief is required? If yes, please give your suggestions? | |
| 45 | Any other info, comments or suggestions | |

d) Labour Officials Questionnaire

**RESEARCH STUDY ON THE IMPACT OF
THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017 IN IT / ITES
INDUSTRY
QUESTIONNAIRE FOR LABOUR OFFICIALS**

| | |
|---|--|
| <i>NOTE:</i> Please tick at appropriate box in the given grid or circle the appropriate response. Some questions may have multiple responses) | |
| Date of Interview: | |
| Name of Respondent | |
| Position / Designation | Labour Commissioner |
| | Additional Labour Commissioner |
| | Deputy Labour Commissioner |
| | Assistant Labour Commissioner |
| | Labour Officer |
| | Any other |
| Location | |
| Jurisdiction | |
| Are you currently working with matters relating to women workers? | Yes / No If yes, please specify details |
| 1 Can you recall some of the key features of the laws that are specific to women. | Protection from Sexual Harassment |
| | Paternity Leave |
| | Maternity Leave |
| | Pick and drop facility for women |
| | Crèche facilities for children |
| | Nursing Breaks / Visits to Crèche |
| | Work from home |
| | Any other: |
| | No, cannot recall |

| | | |
|-------------------|--|---|
| 2 | Do company appointment letters include information on any of the above? If yes, please specify which information is specified. | Yes / No / Can't Say |
| 3 | Are you aware about the Maternity Benefit Act 1961? | Yes / No |
| 4 | Are you aware of the recent amendment in the Maternity Benefit Act, 1961? | Yes / No |
| 5 | Can you identify any key features of the Maternity Benefit Act, 1961? | Maternity Leave given |
| | | Paternity Leave given |
| | | Employer provides crèche facility |
| | | None of the above |
| | | All of the above |
| 6 | What is the period of maternity leave under the Maternity Benefit Act, 1961 as amended by the Maternity Benefit (Amendment) Act, 2017 | 12 weeks paid leave |
| | | 18 weeks paid leave |
| | | 26 weeks paid leave |
| | | 12 weeks paid leave and 12 weeks unpaid leave |
| | | None of the above |
| 7 | In what circumstances can maternity leave be availed under the Maternity Benefit Act, 1961 as amended by the Maternity Benefit (Amendment) Act, 2017 | At anytime |
| | | Only during pregnancy |
| | | Only after delivery |
| | | During advanced stages of pregnancy and post delivery |
| | | For birth of first child |
| | | For birth of second child |
| | | For birth of third child |
| | | When adopting a baby below the age of 3 months |
| | | When adopting a baby older than 3 months |
| | | When taking a baby from a commissioned surrogacy |
| | | All of the above |
| None of the above | | |

| | | |
|----|---|---|
| 8 | As per amended Act, how many weeks' leave with wages is granted to a women, up to two surviving children? | 26 weeks |
| | | 12 weeks |
| 9 | As per amended Act, how many weeks leave with wages is granted in case of two or more surviving children? | 26 weeks |
| | | 12 weeks |
| 10 | As per amended Act, how many weeks leave with wages is granted to an adoptive or commissioning mother, if she adopts a child up to the age of three months? | 26 weeks |
| | | 12 weeks |
| 11 | Do you know that even if child is still- born or dies during the period of maternity leave, still women would be entitled to the full leave with wages? | Yes / No. |
| 12 | Do you know that apart from leave, a woman is also entitled to medical bonus of Rs. 1000/- only. | Yes / No |
| 13 | Whether crèche facilities are to be provided in establishments? | Yes / No If yes, please specify location of crèche |
| 14 | Whether establishments need to make provision for nursing breaks/visits to the crèche during work? | Yes / No / Can't Say |
| 15 | Whether any system to 'work from home' has to be developed in establishments post pregnancy? | Yes / No If yes, please specify |
| 16 | Describe the awareness generation steps taken by you after the Maternity Benefit Act, 1961 was amended by the Maternity Benefit (Amendment) Act, 2017 | |
| 17 | How would you assess employer's attitude towards maternity leave and benefits? | Supportive |
| | | Neutral |
| | | Unsupportive |
| | | Any other: |
| 18 | Have you come across any instance whereby a woman employee has been terminated on account of her pregnancy? | Yes / No |
| 19 | How do you handle cases of dismissals of women employees by the respective employers if they come to know about their pregnancy? | |
| 20 | Are the formalities for getting maternity leave or benefits complicated? | Yes / No/ Can't Say |

