

**Impact on Employment of the Maternity
Benefit (Amendment) Act, 2017:**

Identifying the Affirmative Initiative & Challenges in the Implementation of the Act



Dr. Shashi Bala



V.V. GIRI NATIONAL LABOUR INSTITUTE

Impact on Employment of the Maternity Benefit (Amendment) Act, 2017: Identifying the Affirmative Initiative & Challenges in the Implementation of the Act



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Foreword

India is a founding member of ILO, and celebrated, its century during year 2019. Following are the ILO convention pertaining to Maternity benefits: Maternity protection convention ,1919 (No:003); Maternity protection convention, 1952 (No:183); Maternity protection convention ,1952 (No:103).

To meet obligations under above three conventions, the Indian Parliament enacted the Maternity Benefits Act 1961, which provided 12 weeks paid maternity leave to the women in employment. In 2017, the Indian Government made major amendments in the Act by increasing paid leave period to 26 weeks, provision of crèche by the employer in every establishment having 50 (fifty) or more employees irrespective of sex of the employees, either separately or along with other common facilities. The scheme of 12 weeks paid leave has also been extended to Commissioning mother and adopting mother. Maternity act is paving way towards fulfilling the constitutional provisions pertaining to promoting sustainable gender equity. Article 15(3) of the Indian Constitution reflects the principle of substantive equality and empower the government to make special laws to protect women and children; under article 21 which upholds the right to life and liberty, reorganizer's the freedom of person to practice livelihood of his or her choose and article 42 of the directive principles mandates the state to make provisions for securing just and humane condition of work and for maternity relief. Therefore, the belief of gender equality is envisaged as the most supreme law in India.

Considering the harsh reality to the patriarchal mindset towards women and related issue, it has been observed many employers are not forthcoming in employing women in the reproductive age group. The act bounds the employer to bear all the cost of maternity leave. This financial liability puts many employers in a negative frame of mind, especially in the private sector. Considering this Ministry of Labour and Employment in the process of collaborate the maternity benefits with ESI Scheme so that the financial burden of employer is reduced and women employment is not negatively impacted.

Accordingly, significant efforts have been put by the government of India to develop laws and policies that encourage women to participate actively in the labour workforce. This workshop is an endeavor to look into the changes that have been framed by the Government of India for mainstreaming women in the world of work as a matter of human rights.



(Rajan Verma)
Chief Labour Commission,
Ministry of Labour and Employment, Govt. of India

Preface

As we all are aware, 'empowering a woman means empowering the whole nation', Financial empowerment is one of the tool to achieve this. In the present era of globalization and inclusive growth, the above quotation becomes all the more important, as majority of women in the country are engaged in unpaid care economy of bearing, rearing, and caring which is often looked down despite knowing the significance of the same. Provision of enabling maternity protection during their time of dependency on society will, to some extent, fill this gap and also make them financially independent. India is amongst the leading nations in providing maternity leave benefits to the employees engaged in both Government as well as private sectors. Ministry of Labour and Employment, Government of India made an amendment to the Maternity Benefit Act during 2017, wherein maternity leave was enhanced from 12 weeks to 26 weeks. The Act also mandates that crèche facilities should be provided within a prescribed distance and women should be allowed up to four visits a day to the crèche. Commissioning mothers are also provided 12 weeks of leave. The amendment is a welcome move, appreciated by many and enables a woman to fulfill her social and personal obligations. It is necessary to understand the implications and positive effects of this Act at the grass-root-levels. This workshop report puts together the different points of views from different stakeholders in the amendments to the Maternity Benefit Act, 1961 and its impact on employment of women. We look forward to further consider views from all the stakeholders to take this noble initiative of the government in a holistic way.

I compliment Dr. Shashi Bala, Fellow 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. Postnatal 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 endeavor with this report was to found out the impact on women's employment of the Maternity Benefit (Amendment) Act, 2017.

We would like to express our deepest appreciation to Dr. H. Srinivas, Director General, V. V. Giri National Labour Institute for providing us the opportunity to conduct this workshop and to all those in the Administration who have supported our efforts to conduct and complete this work.

We would also like to express our sincere gratitude to Shri Rajan Verma, CLS, Chief Labour Commissioner (Central), New Delhi for delivering the opening remarks in the workshop. We would also like to thank Mr. Remis Tiru, Deputy Labour Commissioner (Central) and Mr. Niranjana Kumar, RLC (1) Noida RCC (1) Training-In-charge, New Delhi for their valuable inputs and nominating Labour Administrators despite their busy schedule.

We would further like to express our gratitude for Shri Surendra Nath IAS (Retd.), Professor, Former Secretary to Government of India for Chairing the Workshop presentation & deliberations. Special thanks to our panelist Prof. (Dr.) Nuzhat Praveen Khan, Professor, Jamia Millia Islamia, Ms. Aya Matsuura, Gender Specialist, ILO, New Delhi and Ms. Nupur Prasad, Advocate, Delhi High Court for their very valuable observations on the pertinent topic.

Here, we also express my gratitude towards all the stakeholders for nominating the participants, from Academia, Trade Unions, Industries, and representatives of International and National organizations. Their participation has immensely contributed for meaningful discussions and way forward. I would like to acknowledge and express my gratitude to Ms. Nimra Khan (Research Associate), Mr. Rajiv Hasija (Guest Faculty) and Shri G. P. Bhatia (CLS, (Retd.), Guest Faculty VVGNI) for their support in Proofreading this report.

A Special thanks to the entire project team Ms. Tanu Bhardwaj (Research Associate), Ms. Manju Singh (Computer Operator) who helped in organizing this fruitful event in a tireless approach from the beginning and finally my family members for keeping me motivated in my official journey.

Dr. Shashi Bala

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

Minutes of the Workshop on “Impact on Employment of the Maternity Benefit (Amendment) Act, 2017: Identifying the Affirmative Initiative & Challenges in the Implementation of the Act” 22nd November, 2019

The workshop on “Impact on employment of the Maternity Benefit (Amendment Act), 2017: Identifying the Affirmative Initiative & Challenges in the Implementation of the Act” was held under the aegis of V. V. Giri National Labour Institute, Noida on 22nd November 2019 and was attended by eminent personalities viz academicians, Labour Administrators, representatives of International and National organizations, Employers representatives, Research scholars and faculty of VVGNNLI, Noida. List of participants is enclosed at (Annexure-1) and Schedule of the workshop at (Annexure-2).

1. Welcome Address by Workshop Director

1.1 Dr. Shashi Bala, Fellow, V. V. Giri National Labour Institute, Noida, started her address with the quote of Kofi Anan, former Secretary General, and United Nations Organization who impressed upon the role of women in the development of a family, State, nation and finally the world. His memorable and motivating quote is: **“There is no tool for development more effective than the improvement of women”**. Thereafter, she welcomed Dr. H. Srinivas, Director General, VVGNNLI. She further extended a warm welcome, on her behalf and on behalf of the V. V. Giri National Labour Institute, Noida, to Shri Surendra Nath, IAS (Retd.), former Secretary to the Government of India and currently Professor, Amity University, Noida; Shri Rajan Verma, CLS, Chief Labour Commissioner (Central); Prof. Nuzhat Praveen Khan, Professor, Jamia Millia Islamia Delhi; Ms. Aya from International Labour Organization (ILO), Delhi and all the participants. She stated that it was indeed a moment of great privilege and proud for her to welcome all the guests.

1.2 Dr. Shashi Bala further stated that the motive of the Institute is ‘श्रमेवजयते’ which means let the dignity of labour triumph. The Maternity Benefit Act and other related provisions, undisputedly, add to the dignity of women labour in all fields, whether manual or skilled in nature: “pink-collared”, “blue-collared” or “white-collared” jobs. She requested all the participants to go through the concept note, PPT’s and the other reading material provided in the workshop

kit(Annexure-3) and further requested them to give their feedback on enforcement of Maternity Benefit (Amendment) Act, 2017 and its impact on the employment of the women in the enclosed Questionnaire (Annexure-4). She was confident that the workshop will help mainstreaming the women in the world of paid work. Major analysis of the above feedback is attached in (Annexure-5).

2. Inaugural address by the Director General, V. V. Giri National Labour Institute, Noida

2.1. Dr. H Srinivas, Director General, VVGNNLI welcomed the esteemed participants representing academia, governments, NGO’s, industry, trade unions and gender specialist from ILO. Citing the recent amendments during 2017 (Annexure-6) in the Maternity Benefit Act 1961, he stated that the period of maternity leave was extended from 12 weeks to 26 weeks for two surviving children. The Institute had conducted a study during 2018 in four States of Karnataka, Tamil Nadu, Haryana and Maharashtra on impact of employment of women in IT and ITES industry after the recent amendments in the Act. The responses from the field were both positive and negative as many welcomed the amendments and some has small issues on managing the work during period of absence from work because of maternity leave of 26 weeks proposed in the amended Act. The study was carried out from different angles viz. impact on short and long term employment, enforcement of the Act and its social impact. He further stated that the short-term impact could be on employment and long-term impact could be visible in family relation, societal relations and so on. We should discuss how we could take forward this noble intention of the government in a holistic way. He also advised the experts to look at it from a broader perspective and also provide their valuable suggestions.

2.2 He appreciated Dr. Shashi Bala, Fellow and her team for coordinating this workshop.

3. Delivery of opening remarks

3.1 Shri Rajan Verma, CLC, Chief Labour Commissioner (Central) in his opening

remarks supported the observations of Dr. H. Srinivas, Director General, VVG NLI that the recent amendments in the Maternity Benefit will surely have the short-term and long-term impact. He stated that though the Constitution of India included maternity benefit / leave under Article 42 under the Directive Principle of State Policy but it was made a statutory right with the passing of the Maternity Benefit Act, 1961 (**Annexure-7**).

- 3.2 Normally, the women in employment in India are not considered as the main bread-earner of the family and it is supposed that they have a secondary role in supplementing the family income. Further, there are problems in the enforcement of the Act as enforcement officers cannot frequently visit the establishments. All stakeholders' viz. enforcement officers, women, employers, trade-unions, NGOs and women activists should contribute by creating awareness on the rights of women workers on the subject. The employers should not consider the maternity benefits as a financial burden or administrative problem while engaging another employee during the period of confinement of women but should consider as their small and humble contribution allowing a women to pass her period of confinement with dignity. The women employees covered under the ESI Act do not face problems because the maternity benefits to them are given by the ESIC Corporation and not by the employer.
- 3.3 There was also a need to increase the participation of women in employment in organized and unorganized sectors which had remained more or less stagnated over the past years. He was further of the view that the threshold limit of 10 employees for application of Maternity Benefit Act should be removed. Further, even the big employers, both in private and public sector; try to evade their liabilities on lame excuses.
- 3.4 Concluding his address, Mr. Rajan Verma wished the participants to consider all issues relating to maternity and give their valuable and workable suggestions to counter the problems identified by them.

After the opening remarks, the workshop director quoted one Melinda Gates quote that, **"A woman with a voice is by definition a strong woman, but the search to find that voice can be remarkably difficult"** and requested Shri Surender Nath, IAS (Retd.) for chairing the proceedings of the session with the objective of making Maternity Benefit a voice of women

and emphasized on developing provisions for parental leave to involve men in care activities and also move toward comprehensive social security provisions to cover all.

4. Presentations by the Presenters

4.1 **Ms. Ujjani Sengupta, National General Secretary, INTUC (Women Wings)** gave elaborate presentations on various issues germane to the workshop. Some highlights of her presentation are summed up as under: (Full text of her presentation is at (**Annexure-8**).

- (a) Increasing maternity benefit is a welcome step but the Government should devise some mechanism to ensure its proper enforcement without causing any impact on employment in the private sector.
- (b) The Government should try to amalgamate Acts and Rules like Employees State Insurance Act, 1948, All India Services (Leave) Rules, 1955, Central Civil Services (Leave) Rules, 1972 and similar State Service Rules to bring uniformity about maternity benefits.
- (c) Except women covered under the ESI Act, 1948 the entire cost of maternity benefits/ leaves is borne by the employer. This dissuades employers from employing women. Some or entire financial burden of employer could be shared by other sources like compulsory insurance or other social security schemes run by the Central and State Governments.

4.2 **Mr. Prashant Rakesh Chauhan, Assistant Professor, Amity Institute of Social Sciences, Department of Social Work, Amity University, Noida**, expressed his happiness on organizing the workshop by the V. V. Giri National Labour Institute on such an important social issue. He was of the view that no one is talking about the Maternity Benefit Act as a priority. No one is serious about the issue of women empowerment. The employers in most of the private sector feels shy of employing young unmarried girls fearing that they would take maternity leave after they get married. Such employers in private sector want to avoid payment of maternity benefits to the women because of their financial constraints. Instead, they prefer those women who are already married or have kids. Similar situation is seen in academic institutions also. However such a mindset is less seen in big corporate sector. He was of the view that all stakeholders

viz employers' organizations, trade unions, media and executive should work in a cohesive manner to ensure coverage of the MB Act.

5. Panelist views

5.1 **Prof. (Dr.) Nuzhat Praveen Khan, Professor, Jamia Millia Islamia** also congratulated VVGNLI and the workshop director Dr. Shashi Bala for taking up this subject. She being an academician was well aware of the provisions of the Act including its recent amendments viz increasing duration of maternity leave from 12 weeks to 26 weeks and other benefits like crèches, flexibility of working hours, working from home, etc. increasing of duration of leaves to 26 weeks was a historical step towards gender equality and women empowerment.

(a) Few decades back in our Indian Society, there were lesser number of women in direct employment though some worked at home. With the passage of time, gradually women started entering indirect employment. The Maternity Benefit Act, which is in consonance with Article 42 of the Constitution, gave certain rights and benefits to the women workers. Article 14 of the Indian Constitution provides equal protection of laws and equality before laws to all persons including women. Further, Article 15 prohibits discrimination on the basis of caste, creed, colour, sex etc. She stated that there is 16 weeks maternity leave in France, 14 weeks in China, 16 weeks in Singapore, whereas we have made a provision of 26 weeks maternity leave. Norway provides maternity leave more than our Maternity Benefit Act provides.

(b) The legislature has provided an excellent piece of legislation but its implementation needs to be strengthened. Apart from payment of maternity leave there are other problems which the women had to face. While referring to the Supreme Court judgment in the case of 'Air India etc. Vs Nergesh Meerza & Ors. etc.' {1982 SCR (1) 438}, she stated that there cannot be discriminatory service rules or regulations. Ms Nargesh Mirza was an Air Hostess in Air India and an Air Hostess had to retire either at the age of 35 or on being married or on being pregnant. Pregnancy or the motherhood is the most important aspects in the life of a woman. The Honourable Supreme Court quashed the relevant provisions when these were challenged before them.

(c) In case the duration of 26 weeks maternity leave appears to be too high, women workers can be allowed to work from home or they can be engaged as part-time workers enabling them to take care of their infant children.

5.2 **Ms. Aya Matsuura, Gender Specialist, ILO,** New Delhi stated that the ILO is celebrating its 100th anniversary this year and it adopted Convention of Maternity Protection in 1st International Labour Conference. Promoting gender equality in the world of work is the lofty goal of the ILO. Maternity Benefit Act has provisions relating to health of mother and babies and should be implemented uniformly in the world of work. The increasing of maternity leave from 12 weeks to 26 weeks is really a cause of celebrations even though it has increased cost for the employer. To reduce the cost of employer, some different modes of financing the maternity leave may be devised.

There is also need to increase the coverage of the Act as the present Act applies to a shop or establishment employing ten employees. The Act should gradually be made applicable to the entire informal sector of economy or the women employed therein should be covered by some social scheme. In case men are granted paternity leave the duration of maternity leave can be little reduced as men would stay at home to care for their babies.

5.3 **Ms. Nupur Prasad, Advocate** was of the view that the term maternity also includes child care. The long 26 weeks maternity leave is granted for recouping the health of a woman after delivery and also for the child care. Once she joins employment after availing leave, a woman also needs some break for breast feeding which is provided in the M.B. Act. The pregnancy cannot be planned and it is a natural. She agrees with the views of Prof. (Dr.) Nuzrat Praveen Khan that in case the maternity leave is of lesser duration of three months then a woman worker can be given an option to be engaged as a part time worker. If they are considered as liability on the employer to pay wages for six months, it is affecting the employment of women in private sector.