| | | | |
|----|--|---|--|
| 21 | Are you aware who can be complained to if an employee does not receive maternity relief under the Maternity Benefit Act, 1961 | Labour Inspector | |
| | | Company Management | |
| | | Labour Commissioner | |
| | | Ministry of Women and Child Development (Central Government) | |
| | | Ministry of Labour and Employment (Central Government) | |
| | | Labour Courts | |
| | | High Court | |
| | | State Government | |
| 22 | Which statements do you relate to on the Maternity Benefit Act, 1961 as amended by the Maternity Benefit (Amendment) Act, 2017 | Paid Maternity Leave is the duty of employers to provide as motherhood is a natural phenomenon. | |
| | | Paid Maternity Leave is a basic human right for women | |
| | | Maternity Leave discriminates between men and women employees and should not be there | |
| | | Maternity Leave should be unpaid as getting pregnant is the woman's choice, not the employers'. | |
| | | Paid Maternity Leave of 26 weeks is too long and unnecessary | |
| | | Paid Maternity Leave of 26 weeks is too short and should be increased | |
| | | Maternity Relief increases women's participation in the Labor work force | |
| | | Employers avoid employing women due to maternity relief | |
| | | Any other statement: | |

| | | | |
|----|---|--|--|
| 23 | Which of these legal provisions are you aware of? | if an employer does not pay the maternity benefits or dismisses the woman during maternity leave (other than dismissal for prescribed gross misconduct) he can be sentenced for minimum 3 months (extendable up to one year) imprisonment and with fine (Rs. 2000 to 5000) | |
| | | Under section 11 (A) OF Maternity benefits amendment act 2017, in every establishment employing 50 or more employees it is mandatory for the establishment to provide crèche facilities | |
| | | Under the amendment act of 2017 that it is compulsory for employers to educate women about the maternity benefits available to them at the time of appointment. | |
| 24 | How do you view the benefits provided under the Maternity Benefit Act, 1961 as amended by the Maternity Benefit (Amendment) Act, 2017 | Excellent / Very Good / Good / Fair / Poor / Can't Say | |
| 25 | How do male employees feel about maternity leave? | Supportive | |
| | | Neutral | |
| | | Unsupportive | |
| | | Any other: | |
| 26 | Should there be a law for provision of paternity leave? | Yes / No | |
| 27 | Does provision of paternity leave make it easier for employers to provide maternity leave? | Yes / No / Can't Say | |

| OPEN ENDED QUESTIONS | |
|--|-------|
| 28. Has the increase of maternity leave from 12 to 26 weeks increased the financial liability of the employer? If yes, please describe how. | |
| | |
| 29. What advantages or disadvantages accrue to an organization when it provides maternity relief to its employees? | |
| | |
| 30. Identify the difficulties faced by the Labour Officers during inspection at the hands of the employers: | |
| | |
| 31. State some of the administrative difficulties faced by the Labour Department in overseeing the implementation of the Maternity Benefit (Amendment) Act, 2017 and Employees' State Insurance Act, 1948? | |
| | |
| 32. Whether any improvement in the benefits or relief is required? If yes, please give your suggestions? | |
| | |
| 33. What kind of challenges (if any) were faced before & after amendment in this Act ? | |
| Before | After |
| 34. Any other info, comments or suggestions | |
| | |

e) NGO's/Trade Unions/ Advocates Questionnaire

**RESEARCH STUDY ON THE IMPACT OF
THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017 IN IT / ITES
INDUSTRY
QUESTIONNAIRE FOR NGO'S/ TRADE UNIONS / ADVOCATES**

| | | |
|---|--|-----------------------------------|
| <i>NOTE:</i> Please tick at appropriate box in the given grid or circle the appropriate response. Some questions may have multiple responses) | | |
| Date of Interview: | | |
| Name of Respondent | | |
| Name of Organization | | |
| Type of the Organization | Voluntary | |
| | Non-Profit | |
| | Profitable | |
| | Government Run | |
| | Any other | |
| Location | | |
| Area of Work | | |
| Are you currently working with matters relating to women workers? | | |
| Yes / No | | |
| If yes, please specify details | | |
| 1 | Can you recall some of the key features of the laws that are specific to women. | Protection from Sexual Harassment |
| | | Paternity Leave |
| | | Maternity Leave |
| | | Pick and drop facility for women |
| | | Crèche facilities for children |
| | | Nursing Breaks / Visits to Crèche |
| | | Work from home |
| | | Any other: |
| No, cannot recall | | |
| 2 | Are you aware about the Maternity Benefit Act 1961? | Yes / No |
| 3 | Are you aware of the recent amendment in 2017 in the Maternity Benefit Act, 1961 | Yes / No |