When the big employers decide the CTC (Cost to Company) of a woman employee, they can also include the cost towards payment of maternity leave in their CTC along with medical insurance or medical facility, gratuity, etc. This measure would not impact the employment of women in organized and corporate sector.

6. Participants views:

- 6.1 **Dr. Sanghamitra Barik, Deputy Director, NIPCCD (National Institute of Public Corporation and Child Development)** referred to various schemes and Acts passed by the Ministry of Woman and Child Development. In case, the Ministry of Labour and Employment frames any scheme relating to women empowerment and gender equity or other legislation concerning women, the district level mechanism can be set up for its implementation. The provisions of existing crèche facilities under various labour enactments may be tied up with National Crèche Scheme for working mothers which is being run by the Ministry of Women and Child Development. Their Ministry is also the nodal Ministry for issues relating to child adoption. Now adopting mothers are also entitled to 12 weeks leave if age of child being adopted is less than three months.
- 6.2 **Mr. Anuj Kumar Chauhan, Labour Enforcement Officer (Central)** welcomed the increase in maternity leave from 12 weeks to 26 weeks. However, because of increased duration of leave, the employers avoid recruiting women because of their enhanced financial liability. In order to off-set the employers' liability, some social security funds could be devised. In the absence of effective inspection, he stated that the enforcement officers / Inspectors cannot inspect any establishment without proper permission. Enforcement of any law becomes more effective if it is a surprise inspection.
- 6.3 **Ms. Suman, Executive Director, ED FIAN & The Child Trust** stated that the Maternity Benefit Act has directly linked rights of women and the children. If employer is facing problem about payment of wages for the maternity leave, there is a need to analyse maternity benefit in a practical way. Referring to various studies, she stated that in India participation of woman has decreased from 33% to 27% during 1990 to 2017.
- 6.4 **Ms. Amita Uppal, General Secretary, Rajdhani Delhi Nirman Mazdoor Hiteshi Union, Delhi** stated that percentage of daily wage women workers at construction sites was very low. He cited some examples of Delhi Metro Railways in this regard. Similar was the case about the women beneficiaries under the Building and Other Construction Workers Act, 1976. The apparent reason for this low share of employment of women was the responsibility of the employer to pay wages to the women workers for their maternity leave. He stated that the 2017 Amendment in Maternity Benefit Act had adversely impacted the employment of women workers in the construction industry.
- 6.5 **Dr. Archana Sinha, Senior Research Fellow and Head, Department of Women's Studies, Indian Social Institute, Delhi** stated that rural women worker in unorganised sector are neither provided with the maternity leave nor the crèche facility as per the provision in the Maternity Benefit Act. In this respect, she referred to employment in Agriculture and Weaving Industry (Jharkhand), Handloom Sector (Uttar Pradesh) and other home-based workers.
- 6.6 **Mr. Thaneshwar Dayal Adigaur, Secretary, DANMU/INTUC Trade Union, Delhi** stated that every woman should get the Maternity Benefit and Crèche facility. The Government should release more funds for such schemes.
- 6.7 **Mr. Tarun Dixit, Labour Enforcement Officer (Central), Indore** stated that the MB Act has better provision of maternity leave as compared to other countries like China and Russia. The increased duration of leave is affecting the employment of women in small industries. Any ILO convention should not be a burden on employer.
- 6.8 **Mr. Vikas Goyal, Labour Enforcement Officer (Central) Udaipur:** Intimated that the meagre penalty provisions contained in the MB Act are affecting the implementation of the MB Act. Further, except Mines and Circus, the States/Union Territories are the appropriate Government under this Act. The employers also tend not to reveal the employment of women in their establishments in order to avoid their liabilities as per the provisions of the Act.
- 6.9 **Ms. Lilabati, Senior Coordinator, National Commission for Women, Delhi** stated that promotion and protection of welfare of women is one of the primary responsibilities of the National Women Commission. Whenever, the Commission receives complaint relating to denial of Maternity Benefits to women, they investigate and take up the matter with the concerned authorities. The Commission received more than 100 complaints pertaining to all Sectors during 2018-19.
- 6.10 **Mr. Avinash Chandra Upadhyay, Regional Director, CBWE, Ministry of Labour & Employment, Delhi** was of the view that

when employer takes all the benefits from the Government, then he should also provide the statutory benefits to all concerned. There was no need to roll back the duration of maternity leave.

6.11 **Ms. Meenakshi Krishnan, Ph.D. Researcher** advocated granting of paternity leave for the child care and also for better crèche facilities in all the places which can be used by all the employees.

6.12 **LT Col Vikram Mehta (Retd.), Trainee & Consultant, Indian Army** highlighted the dismal record of participation of women in the labour market. The 18% (Source: World Economic Forum) contribution of women towards GDP is one of the lowest in the world. Our aspiration to become a '\$5 trillion economy and a global economic powerhouse by 2024-25' can only be achieved by significantly improving this figure. Furthermore, a sustained growth is possible only by a healthy nation which, in turn, is not possible without healthy mothers and children. The amendments to the Maternity Benefit Act were introduced in 2017 with the intention to encourage more women to join the workforce and for better health care of mothers and children. It is, however, yet to be seen whether the changes have had the desired effect over the last two years or there is a further need for any modification.

6.13 **Mr. Ankit Kumar, Founder/Director, Care Needy Foundation** stated that cost of maternity benefit should be met out of any fund like CSR from the consolidated fund of India.

6.14 **Mrs. Debjani Roy, Advisor, Chief Human Resource** Mind Your Fleet highlighted the inhuman practices of start-ups. Their HR departments, before recruiting women, ask them about their plan to get married, child, etc. There is need for practical enforcement of the legislation.

7 Based on the aforesaid discussion, following major issues were framed for detailed discussion in the workshop:

7.1 Whether employment in India was low and women's employment in particular was lower, and it was falling further?

7.2 If women's employment was low and falling further, what were the possible causes?

7.3 Whether the entire financial burden (of 26 weeks of paid maternity leave) on the employers causing a negative impact on

women's employment, particularly the small industries and the start-ups?

7.4 Whether the enhanced maternity leave of 26 weeks, needed a review, and a possible rollback, in order to protect the situation of women in the labour Market?

7.5 What could be done to mitigate a possible negative effect on women's employment, of the increased financial burden of 26 weeks leave to be granted exclusively by the employer?

7.6 What should be the policy to promote women's employment, and to facilitate women's return to work post maternity?

7.7 Whether there is need for a better management of the network of crèches, in order to facilitate better infant care, which is an integral and crucial part of maternity care?

8 Conclusions

The conclusions drawn through the workshop were as follows:

8.1 As regards the 1st issue, relating to low employment in India, in general, and women's employment in particular, participants in the workshop cited figures of India's Labour Force Participation Rate (LFPR). According to NSSO's Periodic Labour Force Survey, LFPR in India was 49.8% during 2017-18. It was 63.1% in 2005. It means that less than half the working age population, aged 15 to 64 was either employed or looking for employment during 2017-18. This means that half the working age population was not even looking for employment, because there was little or no hope of getting a productive and reasonably well paid employment. This depicts a weak position in global labour market. LFPR for women in India fell from 36.7% in 2005 to 27% in 2017-18. LFPR, has been falling more rapidly in the case of women in India.

8.2 As regards the possible causes of low and falling employment rate in India, it might be related to rising educational enrolment of youth, low investment, inadequate vocational and technical training and low employment opportunities (ILO report, Sher Verik, 2014).

8.3 As regards the 3rd issue of financial burden of the enhanced maternity leave, exclusively on the employers, the estimated cost to the Company (CTC cost to the employer), as a percentage of wage, on account of various social security schemes in India, will be as follows:

GPF: 12%+0.5% EDLI+ 0.5% Admin charges

ESIC: 3.25%

Gratuity: 4.1% (15 days wages for each year of service)

Total: About 20% of the wage cost (male employees)

In the case of women, there is additional CTC for 26 week's paid leave, for an average of 2 maternities, which works out to 52 weeks' pay (1 year's pay), payable over a 5-10 year's usual phase of maternity. Thus about 10-20% of wage cost gets added to CTC, if employers hire women, to the usual 20% of wage, by way of financial burden on the employer on all other national social security schemes.

Total: about 30-40% of the wage cost (for female employees)

It was noted that, ILO Convention no 183 of 2000 (**Annexure-9**), relating to maternity protection, mentions that in order to protect the situation of women in the labour market, the benefit of 14 weeks of leave should be provided through compulsory social insurance, or public funds, or in a manner determined by national law or practice.

An employer shall not be individually liable to pay maternity benefits without that employer's specific agreement. The convention provides for 14 weeks leave, and says that the benefits should not be less than 2/3rds of the women's previous earnings.

Considering the existing practices pertaining to maternity protection in some other countries like in France (maternity leave for 14 weeks is paid to women, who must have contributed at least for 10 months) by public insurance funds, or it is shared with employees. Germany and Japan also provide for 14 weeks maternity leave. Some countries like the United States, under the Family Leaves Act 1993 (FMLA 1993) provide unpaid leave, in companies employing 50 or more employees, who should have worked for at least 12 months before the start of the leave.

European Union Convention number 92 of 1985 (EEC) provides for 14 weeks of maternity leave, to be paid by public health insurance funds. Most of these countries, thus, do not allow the financial burden of paid maternity leave to fall exclusively on the employer, in order to protect the situation of women in the labour market, as also advised by ILO Convention No 183 of 2000.

It was noted that Article 39 of the Constitution of India, has provision for public assistance during old age and sickness. Central Government contributes 1.6% of the wage of employees under the Employees Provident Fund Act 1952. From 1-4-2018, central Government has been contributing the entire 12% contribution of the employers, for 3 years, in order to facilitate new registrations under PM Rojgar Protsahan Yojana. The existing EPF beneficiaries are also covered under this scheme.

For correctly estimating the impact of the enhanced 26 weeks leave on women's employment, under the MB Amendment Act 2017, it is necessary to undertake a detailed survey by the Labour Bureau which may be further analysed by VVGNNLI.

- (i) As regards the 4th issue, regarding whether the enhanced maternity leave of 26 weeks needed a review or a possible roll back the workshop was of the view that the state is committed to maternity and infant care under Article 42 and 45 of the constitution. Maternity and infant cares are crucial social responsibilities of the society and the state.

Considering the fact that the phase of infant care extends till the child is 18 months old the period of 12 weeks of maternity leave envisaged under Maternity Benefit Act, 1961 was extended up to 26 weeks during 2017 after 56 long years. Keeping in view the development of the society during these 56 years and also the sense of shared responsibility, this is a crucial much needed social obligation.

More liberal provisions have been made, not only under the MB Amendment Act 2017, but under many other laws, including social security laws, like, for instance, under the Employees Provident Fund Act 1952.

The rate of contribution of GPF was only 1 (one) paisa per rupee of wage in 1952, which works out to only 1/16th, or 6.25% of the wage. It was enhanced to 12% with effect from 22.9.1997, after 45 years. Even after this enhancement, the legal and actual minimum payable pension under the EPF scheme remains only Rs. 1000 per month, guaranteed pension of Rs. 3000 per month is which being given to 100 million unorganized workers as social security through an executive order. Therefore, there is no need for rollback of the enhanced paid maternity leave of 26 weeks.

- (ii) As regards the fifth issue relating to what could be done to mitigate the possible effect

on women's employment of the whole financial burden of 26 week's leave falling exclusively on the employer, it was noted that there are a large number of social security schemes, welfare funds, cess funds, etc., with huge unspent balances available, which if consolidated, could meet a general social security scheme for the informal as well as the formal sector in the whole country. The social security schemes in operation under various names, include: Pradhan Mantri Matru Vandana Yojana (PMMVY), which provides Rs 4000/- to women for the first two live births. Janani Suraksha Yojana, which is an incentive to pregnant women.

Integrated Child Development Scheme (ICDS), which runs Aanganwadi centres, and has been providing nutrition to pregnant mothers and children below 6, for about five decades. In addition, there are a number of welfare funds, including Construction Worker's Welfare Fund, Cine Workers Welfare Fund, Working Journalists Welfare Fund, Bidi Workers Welfare Fund, Factory Workers Welfare Fund, Informal Sector Welfare Fund, Mathadi Workers Welfare Fund, and so many other funds, operated by the Central and the State Governments. Supreme Court has observed that very large funds are lying unutilized. Funds accumulated in these schemes may be about lakhs of crores of rupees. These funds could be utilized for funding a comprehensive social security scheme, in accordance with the law, and not executive orders. It could be a contributory scheme to provide recurring funds for the employed, and the unemployed could be funded by the state. The scheme could be launched in stages, first for the contributors.

A view was expressed that Employees State Insurance Corporation Act provides all the benefits of the MB Act. ESIC could be extended to all establishments employing 10 or more in order to include all establishments covered under the MB Act.

ESIC could be suitably strengthened to enable it to expand its clusters where it is providing services at present. The burden of maternity leave will then not fall exclusively on the employer. It is the easiest way to implement the MB Amendment Act 2017, in consultation with the ESIC,

without imposing the full financial burden exclusively on the employers.

9 Way Forward

Based on all the discussions held in the workshop a way forward suggested by the Shri Surendra Nath (Chairperson) and Dr. Shashi Bala, Workshop Director which could be implemented in stages & based on actuarial feasibility is mentioned below:

- 9.1 Employer's expenditure, in the case of large employers, could count towards CSR funds under the Companies Act.
- 9.2 ESIC could be strengthened suitably to cover all establishments, employing 10 or more employees in order to cover fully the establishments to which the MB Amendment Act 2017 is applicable.
- 9.3 In course of time, and as early as possible, all social welfare funds and welfare cess schemes, various welfare boards, etc. could be consolidated into a comprehensive social security scheme for every citizen of India, linked to the National Citizenship Register (NRC). The scheme should first cover those who contribute.
- 9.4 In the meantime incentives could be provided to employers based on the proportion of women in their workforce. These incentives could be in the form of Govt. grant, or tax relief.
- 9.5 As regards the sixth issue relating to promoting women's employment, and in particular the need for a policy to facilitate the return of women to work, after maternity, it is felt that the phase of maternity begins with pregnancy, continues with prenatal care and extends to postnatal care, and at least 18 months of infant care. This phase of about two years is long enough to create conditions of obsolescence in this fast changing age of technology. It can be easily handled by retraining and updating, in order to facilitate the return of women to work after maternity and infant care.

Employers are in the best position to arrange for this update and retraining; and it is here that the society needs employer's help more than in footing the bill, exclusively, of the 26 week paid leave for which we have globally accepted alternatives in the form of contributory

insurance or public assistance. Incentive should be given to employers in the form of Government grants or tax relief.

It was observed that the provisions in the Equal Remuneration Act (ER Act), requires employers to promote employment opportunities for women. However, ER Act stopped short of providing incentives to employers for facilitating women's employment.

Incentives in the form of Government grant or tax relief to employers were necessary to promote women's employment. The society can afford these incentives, and will be happy to do so. The part time work, adjustment with family responsibilities through home-based work, flexible working hours and working conditions, fixed-term work, etc. should be used in conjunction to make the maximum adjustment with family responsibilities of women, generally, in particular during their phase of maternity and infant care. Adjustment with family responsibilities at the place of work, should be made, without being detriment to work, to the extent possible, as a policy, in accordance with ILO's Convention No. 156 of 1981 (**Annexure-10**), which is a basic human right at the place of work. An advocate who was a distinguished panelist in the workshop, referred to her general experience that the increased stress on women during maternity and infant care, and the obsolescence at work due to mother's long absence from work, and often the uneven distribution of increased family responsibilities in many families, cumulatively contribute to conditions of familial conflict, and at times divorce. These are avoidable with public assistance to the crucial function of maternity and infant care.

- 9.6 As regards the 7th issue relating to better management of crèches in order to provide better infant care, participants in the workshop, from cities like Mumbai, felt that many women, in some places, travel long distances to reach their work places. They often find it difficult to take along the infant say, in a metro ride. They would prefer a neighbourhood crèche, rather than a crèche at the work place, if they have a choice.

It was felt that an integrated web portal of all crèches, like Rajiv Gandhi crèche scheme, etc. could be managed in coordination between the Labour Ministry and the Department of Women & Child Development. If necessary, an NGO could be selected through a transparent

process for being entrusted with this important role on a no profit no loss basis.

Shri Surendra Nath, Chairperson, concluded the workshop with Sir Adam Smith words 'the withdrawal of women from homes and hearths' should be a prime objective of national policy, as observed by Sir Adam Smith in his celebrated work, 'The Wealth of Nations'. Necessary adjustments and incentives would be well worth it, keeping in view the significant advantages to economic development, which will accrue, paving the way for women's effective participation in work.

(Note:-ILO Convention-003 and Convention-103 has been enclosed at Annexure 11 and 12 respectively)

10. Advocate Tanu Bhardwaj, Research Associate proposed the vote of thanks for the meaningful participation & discussion by the distinguished Chairperson, panelists and participants' on behalf of the Director General VVG NLI Noida and the Director of the Workshop. She hopefully wished for continuing further journey in the same strength with the same unassailable HIGH JOSH.
11. Research Advisory Group members of the Centre for Gender & Labour Studies (VVG NLI) suggested the following:-
 - (i) To develop mechanism to ensure that the Government contributions on Maternity Benefits are reaching the target groups.
 - (ii) Considering the diversity of work in our country, crèche facility model operational in MGNREGA schemes may be replicated in the other organizations as well.
 - (iii) Child care economy needs to be reworked and women engaged in ICDS may be provided workers status and engaged in this process.
 - (iv) Status of unused fund under the head of Maternity Benefit may be looked into.
 - (v) Coverage of Maternity Benefit Act for the home-based workers may be examined.
 - (vi) Financial liability of maternity leave with full wages, exclusively on employer may be shared by other stakeholders as well and national fund may be created jointly both by the Centre & State Governments.



Annexure 1

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List of Participants
22nd November 2019

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Annexure 2

Workshop on
**“Impact on Employment of the Maternity Benefit (Amendment Act),
 2017: Identifying the Affirmative Initiative & Challenges
 in the Implementation of the Act”**

Workshop Schedule
 22nd November, 2019

09:30 a.m. to 10:00 a.m	Registration of the Participants & Feedback on Maternity Benefit (Amendment Act), 2017
10.00 a.m to 10:30 a.m	Tea
10.30 a.m to 10:35 a.m	Welcome Remarks Dr. Shashi Bala
10:35 a.m to 10 :45 a.m	Participant’s Introduction
10:45 a.m to 11:00 a.m	Introductory Remarks Dr. H. Srinivas Director General, VVG NLI
11:00 a.m to 11:10 a.m	Group Photo
11:10 a.m to 11:30 a.m	Opening Remarks Mr. Rajan Verma (CLC), Central
11:30 a.m to 1:00 p.m	Paper Presentation:- Ms. Ujjaini Sengupta, Mr. Prashant Rakesh Chauhan Discussion by the Panelist Chairperson - Shri Surendra Nath IAS (Retd.) Panelist: Prof. Nuzhat Praveen Khan, Ms. Aya Matsuura, Ms.Nupur Parsad
1:00 p.m to 2: 00 p.m	Lunch
2:00 p.m to 3.00 p.m	Session Continue
3. 00 p.m to 3.20 p.m	Way forward Shri Surendra Nath IAS (Retd.)
3.20 p.m to 3.30 p.m	Vote of thanks Advocate Tanu Bhardwaj (Research Associate)
3.30 p.m to 4.00 p.m	Tea break

Workshop on Impact on employment of the Maternity Benefit Amendment Act, 2017: Identifying the Affirmative Initiative & Challenges in the Implementation of the Act Concept note

22nd November, 2019

Workshop Director: Dr. Shashi Bala

Introduction

- 1.1. To become a mother is the most natural phenomena in the life of a woman. They should be honored and treated with dignity at the places where they work to earn their livelihood.

The maternity is a social function and is a positive contribution of a woman to perpetuate a race. Every living being during her pregnancy is a protective species and the functions of reproduction need certain safeguards.

- 1.2. Article 11 (2) of the 'UN Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) has laid down special provisions relating to maternity and child-care which read as under:-

- 11(2) In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

- 1.3. Various International Conventions have also been adopted recognising the rights of women during pregnancy etc. viz:

- (a) Maternity protection convention, 2000 (convention no.183)
- (b) Elimination of all form of discrimination against women (CEDAW) 1976

Constitutional provisions relating to maternity

- 2.1. Article 42 which has been incorporated as one of the 'Directive Principles of State Policy' laid down in Articles 36 to 51 (PART IV) of the Constitution of India had the provisions relating to maternity, which reads as under:-

"42. Protection of just and humane conditions of work and maternity relief. - The State shall make provisions for securing just and humane conditions of work and for maternity relief.

- 2.2. To comply the aforesaid directive principle, the Parliament of India enacted the Maternity Benefit Act, 1961 (MBA). Its preamble reads as under:-

"An Act to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefit and certain other benefits"

- 2.3 Important definitions:

Sec. 3 (b) Child: Includes a still born child.

Sec 3(j) Miscarriage: MTP up to 26 weeks which is not an offence under IPC.

Sec 3(ba) "Commissioning Mother (inserted w.e.f. 01.04.17). - means a biological mother who uses her egg to create an embryo implanted in any other woman.

Salient features of the Act:

- 3.1 The M B Act, 1961 (MB) is a noteworthy step towards gender empowerment. The major salient features of the Act are as under:-

- (a) **Applicability of the Act:** The woman employed in establishments, who are covered under the Employees State

Insurance Act, 1948 are not covered by the MB Act. Since the threshold limit under the ESI Act, 1948 is Rs. 21000/- pm, a woman employee drawing wages above this limit will get benefits under the MB Act.

(b) Like all Indian Labour Laws, the MB Act has no universal application. There are two types of coverage under the Act:-

- (i) Without any limit of persons/employees: Factories, plantation, Government establishments and circus.
- (ii) Where ten persons (not woman) are employed or were employed during preceding twelve months: Shops, establishments

The provisions of the Act have been extended to 'Bedi & Cigar Workers'. State Governments can extend the provisions of the Act to any establishment with the approval of Central Government (Sec. 2(1) (b).

(c) Woman: There is no definition of employee in the Act because maternity is confined to women only. Hence the term 'women' has been defined u/s 2(o) as under:-

"Woman" means a woman employed, whether directly or through any agency, for wages in any establishment".

Thus the definition of woman is very wide. It does not state that the woman should be married. She may be single, live-in-relation, un-married, married or divorcee of any age. Further, there is no restriction of any age, salary or designation or nature of duties. She can be a casual, muster roll or contract labour (employed through any agency). In other words, the principal employer is also liable to pay maternity benefit to a woman employee employed through a contractor. The fixed term woman employee will also be covered under the Act.

Appropriate **Government**: U/s 3(a), the Central Government is the appropriate Government for mines and circus only. All other cases including Railways or defence establishments etc. fall within the jurisdiction of State Governments.

4. Responsibility of employer/principal employer:

Sec. 4 Prohibition of employment during certain period (delivery, miscarriage, MTP):

U/Sec.4 (1) an employer knowingly cannot employ a woman during the six weeks immediately following (after) the day of her delivery or her miscarriage or MTP. U/s 4(2) no woman shall work during said period. Sec 4(3) If a request is made by a pregnant woman, during the period of four weeks **before the pregnancy**, she cannot be asked to:-

- work 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 fetus, or
- Is likely to cause miscarriage or otherwise adversely affecting her health.

Sec.5. Right (entitlements of woman) to payment of maternity benefits.-

Sec. 5(1).Payment of maternity benefit @ average daily wage of preceding three months or Minimum Wages or **ten rupees (per day)**, whichever is the highest

Sec. 5(2) Eligibility Minimum period of service: 80 days actual working during last 12 months preceding the expected date of delivery (EDD). Includes period of lay-off and paid holidays

Sec 5(3) (i). Maximum period of maternity leave (amended w.e.f. 01.04.2017). : 26 weeks (Max. 8 weeks before EDD). In case of two or more than two surviving children.12 weeks leaves. Max. 6 weeks before EDD)

Provision clause to Sec. 5(3)

- If woman dies during maternity leave, the benefits is to be paid to nominee mentioned in notice given u/s 6; if no nominee, to the legal heir.
- If she dies during or after delivery (but child survives): entitlement for entire period of 26 weeks.
- If child also dies: up to and including the date of death.

Sec. 6.Entitled woman may give notice to employer in writing in prescribed form giving details of her absence/ leaves etc. If no notice is given, woman to give it immediately after delivery.

Sec. 8 Medical bonus of Rs. 3500/- w.e.f. 19.12.2011 (if no pre-natal and post-natal free care is provided).

Sec. 9 Leaves for miscarriage or MTP. Six weeks w.e.f. date of miscarriage/ MTP.

Sec. 9A Leaves for tubectomy operation.- Two weeks immediately following date of operation

Sec. 10. Leaves for illness arising out of pregnancy, delivery, premature birth of child, miscarriage, and MTP or tubectomy operation. Additional one month leaves.

Sec. 11. Nursing breaks: Two in addition to rest interval. As per Rule 6 of Maternity Benefit (Mines & Circus) Rules, 1963 the duration of nursing break is 15 minutes.

The MBA is a self-contained Code. U/s. 17, an Inspector of his own motion or on receipt of a complaint, has the powers to direct payment of any admissible benefit. Any aggrieved party can challenge it before the authority within 30 days of the communication of order.

Stringent penal provisions: Failure to pay maternity benefit or discharge or dismissal during maternity leave is punishable with minimum three months and max one year imprisonment; and with fine from Rs. 2000/- to 5000/-. Court may grant lesser sentence or fine after recording reasons for the same.

5. New provisions w.e.f. 01 April 2017

Sec. Sec. 5(4) – w.e.f. 01.04.2017. A woman who **legally adopts** a child of less than 3 months or a **commissioning (biological)** mother is entitled

to 12 weeks maternity leave w.e.f. the date the child is handed over to them.

Working from home. Sec. 5(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 agree

CRÈCHE, Sec.11A. (1) every estb. Having 50 or more employees shall have the facility of crèche, independently or along with common facilities. Maximum four visits (including rest break) permitted to visit to crèche to a woman (not employee).

Sec. 11A(2). Every estb. Shall intimate in writing and electronically to every woman—the benefits of Act at the time of her initial appointment.

5. Gist of leading judgments on the subject {Discrimination in wages, remuneration and other conditions of employment) is placed at **Annexure-1** of this Concept Note.
6. Status of Maternity Leave Benefits of SAARC NATIONS & BRICS NATIONS and the Participation of the female in labour force.

Country	Length of maternity leave	%Wage paid in covered period	Provider of benefit	Labour force participation rate, female (%)in (2018)\$
SAARC Countries				
Afghanistan	90 days	100	Employer	49
Bangladesh	16 weeks	100	Employer	36
India*	26 weeks	100	Employer	24
Nepal	52 days	100	Employer	82
Pakistan	12 weeks	100	Employer	24
Sri Lanka**	12 weeks	86, 100	Employer	35
Maldives	60 days	100	Employer	42
BRICs Nations	Length of Maternity leave	%Wage paid in covered period	Provider of benefit	Labour force participation rate, female (%)in (2018)\$
Brazil	120 days	100	Social Insurance	54
Russian Federation***	140 days	100	Social Insurance Fund	55
India*	26 weeks	100	Employer	24
China	90 days	100	Social Insurance	61
Other than SAARC & BRICs Countries	Length of Maternity leave	%Wage paid in covered period	Provider of benefit	Labour force participation rate, female (%) in (2018)\$
Argentina****	90 days	100	Family allowance funds (financed through state and employer contributions)	49

Country	Length of maternity leave	%Wage paid in covered period	Provider of benefit	Labour force participation rate, female (%)in (2018)\$
Australia	18 weeks	...	Social assistance system financed by the state	60
Canada*****	17 weeks	55	Federal and State. Employment Insurance	61
France	16 weeks	100	Social Security and health insurance funds	50
Germany	14 weeks	100	Statutory health Insurance scheme, employer	55
Japan @	14 weeks	30	1/8 National Treasury, 7/8 Employment Insurance Fund	51
Mexico	12 weeks	100	Social security	44
South Africa@@	4 months	60	Unemployment Insurance Fund	49
United Kingdom#	52 weeks	90	Employer (92% refunded by public funds)	57

Sources

- <http://agoffice.gov.mv/pdf/sublawe/Employment.pdf>
- http://mospi.nic.in/sites/default/files/reports_and_publication/statistical_publication/social_statistics/WM17Chapter7.pdf
- \$ <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS?locations=AF>
* Recent Maternity Benefit (Amendment) Act, 2017
** 12 Weeks according to Maternity Benefits (Amendment) Act, No. 15 of 2018 .86% of wages for workers paid at a time-rate/ piece-rate and 100% to employees covered by Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) Act, No. 14 of 2018.
*** Up to ceiling and Additional birth grant is paid in lump sum.
****In addition, a means-tested birth grant is paid in lump sum.
***** Duration of maternity leave depends on the province. For Federal and Ontario, maternity leave is 17 weeks, while in Quebec, it Federal and State. Related to family income and tax benefits and up to ceiling
@ A further re-engagement benefit of 10% on return to work.
@@ Maximum amount of 60% depending on level of income of the contributor for a maximum of 17.32 weeks.
consisting of 26 weeks of ordinary maternity leave and 26 weeks of additional maternity leave.

Way Ahead:

- 7.1. The MB Act was merged along with fourteen other Acts (Total 15 central labour Acts) in The draft Code on Social Security, **The Code was last uploaded on 17th September, 2019** on the Web-site of the Ministry of Labour and Employment and consultation process with employers' organisations and unions is under process. Chapter IV Clauses 61 to 73 (pages 44 to 46) of the Draft Code deals with the 'Maternity Benefits'. **(Copy at Annexure-2 of this Concept Note).**
- 7.2 For drafting any future policy, the feedback in the form of data is required, which may be collected either after proper surveys or on the basis of analysis of inspection reports as recently conducted by VVG NLI where in major needs is felt on the enforcement of the Act by the appropriate Governments.
8. **To identify the challenges, constraint in the implementation and the impact on employment and Recruitment of the women of the MB Amendment Act, VVG NLI is organizing this workshop with the main stakeholders.**
9. **Target Groups: Academicians, Research Scholars, Trade Union Representatives, Employers, Government Administrators, Lawyers, etc. Working on these issues are requested to send their nominations for paper presentation and abstract of the paper by 10th November, 2019 to:**
Contact Person: Dr. Shashi Bala, Fellow, VVG NLI
Email: balashashi.vvgnli@gov.in , shashibala2002@gmail.com
Contact Number: 0120-2411776

Annexure-1 to the concept note

Gist of leading judgment on MB Act

Supreme Court: **Municipal Corporation of Delhi Vs Female Workers and anr. (2000) 3 SCC 224**

"27. The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, especially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the fetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily wage basis."

33..... Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period.

Kerala High Court. P. Geetha, Geetam Pratheeksha Nagar Vs The Kerala Livestock Development Board Ltd., WP(C).No. 20680 of 2014 (H). DOJ 06 Jan 2015.

Facts. A Dy. General Manager, childless for over 20 years, had undergone surrogate procedure. A baby was born on 18.06.2014 through a host mother. She was denied maternity leave as per Staff Rules.

She filed writ petition contented that child of a few days could not be left to the care of others.

Motherhood does not end with delivery of a baby, but continues, with more vigour, through the process of child rearing, which is an equally difficult task.

Arguments: Motherhood is an integral and inherent part of womanhood and with advanced reproduction techniques, one cannot cling on to the traditional meaning of maternity. All the international covenants and the domestic declarations go to establish that there ought not be any discrimination based on the method of maternity, or in other words, merely on the ground that the mother did not actually bear the child in her womb.