| | | | |
|---|--|---|--|
| 4 | Can you identify any key features of the Maternity Benefit Act, 1961 as amended by the Maternity Benefit (Amendment) Act, 2017? | Maternity Leave given | |
| | | Paternity Leave given | |
| | | Employer provides crèche facility | |
| | | None of the above | |
| | | All of the above | |
| 5 | What is the period of maternity leave under the Maternity Benefit Act, 1961 as amended by the Maternity Benefit (Amendment) Act, 2017 | 12 weeks paid leave | |
| | | 18 weeks paid leave | |
| | | 26 weeks paid leave | |
| | | 12 weeks paid leave and 12 weeks unpaid leave | |
| | | None of the above | |
| 6 | In what circumstances can maternity leave be availed under the Maternity Benefit Act, 1961 as amended by the Maternity Benefit (Amendment) Act, 2017 | At anytime | |
| | | Only during pregnancy | |
| | | Only after delivery | |
| | | During advanced stages of pregnancy and post delivery | |
| | | For birth of first child | |
| | | For birth of second child | |
| | | For birth of third child | |
| | | When adopting a baby below the age of 3 months | |
| | | When adopting a baby older than 3 months | |
| | | When taking a baby from a commissioned surrogacy | |
| | | All of the above | |
| 7 | As per amended Act, how many weeks' leave with wages is granted to a women, up to two surviving children? | 26 weeks | |
| | | 12 weeks | |
| 8 | As per amended Act, how many weeks leave with wages is granted in case of two or more surviving children? | 26 weeks | |
| | | 12 weeks | |
| 9 | As per amended Act, how many weeks leave with wages is granted to an adoptive or commissioning mother, if she adopts a child upto the age of three months? | 26 weeks | |
| | | 12 weeks | |

| | | | |
|------------------|---|--|--|
| 10 | Do you know that even if child is still- born or dies during the period of maternity leave, still women would be entitled to the full leave with wages? | Yes / No. | |
| 11 | Do you know that apart from leave, a woman is also entitled to medical bonus of Rs. 1000/- only. | Yes / No | |
| 12 | Whether crèche facilities are to be provided in establishments? | Yes / No If yes, please specify location of crèche | |
| 13 | Whether establishments need to make provision for nursing breaks/ visits to the crèche during work? | Yes / No / Can't Say | |
| 14 | Whether any system to 'work from home' has to be developed in establishments post pregnancy? | Yes / No If yes, please specify | |
| 15 | Have you contributed to the initiative of the Government of India on the Maternity Benefit (Amendment) Act, 2017? | Yes / No If yes, please specify | |
| 16 | How would you assess employer's attitude towards maternity leave and benefits? | Supportive | |
| | | Neutral | |
| | | Unsupportive | |
| | | Any other: | |
| 17 | Have you come across any instance whereby a woman employee has been terminated or faced difficulties in employment on account of her pregnancy? | Yes / No If yes, please share details | |
| 18 | How do you handle such cases / complaints of women employees by the respective employers on account of their pregnancy? | | |
| 19 | Are the formalities for getting maternity leave or benefits complicated? | Yes / No/ Can't Say | |
| 20 | Are you aware who can be complained to if an employee does not receive maternity relief under the Maternity Benefit Act, 1961 | Labour Inspector | |
| | | Company Management | |
| | | Labour Commissioner | |
| | | Ministry of Women and Child Development (Central Government) | |
| | | Ministry of Labour and Employment (Central Government) | |
| | | Labour Courts | |
| | | High Court | |
| State Government | | | |