The Universal Declaration of Human Rights, 1948 declares that motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. Article 3 of the Convention on the Rights of child, thereof mandates that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration. The nations are required to take all appropriate legislative and administrative measures.

High Court held: Maternity consists of pre and post natal. Admittedly, the woman had not undergone any pre-natal phase, which was undergone by the surrogate mother. From day one, after the delivery, the woman is required to be treated as the mother with a newborn baby. Thus, without discriminating, it can be held that the petitioner was entitled to all the benefits that accrue to an employee after the delivery, as have been provided under the Act or the Staff Rules. ... Admittedly, the woman did not physically bear the child; as such, she cannot insist on having any leaves for convalescing and regaining her health.

"74. Thus, to conclude, this Court declares that there ought not to be any discrimination of a woman as far as the maternity benefits are concerned only on the ground that she has obtained the baby through surrogacy. It is further made clear that, keeping in view the dichotomy of maternity or motherhood, the petitioner is entitled to all the benefits an employee could have on post-delivery, sans the leaves involving the health of the mother after the delivery."

Supreme Court. Rattan Lal and others Vs State of Haryana and others; 1985 (3) SLR 548.

“3. We strongly deprecate the policy of the State Government under which ‘ad hoc’ teachers are denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These ‘ad hoc’ teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leaves shall also be granted such leaves in accordance with the rules.”

HP High Court. State of HP Vs Sudesh Kumari, 2015 Lab IC 1717 (HP). Discrimination between regular and adhoc staff while granting maternity benefit.

Facts: Regular female employees were entitled to 135 days of maternity leave but adhoc were entitled to 12 weeks/84 days.

High Court held that the under Article 14 of the Constitution, State cannot discriminate between an adhoc/contractual and regular female employee and grant different period of maternity leave to them. In law, there is no difference between a female regular employee and a contractual/ad hoc employee because she is female for all intents and purposes; and she has a matrimonial home, matrimonial life, and after conception, she has to undergo same maternity period, treatment, pains and other difficulties like a regular employee.

Annexure-3(ii)

The Maternity Benefit Act, 1961

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Major ILO Conventions relating to gender equity in the world of work.

1. The Equal Remuneration Convention, 1951 (No. 100). Adopted in the General Conference of the ILO in its 34th Session on 29th June 1951. After ratification by India, it was registered with the ILO on 25th September 1958
2. The Discrimination (Employment and Occupation) Convention, 1958 (C-111). Adopted in the General Conference of the ILO in its 42nd Session on 25th June 1958. After ratification by India, it was registered with the ILO on 03rd June 1960.
3. The Workers with Family Responsibilities Convention, 1981 (C-156).
4. The Maternity Protection Convention, 1919 (C-003)
5. The Maternity Protection Convention, 1952 (C-103)
6. The Maternity Protection Convention (Revised), 2000 (No. C-183).

Following Conventions not yet ratified by India.

The Workers with Family Responsibilities Convention, 1981 (C-156). Not yet ratified by India.

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity
2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

For the purposes of this Convention, the terms "dependent child" and "other member of the immediate family who clearly needs care or support" mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.

4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as "workers with family responsibilities"

{Efforts should be made to facilitate the return of women to work, after they are free from their reproductive (child-bearing and child rearing) responsibilities, even though they have entered their middle age. The skill and knowledge they acquired should be used for nation building}.

The provisions akin to C-156 were inserted by recent amendment in the Sec. 5(5) of the Maternity Benefit Act, 1961 (w.e.f. 01.04.2017), i.e.

Sec. 5(5) MB Act. 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 employer and the woman.

Some thirty-seven years back, a three Judge Bench of Hon'ble Supreme Court, in 'Air India Vs Nergesh Meerza & Ors. Etc. {1982 SCR (1) 438}, had the occasion to discuss similar issue and held as under:-

".... Whether the woman after bearing children would continue in service or would find it difficult to look after the children is her personal matter and a problem which affects the AH (Air Hostess) concerned and the Corporation has nothing to do with the same. ..."

Case-law relating to women seeking appointment in police, para-military forces during pregnancy.

In the judgments, the Maternity Benefit Act, 1961 is referred but a woman becomes entitled to maternity benefit only after she gets an employment.

Govt. of India Instructions on the subject.

Whether a woman can enjoy both the rights, i.e. her reproductive rights; and also the right to appointment?

Appointment of women during pregnancy.

Rajasthan High Court: Laxmi Devi Vs State of Rajasthan and ors. 2017 Lab IC 3188 (Raj-DB)

Brief facts: Two writ petitions were referred by the Single Judge on 20 Feb 2017 to the Division Bench for examining correctness of two conflicting judgments of two Single Judges. The term of reference was as under:-

“Whether a delay of two years in the physical efficiency test following the written examination during which a woman candidate became pregnant would entitle to seek postponement of the date of her physical efficiency examination or such date cannot be postponed to the detriment and rejection of the woman candidate.”

The State relied upon the judgment of Rajasthan High Court in case of Suwa Panwar Vs. State of Rajasthan & Ors (decided on 23.08.2011) wherein it was observed that maternity may be a human right of a woman but if the candidate who has qualified the written test and knew that she has to undergo physical test, then she should have scheduled her programmes and other activities (pregnancy) as per the events of selection. Such an important event of selection cannot be made as per convenience of candidates.

Ruling by the Division Bench

The Division Bench held that pregnancy cannot be treated as a bar for appointment to the said posts under the relevant Rules. Further any discriminatory treatment to a pregnant woman would fall foul of Art. 42 of the Constitution which requires the State to make provision for securing just and humane conditions of work and for maternity relief. Any action denying maternity benefit has to be examined on the anvil of Art. 42. The pregnancy is not a disability but is one of the natural consequences of marriage and any distinction made on the ground of pregnancy is arbitrary and violative of Art.14 of the Constitution. The High Court further held as under:-

“16. To become a mother is the most natural phenomenon in the life of a woman. An employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a woman would face at the advanced stage of her pregnancy to perform her duties while carrying a baby in the womb or while rearing up the child after birth and this has been taken note of by the Parliament in its wisdom while enacting the Maternity Benefit Act, 1961. The object behind Act is to provide all the facilities to a woman in a dignified manner so

that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimized for forced absence during the pre-or post-natal period.”

State or any authority cannot curtail the personal freedom of a woman to choose between having a child; or appointment/employment. She has both the rights, i.e. her reproductive rights; and also the right to appointment /employment.

Any order /standing order which lays down that pregnant women candidates cannot be granted extended time for appearing in physical test etc. cannot be legally sustained.

The pregnant women candidates certainly deserve relaxation of reasonable period and an opportunity to qualify the Physical Standard Test etc., as a woman has both the rights, i.e. her reproductive rights; and right to employment.

R. Devika Vs Chairman, Uniformed Recruitment Board, Chennai & Ors, 2019 Lab IC 789 (Mad)

Brief Facts: Petitioner (Candidate) applied for the post of Grade II Police Constable / Jail Warden in the State of Tamil Nadu. As per norms, she had to undergo physical efficiency test and had to complete 100 meters running event in 17:50 seconds but she took 18:10 seconds. She took 0:30 (half second) extra. Her request for relaxation on the ground that she was eight weeks’ pregnant on the day of physical efficiency test was not accepted.

The High Court observed as under:

“Once it is observed & held that maternity is a human right of a woman and so longer the married woman is not disqualified from participating in the selection process and is not an impediment and after having qualified the written test, at the stage when she has to undergo the Physical Standard Test/Physical Efficiency Test became pregnant with advanced stage and the pregnancy being not a disability but one of the natural consequence of marriage, the woman candidate deserves indulgence of qualifying the physical standards after affording a reasonable time in attaining fitness which the authority may consider to be appropriate keeping in view the provisions of the Maternity Benefit Act, 1961.

“20. The pregnancy and the child birth should not be considered as the impediment for discharge of duty. The concessions given to pregnant women shall not be construed as a concession towards personal comfort of the women. The child birth should be considered as a contribution to continuity of generations, without which the existence of the world is impossible.”

Directions given to the State to appoint an eight weeks’ pregnant women who took 0:30 (half second) extra for completing 100 meters race.

Madras High Court: R. Devika Vs Chairman, Uniformed Recruitment Board, Chennai & Ors, 2019 Lab IC 789 (Mad)

Provisions relating to initial appointment of pregnant women in offices under Govt. of India, as published at page 166 of Swamy's Complete Manual on Establishment and Administration.

"Employment of women candidates in state of Pregnancy"

- For appointment against posts carrying hazardous nature of duties- Where a pregnant woman candidate is to be appointed against a post carrying hazardous nature of duties, e.g., in Police Organisations, etc., and she has to complete a period of training as a condition of service and who as a result of tests is found to be pregnant of twelve weeks standing or over shall be declared temporarily unfit and her appointment held in abeyance until the confinement is over.

She should be re-examined for a fitness certificate six weeks after the date of confinement, subject to the production of medical certificate of fitness from a registered medical practitioner. The vacancy against which the woman candidate was selected should be 'kept reserved for her. If she is found fit, she may be appointed to the post kept reserved for her and allowed the benefit of seniority in accordance with para 4 of Annexure to MHA OM No. 9/11/55-R.S, dated the 22nd December, 1959.

- (b) For appointment against posts which do not prescribe any elaborate training- It shall no longer be necessary to declare a woman candidate 'compulsorily unfit' if she is found to be pregnant during medical examination before appointment against posts which do not prescribe any elaborate training, i.e., She can be appointed straightway on the job."

Constitutional Provisions relating to maternity

Article 42. Provision for just and humane conditions of work and maternity relief.- The State shall, make provisions for securing just and humane conditions of work and for maternity relief.

The Maternity Benefit Act, 1961

Sec. 2 (a) It applies to every establishment being a factory, mine, plantation, Govt. establishments, estbs for exhibition of acrobatics, equestrian (pertaining to horses, horse riding), acrobatics and other performances (circus) - no condition of persons employed

2(b). To a shop or establishment, where 10 persons are employed or were employed during preceding 12 months.

Educational institutions, beedi & cigar workers included.

Not applicable to factory or other establishment Covered by ESI Act, 1948.

State Government (with approval of Central Govt.), after giving not less than two months' notice, may apply Act to any other establishment or class of establishments, industrial, commercial, agricultural, etc.

Important definitions:

3(a) Appropriate Govt: Central Govt. for Mines, establishment where persons are employed for exhibition of equestrian, acrobatics and other performances (circus)-

Others - State Govt.

3(b) Child: Includes a still born child.

2(j) Miscarriage: MTP up to 26 weeks which is not an offence under IPC.

2(o) "Women" means a woman employed, whether directly or through any agency, for wages in any establishment.

(Covers all: Daily wagger, contract labour, muster roll)

3(ba) "Commissioning Mother - means a biological mother who uses her egg to create an embryo implanted in any other woman (w.e.f. 01.04.17).

Sec. 4. Prohibition of employment during certain period (delivery, miscarriage, MTP):

U/Sec. 4(1) an employer knowingly cannot employ a woman during the six weeks immediately following (after) the day of her delivery or her miscarriage or MTP.

U/s 4(2) no woman shall work during said period.

4(3) If a request is made by a pregnant woman, during the period of four weeks before the pregnancy, she cannot be asked to:-

- undertake work 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 miscarriage or otherwise adversely affecting her health.

Sec. 5. Right (entitlements of woman) to payment of maternity benefits.-

Sec. 5 (1). Payment of maternity benefit @ average daily wage of preceding three months or Minimum Wages or ten rupees (per day), whichever is the highest

Sec. 5 (2) Eligibility. Minimum period of service: 80 days actual working during last 12 months

preceding the expected date of delivery (EDD). Includes period of lay-off and paid holidays

Sec 5 (3) (i). Maximum period of maternity leave (amended w.e.f. 01.04.2017). : 26 weeks (Max. 8 weeks before EDD).

In case of two or more than two surviving children. 12 weeks leaves. Max. 6 weeks before EDD)

Provision clause to Sec. 5(3). If woman dies during maternity leave, the benefits is to be paid to nominee mentioned in notice given u/s 6; if no nominee, to the legal heir.

If she dies during or after delivery (but child survives): entitlement for entire period of 26 weeks.

If child also dies: up to and including the date of death.

W.e.f. 01 .04.2017.

New provisions w.e.f. 01.04.2017.

Sec. 5(4) A women who legally adopts a child of less than 3 months Or A commissioning (biological) mother is entitled to 12 weeks maternity leave w.e.f. the date the child is handed over to them.

New provision w.e.f. 01 July 2017

Working from home. Sec. 5(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 agree.

Sec.11A. (1) Every estb. having 50 or more employees shall have the facility of crèche, independently or along with common facilities. Maximum four visits (including rest break) permitted to visit to crèche to a woman (not employee).

Sec. 11A (2). Every estb. shall intimate in writing & electronically to every woman – the benefits of Act at the time of her initial appointment.

Sec. 6. Entitled woman may give notice to employer in writing in prescribed form giving details of her absence/ leaves etc. If no notice is given, woman to give it immediately after delivery.

Sec.8. Medical bonus of Rs. 3500/- wef 19.12.2011 (if no pre-natal and post-natal free care is provided).

Sec. 9. Leaves for miscarriage or MTP. Six weeks w.e.f. date of miscarriage/ MTP.

Sec. 9A. Leaves for tubectomy operation. - Two weeks immediately following date of operation

Sec.10. Leaves for illness arising out of pregnancy, delivery, premature birth of child, miscarriage, MTP or tubectomy operation. Additional one month leave.

Sec. 11. Nursing breaks. - Two breaks, in addition to rest-interval, till the child attains age of fifteen months. As per Rule 6 of Maternity Benefit (Mines & Circus) Rules, 1963 – duration is 15 minutes.

New Sec. 11A. w.e.f. 01.04.2017 (1) Every estb. Having 50 or more employees shall have the facility of crèche, independently or along with common facilities.

Employer to allow four visits to crèche including interval for rest

Sec. 11A (2). Every estb. shall intimate in writing and electronically to every woman – the benefits of Act at the time of her initial appointment.

Sec. 13. No deduction of wages because of: - only if-

- (a) light work u/s 4(3) i.e. No pregnant woman shall do work of an arduous nature or which involves long hours of standing, or (b) breaks for nursing u/s section 11.

Sec. 12. Dismissal during absence/leaves of pregnancy.-

- a. No discharge or dismissal;
- b. Not even notice of discharge or dismissal;
- c. Not to vary conditions of her service to her disadvantage.

Discharge permitted if complete maternity benefits are paid.

(2). **Permitted for prescribed gross misconduct;** employer by written order, deprive her of maternity benefit/ medical bonus, if

- a. Wilful destruction of employer's goods and property
- b. Assaulting a superior or co-employee at place of work
- c. Theft, frauds or dishonesty w.r.t. Employer's business
- d. Wilful non-observance/interference with safety measures

Women may appeal within 60 days from the date on such order.

Sec.14. Appointment of Inspectors. - By the appropriate Government.

Sec.15. Powers and duties of Inspectors.-*An Inspector may, subject to such restrictions or conditions as may be prescribed,*

- (a) Enter at all reasonable times with such assistants (being persons in service of Govt. or any local or public authority)
- (b) Examine any person employed in the establishment---- no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself;
- (c) require 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/records/notices.

Sec. 17. Power of Inspector to direct payments to be made.-

- (1) Any woman, may make a complaint to the Inspector: -
 - (a) If maternity benefit etc. u/s 7 has been improperly withheld;
 - (b) If discharged or dismissed against provisions of Act.
- (2) Inspector may enquire, and if satisfied, direct payment and pass just and proper order in case of discharge, etc.
- (3) Any aggrieved person may file appeal to the prescribed authority within 30 days from date of communication of order
- (4) The decision of the prescribed authority shall be final.
- (5) Amount to be recovered as arrear of land revenue

Case law: Availability of this remedy i.e. appeal to prescribed authority will not bar the aggrieved person to file a suit against the decision of Inspector in any court of competent jurisdiction;

Thomas Eapen Vs Assistant Labour Officer, 1993 LLR 800 (Ker).