| | | | |
|----|--|--|--|
| 21 | Which statements do you relate to on the Maternity Benefit Act, 1961 as amended by the Maternity Benefit (Amendment) Act, 2017 | Paid Maternity Leave is the duty of employers to provide as motherhood is a natural phenomenon. | |
| | | Paid Maternity Leave is a basic human right for women | |
| | | Maternity Leave discriminates between men and women employees and should not be there | |
| | | Maternity Leave should be unpaid as getting pregnant is the woman's choice, not the employers'. | |
| | | Paid Maternity Leave of 26 weeks is too long and unnecessary | |
| | | Paid Maternity Leave of 26 weeks is too short and should be increased | |
| | | Maternity Relief increases women's participation in the Labor work force | |
| | | Employers avoid employing women due to maternity relief | |
| | | Any other statement: | |
| 22 | Which of these legal provisions are you aware of? | if an employer does not pay the maternity benefits or dismisses the woman during maternity leave (other than dismissal for prescribed gross misconduct) he can be sentenced for minimum 3 months (extendable up to one year) imprisonment and with fine (Rs. 2000 to 5000) | |
| | | Under section 11 (A) OF Maternity benefits amendment act 2017, in every establishment employing 50 or more employees it is mandatory for the establishment to provide crèche facilities | |

| | | | |
|---|--|---|--|
| | | Under the amendment act of 2017 that it is compulsory for employers to educate women about the maternity benefits available to them at the time of appointment. | |
| 23 | How do you view the benefits provided under the amended Maternity Benefit Act? | Excellent / Very Good / Good / Fair / Poor / Can't Say | |
| 24 | How do male employees feel about maternity leave? | Supportive | |
| | | Neutral | |
| | | Unsupportive | |
| | | Any other: | |
| 25 | Should there be a law for provision of paternity leave? | Yes / No | |
| 26 | Does provision of paternity leave make it easier for employers to provide maternity leave? | Yes / No / Can't Say | |
| OPEN ENDED QUESTIONS | | | |
| 27. Has the increase of maternity leave from 12 to 26 weeks increased the financial liability of the employer? If yes, please describe how. | | | |
| | | | |
| 28. What advantages or disadvantages accrue to an organization when it provides maternity relief to its employees? | | | |
| | | | |
| 29. Identify the difficulties faced by your organization in advocacy concerning rights of women workers, particularly maternity | | | |
| | | | |
| 30. Describe the awareness generation steps taken by your organization after the 2017 amendment of the Maternity Benefit Act, 1961 on the provisions amended by the Maternity Benefit (Amendment) Act, 2017 | | | |
| | | | |
| 31. Whether any improvement in the benefits or relief is required? If yes, please give your suggestions? | | | |
| | | | |
| 32. Any other info, comments or suggestions | | | |

Annexure - II

MATERNITY BENEFIT ACT, 1961 (No. 53 of 1961)¹

[12th. December, 1961]

An Act to regulate the employment of women in certain establishment for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows: -

1. Short title, extend and commencement. -- (1) This Act may be called the Maternity Benefit Act, 1961.

(2) It extends to the whole of India ²[* * *]

(3) It shall come into force on such date as may be notified in this behalf in the Official Gazette, --

³[(a) in relation to mines and to any other establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, by the Central Government, and]

(b) in relation to other establishments in s State, by the State Government.

NOTES. – This Act came into force in relation to mines in the territories to which it extends on the 1st. November 1963 – *Vide* S.O. No. 2920, dated 5th. October, 1963, published in the *Gazette of India*, Part II, Sec. 3 (ii), dated 12th. October, 1963. This Act came into force in the whole of Uttar Pradesh with effect from 22nd. February 1974, *vide* notification No. 512 (V)-2/36-5-13 (V) 72, dated 22nd. February 1974.

2. Application of Act. -- (1) It applies in the first instance, to every establishment being a factory, mine or plantation ⁴[including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances]:

Provided that the State Government may, with the approval of the Central Government, after giving not less than two months' notice of its intention of so doing, by notification

¹ Received the assent of the President on the 12th. December, 1961 and published in the *Gazette of India*, Extraordinary, dated 13th. December 1961. For Statement of Objects and Reasons *see Gazette of India*, Extraordinary, Part II, dated 6th. December 1960.

² Words "except the State of Jammu and Kashmir" omitted by Act 51 of 1970, Sec. 2 and Sch.

³ Subs. by Act 52 of 1973, Sec. 2, w.e.f. 1-3-1975 – *Vide* notification No. S.O. 113A (E), dated 27-2-1975.

⁴ Subs. by Act 52 of 1973, S.3.

In the official on In the official *Gazette*, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

(2) ⁵[Save as otherwise provided in ⁶[sections 5A and 5B] nothing contained in this Act] shall apply to any factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (84 of 1948), apply for the time being.