Sec. 18. Forfeiture of maternity benefit.-If woman works in any other establishment during the period of maternity leave

Sec. 19. Abstract of Act and rules thereunder to be exhibited

Sec. 20. Registers.- Employer to maintain prescribed records

Sec. 21. Penalty. Failure to pay maternity benefit amount or illegal discharges or dismisses : Imprisonment minimum three months and maximum one year; and with fine minimum 2000/- and maximum Rs. 5000/-.

Court may, for sufficient reasons to be recorded, impose a lesser sentence or fine only in lieu of imprisonment.

- (2) For other contraventions (if no other penalty is provided) up to one year, and / or with fine upto five thousand rupees.

Sect. 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 any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter 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 benefits 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."*

Bombay High Court. Archana Nanabhau Dahifale Vs State of Maharashtra & anr, 2019 Lab IC 449 (Bom-DB).

Contractual women employees are entitled to Maternity benefit

"23. In the light of these salutary provisions, the respondents cannot be heard to contend that the condition

No.10 in the agreement would override the beneficial and benevolent provisions of the said Act, The stand of the respondent that the petitioner is disentitled to the said benefits in view of the agreement regarding the terms and conditions of her service is unsustainable in the teeth of the Section 27 of the said Act. The petitioner therefore cannot be deprived of the beneficial provisions of the said Act or any other rules which may entitle her to benefits which are more favourable than those contained in the agreement."

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Arguments: Motherhood is an integral and inherent part of womanhood and with advanced reproduction techniques, one cannot cling on to the traditional meaning of maternity. All the international covenants and the domestic declarations go to establish that there ought not be any discrimination based on the method of maternity, or in other words, merely on the ground that the mother did not actually bear the child in her womb.

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Arguments: The Universal Declaration of Human Rights, 1948 declares that motherhood and childhood are entitled to special care and assistance. **All children, whether born in or out of wedlock, shall enjoy the same social protection.** Article 3 of the Convention on the Rights of child, thereof mandates that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration. The nations are required to take all appropriate legislative and administrative measures.

High Court held: Maternity consists of pre and post natal. Admittedly, the woman had not undergone any pre-natal phase, which was undergone by the surrogate mother. From day one, after the delivery, the woman is required to be treated as the mother with a newborn baby. Thus, without discriminating, it can be held that the petitioner was entitled to all the benefits that accrue to an employee after the delivery, as have been provided under the Act or the Staff Rules. ... Admittedly, the woman did not physically bear the child; as such, she cannot insist on having any leaves for convalescing and regaining her health (No pre-natal).

Order of High Court.

"74. Thus, to conclude, this Court declares that there ought not to be any discrimination of a woman as far as the maternity benefits are concerned **only on the ground that she has obtained the baby through surrogacy.** It is further made clear that, keeping in view the dichotomy of maternity or motherhood, the petitioner is entitled to all the benefits an employee could have on post-delivery, sans the leaves involving the health of the mother after the delivery."

Supreme Court. Rattan Lal and others Vs State of Haryana and others reported in 1985 (3) SLR 548.

Regular Vs adhoc Teachers:

"3. We strongly deprecate the policy of the State Government under which 'ad hoc' teachers are denied the salary and allowances for the

period of the summer vacation by resorting to the fictional breaks of the type referred to above. These 'ad hoc' teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. **Those who are entitled to maternity or medical leaves shall also be granted such leaves in accordance with the rules.**"

Supreme Court: Municipal Corporation of Delhi v. Female Workers and anr. (2000) 3 SCC 224

"27. The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, especially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the fetus. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily wage basis.

33..... Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period

HP High Court. State of HP Vs Sudesh Kumari, 2015 Lab IC 1717 (HP). Discrimination between regular and adhoc staff.

Facts: Regular female employees were entitled to 135 days of maternity leave but adhoc were entitled to 12 weeks/84 days.

High Court held that the under Article 14 of the Constitution, State cannot discriminate between an adhoc/contractual and regular female employee and grant different period of maternity leave to them. In law, there is no difference between a female regular employee and a contractual / ad hoc employee because she is female for all intents and purposes; and she has a matrimonial home, matrimonial life, and after conception, she has to undergo same maternity period, treatment, pains and other difficulties like a regular employee.

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

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Introduction

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.

The 2017 Amendment Act

The Maternity Benefit (Amendment) Act, 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 million women in the organized sector, as well as increasing strength of the working women 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.

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

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 child.

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.

Adoption/ Commissioning mother:

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.

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, apart from the interval for rest allowed to her.

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.

Comparison of Amendments to the Act

SECTIONS	OLD	NEW
SECTION 5(3)	Maximum period of leaves -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)	Leaves for mischarge of medical termination of pregnancy - 6 weeks Female undergo tubectomy operation -2 week	No change
Section 10	Additional 12 week leaves in case of illness arise due to pregnancy	No change

Section 11	After leaves 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

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.
- Paid leaves: 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.

NEW PROVISIONS ADDED

- 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.
- Section 5(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.

Objective of the Study

The objective of this study was to analyse 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.

Research Methodology

Stage -I

- 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 study is also supplemented by data from secondary sources.

Research Methodology

Stage - II

- 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.

Research Methodology

Stage - III (a)

- Considering the 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.

Stage - III (b)

- For Stakeholders direct interviews were conducted.

Field Area

Four states were identified for this study, which are

- Haryana
- Maharashtra
- Telangana
- Karnataka

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.

Timeline

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

Limitations

- 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 a time consuming task.
- 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.
- 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 initiated by us we will be looking at this aspect in detail.

IMPORTANT FINDINGS EMPLOYER'S PERSPECTIVE - I

Table 1: Employer's Perspective - Awareness about the Maternity Benefit Act (Principal) 1961

S. No.	Response	MBA(P)1961	MBA(A)2017
1.	Yes	75.0	58.3
2.	No	25.0	41.7
	Total	100.0	100.0

Data of table 1 reflects that approximately 75% of employers are aware about the Maternity Benefit Act (Principal) 1961 and only 58 % employers are aware about its amendment.

Table 2: Employers providing crèche facilities

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

Data of table 2 shows that 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.

Table 3: 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 3 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.

Table 4: Period of Paternity leaves

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 reflects that most of the employers are providing paternity leaves for less than 10 days. In this patriarchal mindset is reflected. As no clear guidelines for availing paternity leaves 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 leaves until child starts 2nd Grade. In Sweden the father gets 90 days leaves with objective of bonding between child and father.

Table 5: 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.	Not Aware	50.0
	Total	100.0

Table 5 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

Table 6: 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 6 shows that 75% of employers said that the persons work is distributed amongst the existing team members.

IMPORTANT FINDINGS EMPLOYEE'S PERSPECTIVE - II

RESPONDENTS

Table no. (7): Duration of maternity leave availed by woman

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 7 shows that only 25% of female respondents availed 12-16 weeks, it is too early to comment on this, as 26 weeks leaves is applicable only after 2017. Yet there are women who have not even availed 12 weeks leaves and 17% availed more than 26 weeks. This all depends on duration of employment.

Table 8: Nature of assignment post maternity leave.

Return to the same assignment / nature of work

S. No.	Response	Female 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 number 8 illustrate that 18.8% of the respondents reported that they are shifted to entirely different task which in future hinders their growth in the organisation. Nature of paid maternity leave.

Table 9.1: 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 9.1, approximately only half of the female respondents have availed paid leaves and 10.9% respondent did not availed paid leave.

Table 9.2: Paid paternity leaves 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 9.2 shows that males are also availing paid paternity leaves.

Crèche facility at workplace

Table 10: Availed crèche facility provided by the employer

S. No.	Response	Female 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 (10) 84 % women did not avail this facility.

Table 11: Facility to 'work from home'

S. No.	Response	Female 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 flexible work hour provision as shown in table no. (11).

This is important for women with small children.

Table 12: Availed crèche facility provided by the employer

S. No.	Response	Response Percentage	
		Female	Male
1.	Yes	7.8	18.8
2.	No	84.4	81.3
3.	Not Aware	7.8	0.0
	Total	100.0	100.0

Table 12 data shows that men are also availing crèche facility.

IMPORTANT FINDINGS STAKEHOLDER'S VIEW - III

Attitude of employer towards maternity leave and benefits

Table 13.1: NGO/Trade Union/Advocate View

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

Attitude of the employer towards maternity leave and benefit

Table 13.2: Labour Administrators View

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

Majority of the Stakeholders have noticed that employers are supportive towards maternity leave and its benefits. 40% of the Labour officials reported that employers are not supportive due to financial constraints.

Incidence about termination of women employee on account of her pregnancy

Table 14.1: 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

Incidence about termination of women employee on account of her pregnancy

Table 14.2: Labour Administrators 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 the 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.

MAJOR FINDINGS OF THE STUDY

- 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 these benefits.
- The concept of paternity leaves however does not seem to have met with encouragement with fathers being providing with only 7-10 days paternity leaves 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 leaves; although across the world the concept of shared childcare and therefore leaves for both parents is being given importance.

- Employers were in agreement that the Government should share financial responsibility with them with respect to such costs borne.
- 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.
- 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.
- Approximately 75% of employers are aware about the Maternity Benefit Act (Principal) 1961, but only 58 % employers are aware about its amendment.
- However, comprehensive knowledge of the Act's benefits is lacking. Awareness of positive new facts of the legislation including leaves for adoptive and surrogate mothers, etc. does not seem to have been disseminated among all 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.
- Employees were also not aware of the redressal mechanism available to them under the law and this is distressing.
- 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.
- However, it was distressing 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 lacuna in the application of the law needs to be addressed.

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.
 - Increasing 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, leaves 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.

KEY OUTCOMES

- 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.

Need for development of radio commercials and TV commercials about the key features of the amended law on maternity.

- Discussions with relevant ministries for tax breaks or incentives can be made available to employers who are employing returning mothers in flexible work arrangements and employers that have more than 35% women employees and are complaint with the law.
- Fast tracking of notification and scheme of decision of Government to pay 50 per cent of the salary of 14 weeks to women on maternity leave.
- Urgent need for rules and notifications for crèches for proximity, facilities and timings.
- Provision of at least 4 weeks paternity leaves to be considered at the policy level by the ministry.
- 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.
- Legal study on 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.
- Ministry of Labour and Employment to come up with online portal to deal with grievance of women employees on implementation of MBA like She Box initiative of the Ministry of Women and Child Development.

- Convergence efforts with Ministry of Women & Child Development and National Commission for Women to percolate measures down to the stakeholders.
- A more detailed sector wise research study on the amended law and its implementation.
- 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.

LATEST UPDATE

Government plan to reimburse seven weeks of an employees' salary to the employer.

Key Conditions

- Women employee should be in Rs 15k salary bracket
- Enrolled with EPFO for a year

(Policy to be test-piloted in Delhi and Maharashtra)

Why is it needed?

Employers fear female staff may not join post maternity leave.

Instances of retrenchment of female staff claiming maternity benefits have been reported.

Employers doing so to reduce cost

REFERENCES

Books:

- Arbuthnot, J. C.(1904), *Report on the Conditions of Tea Garden Labour in the Dooars of Bengal, in Madras and in Ceylon*, Shillong: Assam Government Press,
- Barker, George(1884) *A Tea Planter's Life in Assam*, Bengal Secretariat Press: Calcutta,
- Bhowmik, S (1981) *Class Formation in the Plantation System*, People's Publishing House: New Delhi.
- Chatopadhyaya, H.(1979). *Indians in Sri Lanka*, O.L.S. Publishers Pvt. Ltd.: Calcutta.
- Cotton, Henry.(1911)*Indian and Home Memories*, Fisher Unwin Press: London,
- Craton, Michael. (1978)*Searching the Invisible Man: Slaves and Plantation Lift in Jamaica*, Harvard University Press: Cambridge.
- Das, Amal Kumar, and H. N. Banerjee.(1964) *The Impact of the Tea Industry on the Lift of Tribals*

- of West Bengal, Tribal Welfare Department, Government of West Bengal, Calcutta,.
- *Enquiry into the Cost and Standard of Living by Plantation Workers in Assam and Bengal*, Government of India, Ministry of Labour, Published by Manager of Publications, New Delhi, 1948.
 - Elizabeth Kaniampady,(2003)*State of women working in the Tea Plantations*, Sterling Publications: New Delhi.
 - Jain, R.K (1970) *South Indians on the Plantation Frontier in Malaya*, Yale University Press: New Hagen.
 - Jam, Shobhi Jam, Shobhita.(1988)*Sexual Equality: Workers in an Asian Plantation System*, Sterling Publications: New Delhi.
 - Jayewardene, Chandra (1963). *Conflict and Solidarity in a Guyanese Plantation*, Althone Press: London.
 - Iar Ali Khan.(1983)*Impact of Tea Plantation Industries on the Life of Tribal Labourers*, Anthropological Survey' of India, Government of India, New Delhi,.
 - Karotem S.Prel and B. Datta Ray (1990)*Labour Welfare in Tea Plantations: An Assessment of the Plantation Labour Act in the Tea Garden Labour in North Eastern India*,Vendrame Institute, Shillong,.
 - Khan, I. A., and D. Biswas.(1990)*Problems and Prospects of Darjeeling Tea Industry*, The International Press: New Delhi.
 - Kurian, Rachel. *Women Workers in the Sri Lankan Plantation Sector: Historical and Contemporary Analyses*, International Labour Office, Geneva, 1982.
 - Ramsden, A. R.(1945)*Assam Planter: Tea Planting and Hunting in the Assam Jungle*, Althone Press: London.
 - Rajani Kanta Das (1931), *Plantation Labour in India*, Prabasi Press: Calcutta.
 - Recldock, Rhoda, and JairShobhita,(1998) *Women Plantation Workers: International Experiences*, New York University Press: New York,.
 - Sarkar, R.L and Mahendra L. Lama (1986), *Tea Plantation Workers in the Eastern Himalayas - A Study on wages, Employment and Living Standards*, Atma Ram & Sons: New Delhi,.
 - Sharma, K.R (1997). *Industrial Labour in India*, Atlantic Publishers and Distributors: New Delhi.
 - Purnedu Kumar (2006), *State and Society in North- East India- A Study of Immigrant Tea Plantation*, Regency Publications: New Delhi,
 - Pranabkumar das gupta& far Ali khan (1983), *Impact of tea Plantation Industry on the Life of Tribal Labourers*, Anthropological Survey of India, Government of India: Calcutta.
 - *Report of the Assam Labour Enquiry Committee - 1906*, Office of the Superintendent of Government Printing Press, Calcutta, 1906.
 - *Report on the Survey of Labour Conditions in Tea Plantations and Tea Factories in India, 1961-1962*, Shimla: Ministry of Labour, 1966.
 - Das Gupta, Manas.(1992)*Labour and Trade Union Movements in Tea Plantations of Terai: Problems of Class Formation*, North Bengal University: Bagdogra,.
 - Das Gupta, Manas.(1991)*On the Problems of Development of North Bengal: A Background Report*, Department of Economics, North Bengal University:Bagdogra.
 - Das, R. K.(1931)*Plantation Labour in India*, Prabasi Press: Calcutta,.
 - Dasgupta, Pranab Kumar.(1984)*Maintenance of Ethnic Boundaries in the Tea Gardens of North Bengal and Assam*, North Bengal University: Bagdogra.
 - Lal, Brij.(1985)*Kunti's Cry: Indentured Women on Fiji Plantations* Indian Economic and Social History Review, Northeastern Press: Boston.
 - Moliapatra, Prabhu Prasad. *Class Conflict and Agrarian Regimes in Chotanagpur, 1860-1950."* *The Indian Economic and Social History Review* 2.8, no. I (1991): 1-42.
 - Nalini, R.(2011)*Social Work and the Work Place*, Concept Publishing Company Pvt. Ltd: New Delhi.
 - OddvarHollup. *Bonded Labour: Caste and Cultural Identity among Tamil Plantation Workers in Sri Lanka*, Sterling Publishers Pvt. Ltd: New Delhi.
 - Raman, Vasantili.(1991)*Child Labour in the Tea Plantations of North Eastern India*, UNICEF and Ministry of Labour and Social Welfare, New Delhi,.
 - Rajan, S & Prabhat Kumar (1996), *Historical overview of International Migration*, Rawat Publications, New Delhi.
 - Teraj (West Bengal, 1984).Alipore: Superintendent of Government Printing, 1952.

- Purcell, A. A., and J. Hallsworth. *Report on Labor Conditions in India. British Trade Union Congress Delegation to India, November 1927-March 1928*, Trade Union Congress General Council, London, 1928.
- UmanandaPhukan(1983), *The Ex-tea Garden Labouur Population in Assam*, N.L Publishers: Gauhati.

Journals:

- Adas, Michael. "From Foot dragging to Flight: The Evasive History of Peasant Avoidance Protest in South and South East Asia." *Journal of Peasant Studies* 13,110. 2 (January 1982): 64-86.
- "A Workers' Cooperative in Tea" *Assam Review and Tea News* 78, I.L.O. 9 (November 1989): 21-28.
- Aggarwal, Ravina. "Shadow Work: Women in the Workplace in Ladakh, India," *Anthropology of Work Review* 16, Nos. 1-2 (1991): 33-38.
- Chatterjee, Suranjan, and II. Dasgupta. "Tea Labour in Assam: Recruitment and Government Policy." *Economic and Political Weekly* (special number, 1981): 1861-1868.
- Bandarage, Asoka. "The Establishment and Consolidation of the Plantation Economy in Sri Lanka." *Bulletin of Concerned Asian Scholars* 14, no. (1982):2-22.
- Barbora, Sanjay. "Struggles in the Tea Plantations of Assam: Then and Now", *Revolutionary Democracy* 5, no.1 (April 1999): 41-46.
- Beckford, George. "Caribbean Peasantry in the Confines of the Plantation Mode of Production." *International Social Science journal* 37, no. 3 (1985):401-419-
- Bhowmik, Sharit. "Plantation Labour Act and Child Labour", *Economic and Political Weekly* (October 17, 1992): 2287-2289.
- Chatterjee, D. N. *Family Welfare Education Project: Study of Savings on Account*

of an Averted Birth. Binnaguri, Doar Branch of Indian Tea Association, Bengal Secretariat Press Calcutta, 1960

Websites:

- Koneru. A (2017), "The maternity Benefit (Amendment) Act, 2017 a big and positive step towards improvement in securing the employment rights of women", [Online: web] Accessed 2 December 2019, URL: <http://www.legalserviceindia.com/legal/article-176-the-maternity-benefit-amendment-act-2017-a-big-and-positive-step-towards-improvement-in-securing-the-employment>.
- Co Achieve (2017), "The maternity Benefit (Amendment) Act, 2017- A detailed review on the amendment", [Online: web] Accessed 4 December 2019, URL: http://coachieveindia.com/regdocs/uploads/The%20Maternity%20Benefit%20Act%202017_A%20Reveiw%20Note.pdf.
- Pathak. M (2017), "Analysis of certain aspects of the Maternity Benefit (Amendment) Act 2016", [Online: Web] Accessed 5 December 2019, URL: <https://corporate.cyrilamarchandblogs.com/2017/06/analysis-certain-aspects-maternity-benefit-amendment-act-2016>.
- G.K today (2017), "The maternity Benefit (Amendment) Act, 2017: Significant Provisions and Issues", [Online: web] Accessed 9 December 2019, URL: <https://www.gktoday.in/academy/article/maternity-benefit-amendment-act-2017-significant-provisions-and-issues/>.
- Sharma.Y (2018), "Maternity Leave: employers may get financial support", [Online: Web] Accessed 18 December 2019, URL: <https://economictimes.indiatimes.com/news/economy/policy/maternity-leave-employers-may-get-financial-support/articleshow/66626313.cms>.

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India's Bold Maternity Benefit Act Can Become a Game Changer if it Addresses Current Limitations

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This article explores India's Maternity Benefit (Amendment) Act, 2017. It frames it within the discourse on women's work in totality, including unpaid care work and the gendered division of labour. It recognises the act's potential to alleviate new categories of working mothers' unpaid care pressures, protects their employment and enhance their access to resources. It argues for paradigm shifts away from retrofitting existing gender relationships and towards recognising, reducing and redistributing women's unpaid carework.

The landmark Maternity Benefit (Amendment) Act, 2017, (henceforth, the amendment) became effective from April 2017. [1] It makes New Age amendments to the Maternity Benefit Act, 1961 that protects women's employment, and women's and children's well-being during maternity, with paid absence and related benefits. [2] Like its original, the amendment covers establishments employing 10 or more persons [3] and women working for at least 80 days in the 12 months immediately preceding the expected delivery date. The law penalises non-compliance, including the taking of legitimate maternity leave (Government of India 1961).

The amendment extends paid maternity leave for women employees with less than two surviving children, from the original 12 weeks to 26 weeks. A maximum of eight weeks can be taken before the expected delivery date and the remaining after childbirth Section 5A. (3i)]. Women expecting their third child have 12 weeks of paid maternity

leave—six weeks before childbirth and six after. Section 5A. (3ii)]. Mothers adopting a child below three months of age, or “commissioning mothers” [4] have 12 weeks of maternity leave from the date of receiving the child Section 5B. (4)]. The act enables working from home after completing 26 weeks of leave contingent on work profiles and the employer's endorsement. Section 5B. (5)]. It mandates a crèche for establishments employing 50 or more employees within such distance as may be prescribed either separately or along with common facilities. Women employees can visit the crèche four times a day, including during their rest interval Section 11A (1)]. Employers must inform women when initially appointed, in writing or electronically, about benefits available under the act Section 11A (2)] (Gazette of India 2017).

At a time of increasing education and economic growth, Indian women's participation in the organised labour force declined from 34.1% in 1999–2000 to 27.4% in 2015–16 (Verrick, 2017)—ranking 11th bottom up among 131 countries with available data (ILO 2013). There are also wide gender differences in participation rates. This contributes to women's multidimensional relative poverty, adversely impacting their families and communities, and pegs women's contribution to India's gross domestic product (GDP) at 17% compared to the global average of 37%. (McKinsey Global Institute 2015). A number of reasons are responsible for this, including the very definition of work, methodological concerns in its measurement and shifts from recognised to unpaid work that are not counted as work.

Many Indian women quit employment after marriage and childbirth. According to a study by the Associated Chambers of Commerce and Industry of India, 100 new mothers interviewed in 10 Indian cities exited employment post-childbirth (ASSOCHAM India 2015). This reflects a gendered division of labour, wherein motherhood—the dominant marker of femininity—returns women in paid public employment to full-time domesticity to fulfil their “primary” roles. These women either lack accessible, affordable, secure childcare assistance or family support, or have internalised dominant notions of womanhood and may be conflicted about public employment versus childcare priorities.

Challenges Faced

The act's extended and different categories of paid maternity leave, work from home options and crèche provisions, potentially reaching 1.8 million formal sector women workers, contribute to easing pressures of combining paid public work with unpaid care work, for which women bear the principal responsibility. This may increase the numbers of post maternity returnees and retention of women employees overtime, enhancing their right to decent work and access to material and non-material resources. Women's incomes and public-sphere learning have multiplier effects on development as they tend to invest these in families and communities, creating social and economic capital (World Bank 2014). Further, \$2.9 trillion additional annual GDP could be added in India in 2025 by fully bridging gender gaps in employment which is 60% higher than business-as-usual GDP in 2025 (McKinsey Global Institute 2015). Top quartile companies on executive-level gender diversity worldwide had a 21% and 27% likelihood of outperforming fourth quartile industry peers on profitability and longer value creation (McKinsey and Company 2018). In India, maternity leave funding is an investment in gender diversity mandated by many companies. Industry analysts suggest offsetting the high cost of post-maternity loss by spending at least 1% of this cost loss on support to returning women to work (Agarwal 2017). The amendment positively supports adoptive and commissioning mothers, enhancing its inclusivity, and codifies women's right to information on maternity entitlements.

Its challenges relate to coverage, inadequate provisions and guidelines which could undermine uptake, reinforcing discrimination in employment especially for poor women. It conflates maternity benefits with women as mothers, and is framed within the heteronormative paradigm, overlooking the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) community, and their motherhood or parenting. This reinforces conventional gender-based divisions of labour, identities and relations.

Contrary to the recommendations of the Sixth Pay Commission, 2008 and the Law Commission of India, 2015, the amendment excludes informal sector women workers, who constitute 93% of India's workforce. With poor childcare support, these women cope by leaving children alone at home, enlisting an older sibling's assistance and taking children with them to work. [5] This compromises the quality of care, health and security of young children. It negatively affects educational and employment opportunities of the caregiver, often a girl child, withdrawn from school to provide care, reinforcing the vicious cycle

of poverty and gender inequality. Children at the mother's worksite bereft of crèches can reduce time and effort that women may invest in paid work, diminishing productivity (Swaminathan 1985). It exposes children to multiple hazards such as toxic environments, extreme weather conditions, animal and insect bites, traffic or other accidents in fields, at construction sites, markets. In the case of women in the sex sector, it exposes children to sex too early in child debilitating environments. [6] These children tend to join the army of child labour as they grow, incrementally assuming tasks at these worksites (Swaminathan 1985).

It also does not define common facilities or have guidelines governing crèche accessibility, infrastructure design standards, child enrolment and retention ages, competence standards for personnel and care. Its crèche provisions overlook childcare in middle-class Indian families where working women may receive childcare support from extended families and/or domestic workers in the comfort of home (D'Cunha, forthcoming). It also overlooks the physical and monetary costs of transporting children to and from worksites, and does not provide for crèches in residential areas or subsidies for childcare support by domestic workers. This can negatively impact women's uptake.

A mid-November 2017 circular, issued by the Ministry of Labour and Employment, Government of India, directs state governments to introduce rules regulating crèches. This could result in time lags, missed opportunities to establish crèche, non-standardised rules and compromised quality, which undermine use. According to industry reports, employers are in interim drawing on crèche guidelines under the Factories Act, 1948 or the Kerala Shops and Commercial Establishments Act, 1960. They are adopting varied models such as in-house crèche facilities with self-run or outsourced administration, establishing separate off worksite crèches, partnerships with external crèches, or utilising surplus space of other employers with in-house crèches. Current usage is reportedly not that high, given the culture of childcare support by extended families or domestic workers at home (deRidder and Hutchings 2018). Finally, if crèche design and implementation guidelines do not include employees of all genders and socio-economic groupings, usage may be limited and discrimination reinforced.

The amendment may unintentionally cause replacement of women by male labour, reduction in women's wages and labour force participation. Employers have been made fully responsible for providing maternity benefits. This is feasible for large corporations but start-ups, and micro, small

and medium enterprises (MSMEs) that employ around 40% of India's workforce, grapple with operating costs. Maternity benefits would impose further cost pressures, risk of litigation, penalties for non-compliance and threatening viability. This could result in recruiting men instead or lowering productivity in women-oriented jobs. If reduced wages contribute negligibly or negatively to household incomes, women may exit employment, further reducing their labour force participation rates and increasing gender inequalities in employment (Khattari 2017). This could be averted by tax breaks and public-private partnerships in childcare support to these sectors and for poor communities, without transferring the cost burden to beneficiaries.

There are no post-return career management provisions for women, such as refresher trainings. Women risk placement in woman-focused arrangements "retrofitted to suit male environments." These include "a mommy track" of part-time work just for women, in which the hourly gender wage gap globally tends to be the most, between women working part-time and men working full-time or switches to less-demanding jobs that undermine women's upward mobility (Elson 2017).

Monitoring and Accountability

The amendment's provision of maternity benefits to women associates childcare solely with women, thus reinforcing a gendered division of labour. Unpaid care work involves household maintenance, person care in one's own household and volunteer services to others. This creates, nurtures, renews and replenishes the workforce. It is fundamental to economic and social functioning, and subsidises the economy and State. Unpaid care work is ideologically mystified as a "labour of love" or "innate to women" which needs no special skill. While child-bearing and breastfeeding are completely "women-centric" biological acts, care work, including childcare is a social act that all people can be socialised into providing. Invisible in the privacy of domesticity, unpaid care work is not defined as "work" and not counted in GDPs. The low-value underscoring it mediates the poor value of women's paid public work and discriminatory gender-based sectoral and occupational segmentation – vertical and horizontal. It is imperative that societies understand the socio-economic value of unpaid care work, include it in the System of National Accounts [7], and measure its contribution to GDP, as in the case of Mexico and the Philippines. Further, pressures of unpaid care work can be reduced through public investment in material and social infrastructure like clean energy, water, sanitation, healthcare services, such as decentralised

renewable energy solutions for women-enhancing access to energy and non-traditional jobs, mobile crèches provided by the voluntary sector in India for women informal sector workers. There is a need to go beyond recognising and reducing unpaid care work for women in ways that shed stereotypes, towards ensuring its redistribution between men, women and all genders, as this is central to gender equality and women's rights.

Redistribution requires reform in policy, institutional mandates, standard operating procedures, practice and cultures at scale; changes in communities and households, and pervasive transformation in individual thinking and practice. Ninety four of 170 countries in the International Labour Organization's (ILO) 2015 data base, provided paternity leave for fathers – up from 41 out of 141 in 1994 (ILO 2016). But, paid paternity leave has an average time frame of seven days versus 106 days for mothers (Elson 2017). A notification in the late 1990's under the All India Civil Services (Leave) Rules permitted biological and adoptive fathers in government service to 15 days paid paternity leave which may be merged with other leave. There is no legislation mandating compulsory paternity leave in private institutions. But the New Delhi High Court upheld paternity leave in private schools in *Chander Mohan Jain v N K Bagrodia*, 2009. It ruled that Jain, a private school teacher be returned his deducted salary, deeming his paternity leave. A 2017 Pro Eves Survey on maternity, childcare, parental support in India, demonstrated that 85% of 70 organisations across varied sectors granted paternity leave and supported new fathers in transitioning to parenthood (Agarwal 2017).

More countries are encouraging men to take parental leave. Tax-funded paid parental leave policies for fathers and mothers facilitate redistributing care work between men and women, shed gender stereotypes (OECD 2011), enhance equality in decision-making, mutual respect and appreciation between mothers and fathers (Holter et al 2009), enrich men's nurturing capacities and lived experience (D' Cunha forthcoming). They also reduce gender-based work inequalities. A 2010 Institute for Labour Market and Evaluation Policy showed that a mother's future earnings increase on average 7% for every month that the father takes parental leave (Bennhold 2010). It enhances women's mobility, access to material and non-material resources and agency (D' Cunha forthcoming).

Fathers' use of parental leave happens best when paid – at least half of previous earnings, as in Iceland, Japan, Norway, Portugal, and Sweden. Facilitating flexible leave options such as taking parental leave in one block, or flexibly, till the child

is three years old (as in Iceland) and prohibiting fathers from transferring their entitlement to mothers, also increase the proportion of men taking parental leave and amounts used (ILO 2016). In Iceland and Sweden, which have a “use it or lose it” policy for fathers, men’s uptake is much higher – at 90%, than in Denmark (24%) and Slovenia (6%), where such provisions are absent (Elson 2017).

Organisations should consider paid leave for various care responsibilities, advance scheduling for shift workers, flexible work arrangements, sick leave, subsidised quality childcare, adequate pensions, shorter working hours as appropriate, liveable wages, and work cultures that respect care work by all genders equally with professional achievements (Heilman 2017). Investing in gender diversity and realising that working parents constitute an increasing share of India’s workforce, companies are building an enabling ecosystem for sustainable careers for women and men. Procter & Gamble and Snap deal have launched campaigns like #share the load and #fathers can be mothers too. Sapient India has flexible working hours and work from home policies for men and women (Shrivastava 2018). Other employer practices include secured performance rating, workshops for new parents (Shrivastava 2018), and on-site crèches for men and women employees (D’ Cunha forthcoming).