3. Definitions. -- In this Act, unless the context otherwise requires, --

- (a) "appropriate Government" means in relation to an establishment being a mine ⁷[or an establishment where persons are employed for the exhibition of equestrian, acrobatic and other performances], the Central Government and in relation to any other establishment, the State Government;
- (b) "child" includes a still-born child;
- (c) "delivery" means the birth of a child;
- (d) "employer" means –
 - (i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;
 - (ii) in relation to an establishment which is under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;
 - (iii) in any other case, the person who are the authority which has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;
- ⁸(e) "establishment" means –
 - (i) a factory;
 - (ii) a mine;
 - (iii) a plantation;
 - (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatics and other performances; or

⁵ Subs. by Act 21 of 1972, S.2.

⁶ Subs. by Act 53 of 1976, sec. 2, for "section 5A". Act 53 of 1976 came into force w.e.f. 1-5-1976 – Vide notification No. S.O. 337 (E), dated 30-4-1976.

⁷ Added by Act 52 of 1973, S. 4.

⁸ Subs. by Act 52 of 1973, S. 4.

- (v) an establishment to which the provisions of this Act have been declared under sub-section (4) of section 2 to be applicable;]
- (f) “factory” means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (g) “Inspector” means an Inspector appointed under section 14;
- (h) “maternity benefit” means the payment referred to in sub-section (1) of section 5;
- (i) “mine” means a mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952)
- (j) “miscarriage” means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage the causing of which is punishable under the Indian Penal Code (45 of 1860);
- (k) “plantation” means a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);
- (l) “prescribed” means prescribed by rules made under this Act;
- (m) “State Government” in relation to a Union territory, means the Administrator thereof;
- (n) “wages” means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes –
- (1) such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to;
 - (2) incentive bonus; and
 - (3) the money value of the concessional supply of foodgrains and other articles,
- but does not include –
- (i) any bonus other than incentive bonus;
 - (ii) overtime earnings and any deduction or payment made on account of fines;
 - (iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and
 - (iv) any gratuity payable on the termination of service;
- (o) “woman” means a woman employed, whether directly or through any agency, for wages in any establishment.

NOTES. – Sec 3 (f). – A factory does not include a mine subject to the operation of the Mines Act, 1952, or a railway running-shed.

Sec. 3 (j) – The definition of miscarriage is similar to the definition as given in Sec. 2 (14-B) of the Employees’ State Insurance Act, 1948.

4. Employment of, or work by, women prohibited during certain period. -- (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.

(2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.

(3) Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section (4) any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

(4) The period referred to in sub-section (3) shall be –

- (a) at the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;
- (b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.

5. Right to payment of maternity benefit. -- (1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.

Explanation. – For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or one rupee a day, whichever is higher.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of one hundred and sixty days aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation: - For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid-off during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day:

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided further that where a woman, having been delivered of a child dies during her delivery or during the period of six weeks immediately following the date of her delivery, leaving behind in either case the child, the employer shall be liable for the maternity benefit for the entire period of six weeks immediately following the day of her delivery but if the child also dies during the said period, then for the days up to and including the day of the death of the child.

NOTES. – The term “week” means a cycle of seven days including Sundays;
B. Shah V. Presiding Officer, A.I.R. 1978 S. C. 12.

⁹**[5-A. Continuance of payment of maternity benefit in certain cases. --** Every woman entitled to the payment of maternity benefit under this Act shall, notwithstanding the application of the Employees’ State Insurance Act, 1948 (34 of 1948), to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under Sec. 50 of that Act.]

¹⁰**[5-B. Payment of maternity benefit in certain cases. --** Every woman –

- (a) who is employed in a factory or other establishment to which the provisions of the Employees’ State Insurance Act, 1948 (34 of 1948), apply;
- (b) whose wages (excluding remuneration for overtime work) for a month exceed the amount specified in sub-clause (b) of clause (a) of section 2 of that Act; and
- (c) who fulfils the conditions specified in sub-section (2) of section 5, shall be entitled to the payment of maternity benefit under this Act].

6. Notice of claim for maternity benefit and payment thereof. -- (1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.

⁹ Ins. By Act 21 of 1972, S. 3.

¹⁰ Ins. By Act 53 of 1976, S. 3.

(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment until the expiry of six weeks after the day of her delivery.

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on the production of such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

NOTES. – See also Sec. 50 of the Employees' State Insurance Act, 1948, for conditions under which a woman becomes qualified to claim maternity benefit under this Act.

7. Payment of maternity benefit in case of death of a woman. -- If a woman entitled to maternity benefit or any other amount under this Act, dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to sub-section (3) of section 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6 and in case there is no such nominee, to her legal representative.

8. Payment of medical bonus. -- Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of twenty-five rupees, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

9. Leave for miscarriage. -- In case of miscarriage, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage.

10. Leave for illness arising out of pregnancy, delivery, premature birth of child, or miscarriage. -- A woman suffering illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall, on production of such proof as may be prescribed, be entitled in addition to the period of absence allowed to her under section 6, or, as the case may be, under section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.

11. Nursing breaks. -- Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course

of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

12. Dismissal during absence or pregnancy. -- (1) Where a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

(2) (a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus:

Provided that where the dismissal is for any prescribed gross misconduct the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.

(b) Any woman deprived of maternity benefit or medical bonus or both may, within sixty days from the date on which the order of such deprivation is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefits or medical bonus or both, shall be final.

(c) Nothing contained in this sub-section shall affect the provisions contained in sub-section (1).

13. No deduction of wages in certain cases. -- No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Act shall be made by reason only of –

- (a) the nature of work assigned to her by virtue of the provisions contained in sub-section (3) of section 4 : or
- (b) breaks for nursing the child allowed to her under the provisions of section 11.

14. Appointment of Inspectors. – The appropriate Government may, by notification in the Official *Gazette*, appoint such officers as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits of the jurisdiction within which they shall exercise their function under this Act.

15. Powers and duties of Inspectors. -- An Inspector may, subject to such restrictions or conditions as may be prescribed, exercise all or any of the following powers, namely: -

- (a) enter at all reasonable times with such assistants, if any, being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where women are employed or work is given to them in an

establishment, for the purposes of examining any registers, records and notices required to be kept or exhibited by or under this Act and require their production for inspection;

- (b) examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment:

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself:

- (c) require the employer to give information regarding the names and addresses of women employed, payments made to them, and applications or notices received from them under this Act; and
 (d) take copies of any registers and records or notices or any portions thereof.

16. Inspectors to be public servants. -- Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

17. Power of Inspector to direct payments to be made. -- (1) Any woman claiming that maternity benefit or any other amount to which she is entitled under this Act and any person claiming that payment due under section 7 has been improperly withheld, may make a complaint to the inspector.

(2) The Inspector may, of his own motion or on receipt of a complaint referred to in sub-section (1), make an enquiry or cause an inquiry to be made and if satisfied that payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders.

(3) Any person aggrieved by the decision of the Inspector under sub-section (2) may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority.

(4) The decision of the prescribed authority where an appeal has been preferred to it under sub-section (3) or of the Inspector where no such appeal has been preferred, shall be final.

(5) Any amount payable under these sections shall be recoverable as an arrear of land revenue.

18. Forfeiture of maternity benefit. -- If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorized absence, she shall forfeit her claim to the maternity benefit for such period.

19. Abstracts of Act and rules thereunder to be exhibited. -- An abstract of the provisions of this Act and the rules made thereunder in the language or languages of the

locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

20. Registers, etc. – Every employer shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.

21. Penalty for contravention of Act by employers. -- If any employer contravenes the provisions of this Act or the rules made thereunder he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall in addition recover such maternity benefit or amount as if it were a fine, and pay the same to the person entitled thereto.

22. Penalty for obstructing Inspector. -- Whoever fails to produce on demand by the Inspector any register or document in his custody kept in pursuance of this Act or the rules made thereunder or conceals or prevents any person from appearing before or being examined by an Inspector, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees or with both.

23. Cognizance of offences. -- (1) No prosecution for an offence punishable under this Act or any rule made thereunder shall be instituted after the expiry of one year from the date on which the offence is alleged to have been committed and no such prosecution shall be instituted except by, or with the previous sanction of, the Inspector;

Provided that in computing the period of one year aforesaid, the time, if any, taken for the purpose of obtaining such previous sanction shall be excluded.

(2) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any such offence.

NOTES. – Sections 21 to 23 deal with penalties under the Act and procedure to try offences committed under this Act.

24. Protection of action taken in good faith. -- No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or order made thereunder.

25. Power of Central Government to give directions. -- The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution the provisions of this Act and the State Government shall comply with such directions.