Conclusions

Research and community outreach show shifts in thinking and practice on masculinities and femininities. A study of 9,205 men and 3,158 women aged 18 to 49 in seven north Indian states said that one in four men strongly believed that men and women are equal, and men should share housework. A multi-country study^[8] covering 8,000 men and 3,500 women across four regions suggests generational shifts in male thinking and practice, even in low-income countries, with men and women valuing men’s greater participation in childcare and men devoting increased time to unpaid care work in some contexts (ICRW and Institute Prom undo2011).

Against this backdrop, India’s bold Maternity Benefit (Amendment) Act, 2017 can surpass itself by addressing current limitations and redistributing unpaid care work between men, women and all people—a game changer for equitable gender relations.

End Notes:

- [1] Section 11A, Amendment Act, 2017 (crèche facilities) was effective from July 2017.
- [2] The maternity entitlement is based on the average daily wage for the period of actual absence. Key related benefits include medical bonus, leave for miscarriage and illness related

to pregnancy, childbirth, premature delivery and miscarriage.

- [3] These establishments include factories, mines, plantations, government establishments, shops and establishments under the relevant applicable laws, establishments employing persons for equestrian, acrobatic and other performances, or any other establishment notified by the central government.
- [4] The 2017 act defines a commissioning mother as a biological mother who uses her egg to create an embryo planted in any other woman.
- [5] Author’s discussions with domestic workers and women vegetable vendors in Mumbai between 1986 and 1996.
- [6] Author’s research work and discussions with women in the sex sector in India between 1986 and 1996.
- [7] The System of National Accounts (SNA) are international rules for GDP calculation. It distinguishes between “production” and “work” and non-productive activity, defining production as activity that someone else could, at least theoretically be paid to do. Factory or housework is production, whereas sleeping, etc., is not. The SNA further distinguishes between production for inclusion and exclusion in GDP calculations. It includes all production of goods in the calculation (the SNA “production boundary”), whether or not they are sold on the market. Regarding services, only those sold on the market are included. Housework in one’s own home, and unpaid people care are not included in GDP calculation, See Budlender, Debbie, *The Statistical Evidence of Care and Non-Care Work across Six Countries*, Geneva: UNRISD, 2008, Print, p3
- [8] Countries (2009–10) include Brazil, Chile, Croatia, India, Mexico, and Rwanda.

References:

- Agarwal, Divya (2017): “Managing the Maternity Benefit Amendment Act, 2017”, Pro Eves Survey, *People Matters*, # Diversity, 27 June, <https://www.peoplesmatters.in/article/diversity/managing-the-maternity-benefit-amendment-act-2017-15747>.
- ASSOCHAM India (2015): “25% New Momsgive Up Careerto Raise Kids: Survey, *Thought Leadership*, 9 May, <http:// ASSOCHAM.ORG/newsdetail.php?id=4953>.
- Bennhold, Katrin (2010): “Sweden’s Paid Paternity Leave,” *New York Times*, 15 June, <https://ibew1245.com/2010/06/16/swedens-paid-paternity-leave/>

- 'Cunha, Jean (forthcoming): "Letters to My Sons", *WheredidIgo?: Identity Challenges for High Achieving Professional Late Mothers*, Suzette Mitchell and Tania Principe (eds), Ontario: Demeter Press.
- deRidder, Craig A and Jeffrey D Hutchings (2018): "Indian Maternity Benefit (Amendment) Act, 2017," *Pillsbury Winthrop Shaw Pittman LLP*, 22 February, <https://www.lexology.com/library/detail.aspx?g=a44533ec90bf-4bbf-9c11-ab480bc39036>.
- Elson, Diane (2017): "Recognize, Reduce, Redistribute Unpaid Carework: How to close the Gender Gap," *New Labor Forum*, Murphy Institute, Cuny School of Professional Studies, March, <http://newlaborforum.cuny.edu/2017/03/03/recognize-reduce-redistribute-unpaid-care-work-how-to-close-the-gender-gap/>.
- Government of India (1961): "The Maternity Benefit Act, 1961," Act No 53 of 1961, 12 December, <http://www.ilo.org/dyn/travail/docs/678/maternitybenefitsact1961.pdf>.
- Heilmanetal (2017): "State of the World's Fathers: Time for Action," Promundo, Sonke Gender Justice, Save the Children, and Men Engage Alliance, Washington, DC, <http://www.sowf.men-care.org>.
- Holter, Oystein Gulliogetal (2009): "Gender Equality and Quality of Life: A Norwegian Perspective," Nordic Gender Institute (NIKK), Oslo, <http://www.nikk.no/filestore/Publikasjoner/GenderEqualityandQualityofLife2009.pdf>.
- ICRW and Institu to Promundo (2011): "Evolving Men Initial Results from The International Men and Gender Equality Survey (IMAGES)", <https://www.icrw.org/wp-content/uploads/2016/10/Evolving-Men-Initial-Results-from-the-International-Men-and-Gender-Equality-Survey-IMAGES-1.pdf>.
- ILO (2013): "India: Why is Women's Labour Force Participation Dropping", *ILO News*, International Labour Organization, 13 February, http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_204762/lang--en/index.htm. — (2016): "Women at Work: Trends 2016," Geneva: ILO, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_457317.pdf.
- Khattri, Swapnil (2017): "Maternity Benefits Amendment Act, Fraught with Risk of Adverse Unintended Consequences", *Indian National Interest*, 13 June, <https://nationalinterest.in/the-new-maternity-benefits-act-is-fraught-with-risk-of-unintended-consequences-27ae385fa6ab>.
- McKinsey Global Institute (2015): "The Power of Parity: Advancing Women's Equality in India", November, <https://www.mckinsey.com/~media/McKinsey/Global%20Themes/Employment%20and%20Growth/The%20power%20of%20parity%20Advancing%20womens%20equality%20in%20India/MGI%20India%20parity%20Full%20report%20November%202015.ashx>.
- McKinsey and Company (2018): "Delivering through Diversity", January, <https://www.mckinsey.com/~media/McKinsey/Business%20Functions/Organization/Our%20Insights/Delivering%20through%20diversity/Delivering-through-diversity-full-report.ashx>.
- Nanda, Priya et al (2013): "Masculinity, Son Preference & Intimate Partner Violence", a study by ICRW and UNFPA, November, <https://www.icrw.org/publications/masculinity-son-preference-intimate-partner-violence/>.
- OECD (2011): "Doing Better for Families," OECD Publishing, Organisation for Economic Co-operation and Development, <http://dx.doi.org/10.1787/9789264098732-en>.
- Shrivastava, Arunima Dr (2018): "Economic and Talent Implications of Maternity Benefits Amendment Act," *People Matters*, # Diversity, 9 March, <https://www.peoplesmatters.in/article/diversity/economic-and-talent-implications-of-maternity-benefits-amendment-act-17687>.
- Swaminathan, Mina (1985): "Who Cares? A Study of Child Care Facilities for Low-Income Working Women in India", Centre for Women's Development Studies, <http://www.cwds.ac.in/publications/reports/>.
- Gazette of India (2017): "The Maternity Benefit (Amendment) Act, 2017," No. 6 of 2017, 28 March, <http://www.livelaw.in/maternity-benefit-amendment-act-2016-act-comes-force-read-text/>.
- Verrick, Sher (2017): "The Paradox of Low Female Labor Force Participation", *Ideas for India*, 8 March, <http://www.ideasforindia.in/topics/social-identity/women-and-work-in-asia-insights-for-indias-low-female-labour-force-participation.html>.
- World Bank (2014): "Gender at Work: A Companion to the World Development Report on Jobs," http://www.worldbank.org/content/dam/Worldbank/Event/Gender/GenderAtWork_web2.pdf

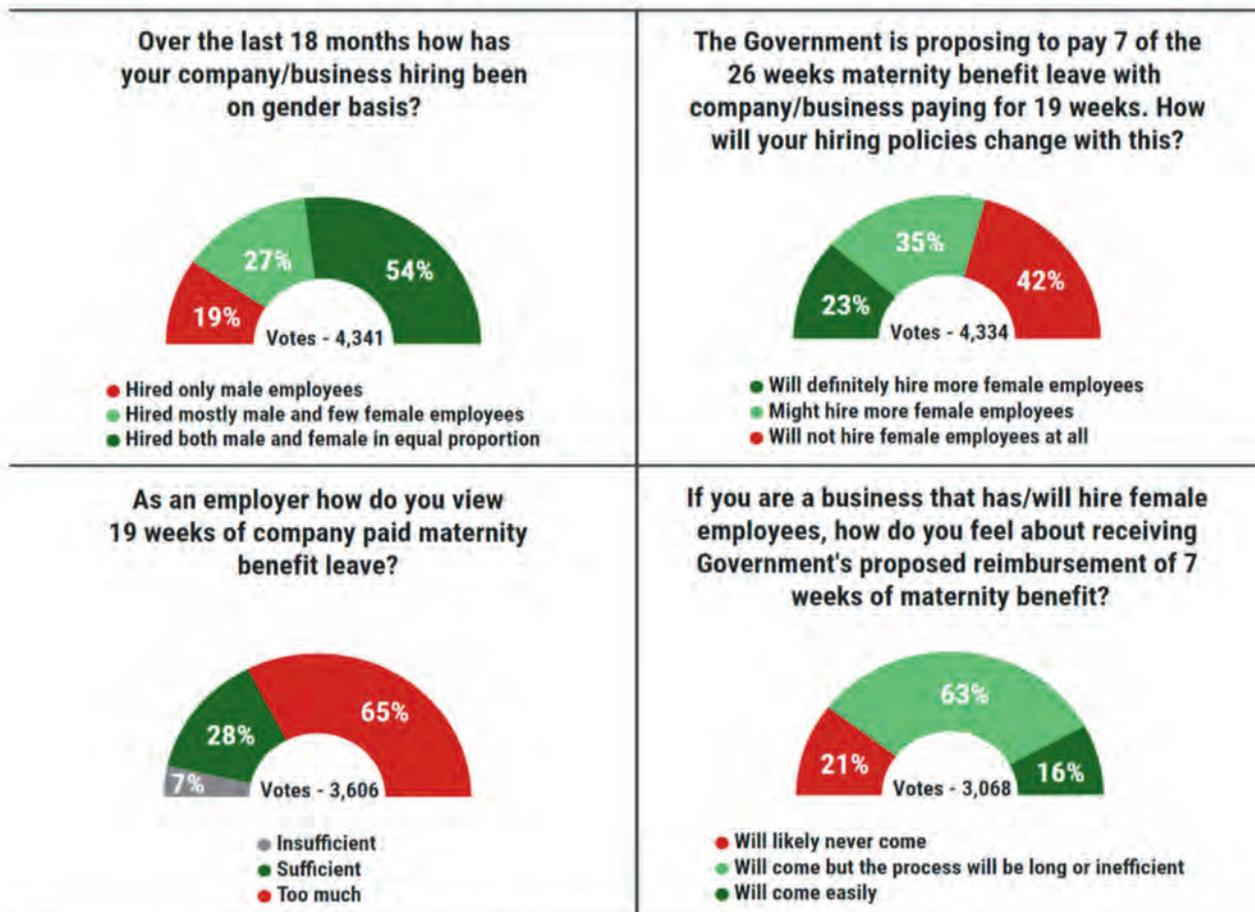
Maternity Benefit Act - Startups and SMEs wary of hiring female staff even after Govt. says it will pay 7 week's salary

6th December, 2018, New Delhi: The Government has recently announced that it will pay 50% of the salary of the 14 weeks of extended maternity benefit to women. The Maternity Benefit Act had increased the maternity leave for women in India from the earlier 12 weeks to 26 weeks. The news had spread a cheer among the females as they will be able to stay closer to their babies for a longer period of time, while it spread panic among SMEs and startups as

it would mean an extra financial burden on their already tight financial condition.

Local Circles conducted a large survey among SMEs, startups and entrepreneurs to get a pulse on what effect this change has brought to their usual working and hiring process. The survey received more than 15,000 votes from 8,000+ Startups and SMEs located all across India.

Maternity Benefit Act – Businesses wary of hiring female staff even after Govt says it will pay 7 week's salary



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The first question asked over the last 18 months how their company/business hiring has been on gender basis after the maternity law came in effect. 19% said they hired only male employees while 27% said they hired mostly male and few female

employees. 54% hired both male and females in equal proportion.

46% SMEs and Startups says they have mostly hired male employees in the last 18 months

Over the last 18 months how has your company/business hiring been on gender basis?



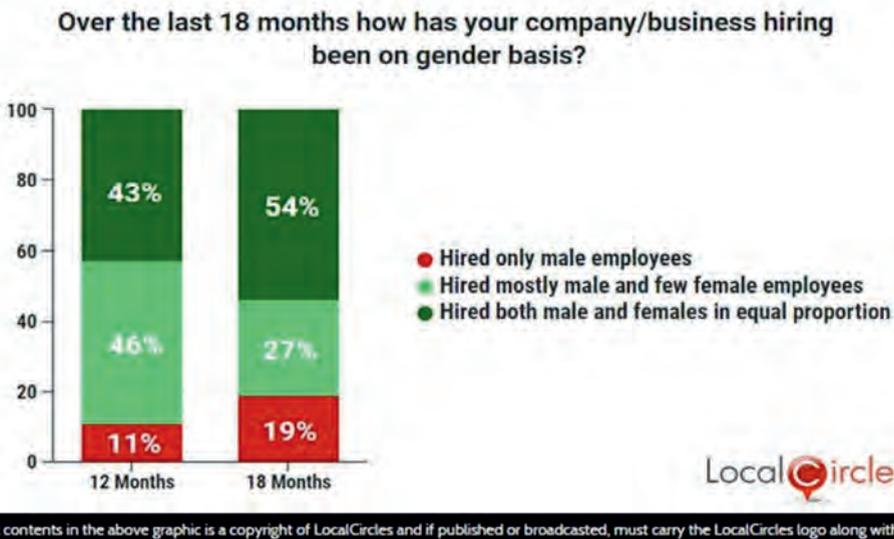
46% SMEs and Startups says they have mostly hired male employees in the last 18 months

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A Local Circles survey done last year had predicted that the Government ruling of extending maternity leave for women will have a negative impact on their hiring, especially by startups and SMEs as they will not be able to bear the extra financial stress.

After Maternity Act 2017, percentage of Startups and SMEs hiring "male employees only" gradually rises

After Maternity Act 2017, percentage of Startups and SMEs hiring "male employees only" gradually rises



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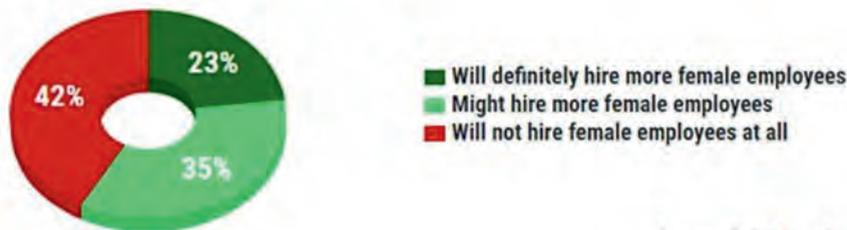
The comparison of the 12-month and 18-month poll shows that the companies who have hired only male employees, has risen from 11% to 19% in the last 6 months.

The Government is proposing to pay 7 of the 26 weeks maternity benefit leaves with the company/ business paying for the rest 19 weeks to reduce the burden for Startups and SMEs. The next question

asked startups and SMEs how their hiring policies will change with this. 23% said they will definitely hire more female employees and 35% said they 'might' hire more female employees. 42% said they will not hire female employees at all.

Even if Government pays 7 weeks of maternity benefit leaves, 42% Startups and SMEs say they still won't hire female employees

The Government is proposing to pay 7 of the 26 weeks maternity benefit leave with company/business paying for 19 weeks. How will your hiring policies change with this?