26. Power to exempt establishments. -- If the appropriate Government is satisfied that having regard to an establishment or a class of establishments providing for the grant of benefit which are not less favourable than those provided in this Act, it is necessary so to

do, it may, by notification in the Official *Gazette*, exempt subject to such conditions and restrictions, if any, as may be specified in the notifications, the establishment or class of establishments from the operation of all or any of the provisions of this Act or of any rule made thereunder.

27. Effect of laws and agreements inconsistent with this Act. -- (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act:

Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefit in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter, which are more favourable to her than those to which she would be entitled under this Act.

28. Power to make rules. -- (1) The appropriate Government may, subject to the condition of previous publication and by notification in the Official *Gazette*, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for –

- (a) the preparation and maintenance of registers, records and muster rolls;
- (b) the exercise of powers (including the inspection of establishments) and the performance of duties by Inspectors for the purposes of this Act;
- (c) the method of payment of maternity benefit and other benefits under this Act in so far as provision has not been made therefore in this Act;
- (d) the form of notices under section 6;
- (e) the nature of proof required under the provisions of this Act;
- (f) the duration of nursing breaks referred to in section 11;
- (g) acts which may constitute gross misconduct for purposes of section 12;
- (h) the authority to which an appeal under clause (b) of sub-section (2) of section 12 shall lie, the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;
- (i) the authority to which an appeal shall lie against the decision of the Inspector under section 17; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;

- (j) the form and manner in which complaints be made to Inspectors under sub-section (1) of section 17 and the procedure to be followed by them when making inquiries or causing inquiries to be made under sub-section (2) of that section;
- (k) any other matter which is to be, or may be, prescribed.

(3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session ¹¹[or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session, aforesaid.] both Houses agree in making any modification in the rule or both houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

29. Amendment of Act 69 of 1951. -- In section 32 of Plantation Labour Act, 1951, --

- (a) in sub-section (1), the letter and brackets “(a)” before the words “in the case of sickness,” the word “and” after the words “sickness allowance”, and clause (b) shall be omitted.
- (b) In sub-section (2), the words “or maternity” shall be omitted.

30. Repeal. -- On the application of this Act. –

(i) to mines, the Mines Maternity Benefit Act, 1941 (19 of 1941); and Maternity Benefit Act, 1929 (Bom. Act VII of 1929), as in force in that territory, shall stand repealed.

¹¹ Subs. by Act 52 of 1973, S. 5.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 6] नई दिल्ली, मंगलवार, मार्च 28, 2017/चैत्र 7, 1939 (शक)
No. 6] NEW DELHI, TUESDAY, MARCH 28, 2017/CHAITRA 7, 1939 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 28th March, 2017/Chaitra 7, 1939 (Saka)

The following Act of Parliament received the assent of the President on the 27th March, 2017, and is hereby published for general information:—

THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017

No. 6 OF 2017

[27th March, 2017.]

An Act further to amend the Maternity Benefit Act, 1961.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Maternity Benefit (Amendment) Act, 2017.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

53 of 1961.

2. In the Maternity Benefit Act, 1961 (hereinafter referred to as the principal Act), in section 3, after clause (b), the following clause shall be inserted, namely:—

Amendment of section 3.

“(ba) “commissioning mother” means a biological mother who uses her egg to create an embryo implanted in any other woman;”.

3. In the principal Act, in section 5,—

Amendment of section 5.

(A) in sub-section (3)—

(i) for the words “twelve weeks of which not more than six weeks”, the

words “twenty-six weeks of which not more than eight weeks” shall be substituted;

(ii) after sub-section (3) and before the first proviso, the following proviso shall be inserted, namely:—

“Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery;”;

(iii) in the first proviso, for the words “Provided that”, the words “Provided further that” shall be substituted;

(iv) in the second proviso, for the words “Provided further that”, the words “Provided also that” shall be substituted;

(B) after sub-section (3), the following sub-sections shall be inserted, namely:—

“(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.”.

Insertion of
new section
11A.

Crèche
facility.

4. In the principal Act, after section 11, the following section shall be inserted, namely:—

“11A. (1) Every establishment having fifty or more employees shall have the facility of crèche within such distance as may be prescribed, either separately or along with common facilities :

Provided that the employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her.

(2) Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act.”.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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श्रम और रोजगार मंत्रालय

अधिसूचना

नई दिल्ली, 31 मार्च, 2017

का.आ. 1026(अ).— केन्द्रीय सरकार, प्रसूति प्रसुविधा (संशोधन) अधिनियम, 2017 (2017 का 6) की धारा 1 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एतद्वारा --

- (i) 1 अप्रैल, 2017 जिससे उक्त अधिनियम के प्रावधान, सिवाय धारा 3 की उप-धारा (5); तथा
- (ii) 1 जुलाई, 2017 जिससे उक्त अधिनियम की धारा 3 की उप-धारा (5),

प्रवृत्त होंगे, ऐसी तारीख नियत करती है।

[फा. सं. एस-36012/03/2015-सा.सु.-I]

मनीष कुमार गुप्ता, संयुक्त सचिव

MINISTRY OF LABOUR AND EMPLOYMENT NOTIFICATION

New Delhi, the 31st March, 2017

S.O. 1026(E).— In exercise of the powers conferred by sub-section (2) of section 1 of the Maternity Benefit (Amendment) Act, 2017 (6 of 2017), the Central Government hereby appoints—

- (i) the 1st day of April, 2017 as the date on which the provisions of the said Act, except sub-section (5) of section 3: and
- (ii) the 1st day of July, 2017, as the date on which sub-section (5) of section 3 of the said Act,

shall come into force.

[F.No.S-36012//03/2015-SS-I]

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असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 934]

नई दिल्ली, सोमवार, अप्रैल 03, 2017/चैत्र 13, 1939

No. 934]

NEW DELHI, MONDAY, APRIL 03, 2017/CHAITRA 13, 1939

श्रम और रोजगार मंत्रालय

शुद्धिपत्र

नई दिल्ली, 3 अप्रैल, 2017

का.आ. 1049(अ).—दिनांक 31 मार्च, 2016 के का.आ. सं. 1026(अ.) के द्वारा भारत के राजपत्र, असाधारण, भाग-II, खण्ड-3, उप-खण्ड (ii) में प्रकाशित भारत सरकार, श्रम और रोजगार मंत्रालय की दिनांक 31 मार्च, 2017 की अधिसूचना संख्या 914 में 'धारा 3 की उप-धारा (5)' शब्दों और अंकों के लिए दोनों स्थानों पर 'धारा 4 की उप-धारा (1)' शब्द और अंक पढ़े जाएं।

[फाइल सं. एस-36012/03/2015-सा.सु.-I]

मनीष कुमार गुप्ता, संयुक्त सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

CORRIGENDUM

New Delhi, the 3rd April, 2017

S.O. 1049(E).—In the Government of India, Ministry of Labour and Employment notification No.914 dated 31st March,2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 1026 (E) dated the 31st March, 2016,—for the words and figures 'sub-section (5) of section 3', the words and figures 'sub-section (1) of section 4' may be read at both the places.

[F.No.S-36012/03/2015-SS-I]

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Annexure - IV

- a) Company's appointment letters including information regarding maternity leave

| S. No. | Response Response | Percentage |
|--------|-------------------|------------|
| 1. | Yes | 50.0 |
| 2. | No | 25.0 |
| 3. | Not Aware | 25.0 |
| | Total | 100.0 |

- b) Advantages or Disadvantages occurring in an organization while providing maternity relief to its employees

| S. No. | Response Response | Percentage |
|--------|---|------------|
| 1. | Not Aware | 33.3 |
| 2. | It's difficult to give such long maternity leave | 8.3 |
| 3. | More women in leadership roles | 8.3 |
| 4. | Retention is higher | 8.3 |
| 5. | Employees are more loyal and happy | 8.3 |
| 6. | There is a problem when an employee quits after availing maternity leave benefits | 8.3 |
| 7. | There is no advantage, Disadvantage is we have to distribute the work among other workers | 8.3 |
| 8. | Trustworthy, long serving period employee | 8.3 |
| 9. | Work does suffer To an extent | 8.3 |

- c) Female colleagues availing maternity leave

| S. No. | Response Response | Percentage |
|--------|-------------------|------------|
| 1. | Yes | 71.9 |
| 2. | No | 6.3 |
| 3. | Not Aware | 21.9 |
| | Total | 100.0 |

- d) Employers providing crèche facilities

| S. No. | Response Response | Percentage |
|--------|-------------------|------------|
| 1. | Yes | 25.0 |
| 2. | No | 75.0 |
| | Total | 100.0 |

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