Votes - 4,334



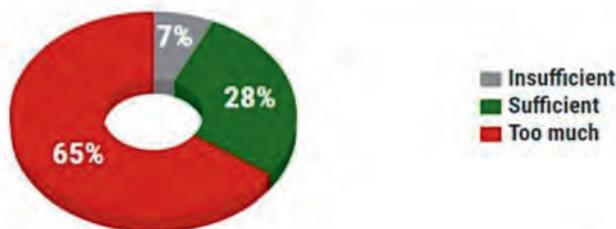
Even if Government pays 7 weeks of maternity benefit leave, 42% Startups and SMEs say they still won't hire female employees

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The Ministry of Women & Child Development had received many complaints saying that corporates were hesitating in hiring female employees after the extension of the leaves. This was followed by WCD minister Maneka Gandhi meeting the Labour Ministry and both jointly deciding towards reimbursement of maternity leave for 7 weeks.

Despite Government proposal to pay 7 weeks of maternity benefit leaves, 65% of Startups and SMEs still find 19 weeks of business paid leaves too much to cover

As an employer, how do you view 19 weeks of business paid maternity benefit leave?



Votes - 3,606



Despite Government proposal to pay 7 weeks of maternity benefit leave, 65% of Startups and SMEs still find 19 weeks of business paid leave too much to cover

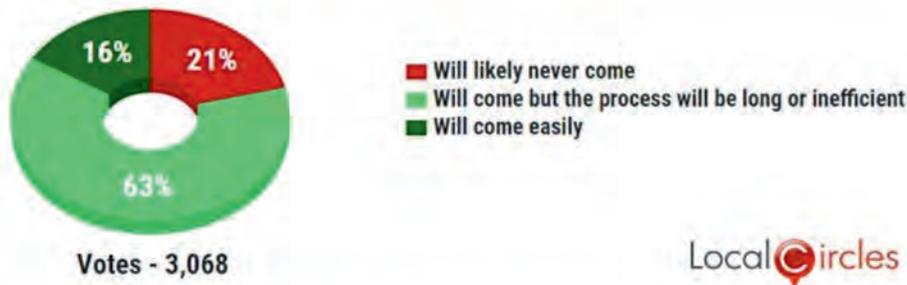
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The next poll asked the 8000+ startups and SMEs as an employer, how do they view the 19 weeks of business paid maternity benefit leaves. 65% said it is too much while 28% said it is sufficient. 7% felt it was insufficient.

Only 16% Startups and SMEs feels that the reimbursement of 7 weeks of Government proposed maternity leave benefits will be efficient and timely

The last question asked SMEs, startups and

If you are a business that has/will hire female employees, how do you feel about receiving Government's proposed reimbursement of 7 weeks of maternity benefit?



Only 16% Startups and SMEs feels that the reimbursement of 7 weeks of Government proposed maternity leave benefit will be efficient and timely

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entrepreneurs that if they have recently hired or are planning to hire female employees, how do they feel about receiving Government's proposed reimbursement of 7 weeks of maternity benefits. 63% said that the reimbursement will come but the process will be long or inefficient. 21% said reimbursement will never come while only 16% said it will come easily.

The scheme will be applicable for women who earn at least Rs. 15,000 a month. Although it is a forward-looking move by the Government, the business community fears that its implementation might take a while and foresee many hiccups in the reimbursement finally reflecting in their bank accounts. Till then we can just hope that this move will reduce the hiring bias from the corporate mindset.

In discussions on Local Circles in 2017, majority of the startups and SMEs seemed supportive of 2 months of paid maternity benefit leaves and unpaid leaves of up to 4 months. Local Circles will be submitting the findings of this report to the relevant Government stakeholders for their consideration.

Poll Demographics

The survey was conducted in the Startup/Doing Business circle on Local Circles and more than 35,000 startups and SMEs are a part of it. The survey received more than 15,000 votes from 8,000+ Startups and SMEs located all across India.

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- [Bias emerging among Indian SMEs and startups towards hiring male workers post Maternity Benefit Act](#)

- [61% Startups and SMEs want exemption from new maternity law](#)
- [Startups and SMEs say maternity bill will impact hiring of women](#)

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<https://www.localcircles.com/a/press/page/startups-wary-of-hiring-female-staff#.XgR2y64zbiU>

Statement Showing: MB Act									
Year 2017-18									
S. No	Regions	No. of Insp.	No. of workers		No. of irregularities		No. of pro-sections		Amount of the imposed by court (in Rs)
			Male	Female	detected	rectified	field	convictions	
12	Guwahati	2	1643	25	2	0	0	0	0
13	Hyderabad	1	4	0	3	0	0	0	0
14	Jabalpur	0	0	0	0	0	0	0	0
15	Kanpur	0	0	0	0	0	0	0	0
16	Kolkata	0	0	0	0	0	0	0	0
17	Mumbai	1	13	5	1	8	0	0	0
18	Nagpur	10	0	16	28	0	0	0	0
19	Patna	0	0	0	0	0	0	0	0
20	Raipur	0	0	0	0	0	0	0	0
	Total	295	25156	1775	209	119	3	4	15000
Year: 2019-20 (Apr-Oct)									
1	Ahmadabad	6	105	87	11	2	1	0	0
2	Ajmer	182	1926	206	44	5	0	0	0
3	Asansol	1	612	19	1	16	1	0	0
4	Bangalore	0	0	0	0	0	0	0	0
5	Bhubaneswar	13	5214	691	22	2	0	0	0
6	Chandigarh	0	0	0	0	0	0	0	0
7	Chennai	4	80	43	22	0	0	0	0
8	Cochin	0	0	0	0	0	0	0	0
9	Delhi	0	0	0	0	0	0	0	0
10	Dhanbad	42	21677	1666	73	39	4	0	0
11	Dehradun	0	0	0	0	0	0	0	0
12	Guwahati	1	35	4	1	0	0	0	0
13	Hyderabad	0	0	0	0	0	0	0	0
14	Jabalpur	0	0	0	0	0	0	0	0
15	Kanpur	0	0	0	0	0	0	0	0
16	Kolkata	0	0	0	27	0	0	0	0
17	Mumbai	1	1	2	2	0	0	0	0
18	Nagpur	0	0	0	0	0	0	0	0
19	Patna	0	0	0	0	0	0	0	0
20	Raipur	0	0	0	0	0	0	0	0
	Total	250	29650	2718	203	64	6	0	0
Note: Source of data MSOP (monthly statement of performance) Report									

Workshop on “Impact on employment of the Maternity Benefit (Amendment) Act, 2017: Identifying the Affirmative Initiative & Challenges in the Implementation of the Act”

QUESTIONNAIRE

NOTE: Please tick at appropriate box in the given grid or circle the appropriate response. Some questions may have multiple responses)		
1	Date:	
2	Name of Respondent	
3	Position/Designation	
4	Name and address of Organization	
5	Location	
6	Area of Work	
7	Are you currently working with matters relating to women workers?	Yes / No If yes, please specify details
8	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
9	Are you aware about the Maternity Benefit Act 1961?	Yes / No
10	Are you aware of the recent amendment in 2017 in the Maternity Benefit Act, 2017	Yes / No
11	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
12	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 leaves
		18 weeks paid leaves
		26 weeks paid leaves
		12 weeks paid leaves and 12 weeks unpaid leaves
		None of the above

13	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		
14	As per amended Act, how many weeks' leaves with wages is granted to a women, up to two surviving children?	26 weeks
		12 weeks
15	As per amended Act, how many weeks leaves with wages is granted in case of two or more surviving children?	26 weeks
		12 weeks
16	As per amended Act, how many weeks leaves 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
17	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 leaves with wages?	Yes / No.
18	Do you know that apart from leaves, a woman is also entitled to medical bonus of Rs. 1000/- only.	Yes / No
19	Whether crèche facilities are to be provided in establishments?	Yes / No
		If yes, please specify location of crèche
20	Whether establishments need to make provision for nursing breaks/ visits to the crèche during work?	Yes / No
21	Whether any system to 'work from home' has to be developed in establishments post pregnancy?	Yes / No
		If yes, please specify
22	Have you contributed to the initiative of the Government of India on the Maternity Benefit (Amendment) Act, 2017?	Yes / No
		If yes, please specify
23	How would you assess employer's attitude towards maternity leave and benefits?	Supportive
		Neutral
		Unsupportive
		Any other:
24	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

25	How do you handle such cases / complaints of women employees by the respective employers on account of their pregnancy?	
26	Are the formalities for getting maternity leave or benefits complicated?	Yes / No
27	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	
28	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:
29	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.

30	How do you view the benefits provided under the amended Maternity Benefit Act?	Excellent / Very Good / Good / Fair / Poor
31	How do male employees feel about maternity leave?	Supportive
		Neutral
		Unsupportive
		Any other:
32	Should there be a law for provision of paternity leaves?	Yes / No
33	Does provision of paternity leaves make it easier for employers to provide maternity leave?	Yes / No
34. Has the increase of maternity leave from 12 to 26 weeks increased the financial liability of the employer? If yes, please describe how.		
35. Identify the difficulties faced by your organization in advocacy concerning rights of women workers, particularly maternity		
36. Does this amendment negatively impact the employment opportunity of women in the labour market? Yes/ No		
If Yes, how?		
37. Please provide suggestion's to make this act more implementative.		

Workshop on “Impact on employment of the Maternity Benefit (Amendment) Act, 2017: Identifying the Affirmative Initiative & Challenges in the Implementation of the Act”

QUESTIONNAIRE FOR LABOUR ADMINISTRATORS

<i>NOTE:</i> Please tick at appropriate box in the given grid or circle the appropriate response. Some questions may have multiple responses)		
1	Date :-	
2	Name of Respondent	
3	Position / Designation	
4	Location	
5	Jurisdiction	
6	Are you currently working with matters relating to women workers?	Yes / No If yes, please specify details
7	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
8	Are you aware about the Maternity Benefit Act 1961?	Yes / No
9	Are you aware of the recent amendment in the Maternity Benefit Act, 1961?	Yes / No
10	Can you identify any key features of the Maternity Benefit Act, 1961?	Maternity Leave given
		Paternity Leaves given
		Employer provides crèche facility
		None of the above
		All of the above
11	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 leaves
		18 weeks paid leaves
		26 weeks paid leaves
		12 weeks paid leaves and 12 weeks un-paid leaves
		None of the above

12	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			
13	As per amended Act, how many weeks' leaves with wages is granted to a woman, up to two surviving children?	26 weeks	
		12 weeks	
14	As per amended Act, how many weeks leaves with wages is granted in case of two or more surviving children?	26 weeks	
		12 weeks	
15	As per amended Act, how many weeks leaves 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	
16	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 leaves with wages?	Yes / No.	
17	Do you know that apart from leaves, a woman is also entitled to medical bonus of Rs. 1000/- only.	Yes / No	
18	Whether crèche facilities are to be provided in establishments?	Yes / No If yes, please specify location of crèche	
19	Whether establishments need to make provision for nursing breaks/visits to the crèche during work?	Yes / No	
20	Whether any system to 'work from home' has to be developed in establishments post pregnancy?	Yes / No If yes, please specify	
21	Describe the awareness generation steps taken by you after the Maternity Benefit Act, 1961 was amended by the Maternity Benefit (Amendment) Act, 2017		

22	How would you assess employer's attitude towards maternity leave and benefits?	Supportive	
		Neutral	
		Unsupportive	
		Any other:	
23	Have you come across any instance whereby a woman employee has been terminated on account of her pregnancy?	Yes / No	
24	How do you handle cases of dismissals of women employees by the respective employers if they come to know about their pregnancy?		
25	Are the formalities for getting maternity leave or benefits complicated?	Yes / No	
26	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	
27	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 The 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.	
28	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	

29	How do male employees feel about maternity leave?	Supportive	
		Neutral	
		Unsupportive	
		Any other:	
30	Should there be a law for provision of paternity leaves?	Yes / No	
31	Does provision of paternity leaves make it easier for employers to provide maternity leave?	Yes / No	
32. Has the increase of maternity leave from 12 to 26 weeks increased the financial liability of the employer? If yes, please describe how.			
33. What advantages or disadvantages accrue to an organization when it provides maternity relief to its employees?			
34. Identify the difficulties faced by the Labour Officers during inspection at the hands of the employers:			
35. Whether any improvement in the benefits or relief is required? If yes, please give your suggestions?			
36. What kind of challenges (if any) was faced before & after amendment in this Act?			
Before		After	
37. Does this amendment negatively impact the employment opportunity of women in the labour market? Yes/ No			
If Yes, how?			
38. Please provide suggestion's to make this act more implementative.			

Analysis of the Feedback/Questionnaires

S.no	Designation	Jurisdiction	Working on matter pertaining to women workers		
			Yes	No	No Response
1	Labour Enforcement Officer (C)	Dehradun	11.1	0.0	0.0
2		Faridabad Region	0.0	0.0	11.1
3		Delhi (Head Quarter)	0.0	11.1	0.0
4		Indore	11.1	0.0	0.0
5		Jaisalmer Jodhpur Bikaner Jalore	0.0	0.0	11.1
6		Kanpur	0.0	0.0	11.1
7		Kanpur Region	0.0	0.0	11.1
8		Karnal Haryana	0.0	11.1	0.0
9		Udaipur Rajsamand Sirohi Durgapur	0.0	11.1	0.0
		Total %	22.2	33.3	44.4

Source- Feedback Questionnaire

Table 1 shows that majority of the respondents did not provide any response. Only 22.2% of respondents were working on issues pertaining to the women workers.

S.no	Designation	Jurisdiction	Awareness regarding the Maternity Benefit Act 1961	
			Yes	No
1	Labour Enforcement Officer (C)	Dehradun	11.1	0.0
2		Faridabad Region	11.1	0.0
3		Delhi (Head Quarter)	11.1	0.0
4		Indore	11.1	0.0
5		Jaisalmer Jodhpur Bikaner Jalore	11.1	0.0
6		Kanpur	11.1	0.0
7		Kanpur Region	11.1	0.0
8		Karnal Haryana	11.1	0.0
9		Udaipur Rajsamand Sirohi Durgapur	11.1	0.0
		Total %	100.0	0.0

Source- Feedback Questionnaire

Table 2 illustrates that all the respondents were aware about the provisions pertaining to the Maternity Benefit Act, 1961.

S.no	Designation	Jurisdiction	Awareness regarding the Maternity Benefit (Amendment) Act, 2017	
			Yes	No
1	Labour Enforcement Officer (C)	Dehradun	11.1	0.0
2		Faridabad Region	11.1	0.0
3		Delhi (Head Quarter)	11.1	0.0
4		Indore	11.1	0.0
5		Jaisalmer Jodhpur Bikaner Jalore	11.1	0.0
6		Kanpur	11.1	0.0
7		Kanpur Region	11.1	0.0
8		Karnal Haryana	11.1	0.0
9		Udaipur Rajsamand Sirohi Durgapur	11.1	0.0
		Total %	100.0	0.0

Source- Feedback Questionnaire

Table 3 shows that maximum percentage of the respondents were also aware about the new provision added in The Maternity Benefit (Amendment) Act, 2017.

S.no	Designation	Jurisdiction	Duration of the Maternity paid leaves	
			26 WEEKS	12 WEEKS
1	Labour Enforcement Officer (C)	Dehradun	11.1	0.0
2		Faridabad Region	11.1	0.0
3		Delhi (Head Quarter)	11.1	0.0
4		Indore	11.1	0.0
5		Jaisalmer Jodhpur Bikaner Jalore	11.1	0.0
6		Kanpur	0.0	11.1
7		Kanpur Region	11.1	0.0
8		Karnal Haryana	11.1	0.0
9		Udaipur Rajsamand Sirohi Durgapur	11.1	0.0
		Total %	88.9	11.1

Source- Feedback Questionnaire

Table 4 shows that maximum percentage of the respondents were aware regarding the latest amendment of increasing maternity paid leaves from 12 weeks to 26 weeks for up to two surviving children.

S.no	Position or Designation	Organisation	Benefits provided for Maternity Benefit Act, 1961 as amended by MBA, 2017					
			Excellent	Very Good	Good	Fair	Poor	No Response
1	Associate Professor	B. S. Anangpuria Educational Institute	0.0	0.0	0.0	8.3	0.0	0.0
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	0.0	8.3	0.0	0.0	0.0	0.0
3	Consultant	Freelance	0.0	8.3	0.0	0.0	0.0	0.0
4	Deputy director	NIPCCD	0.0	8.3	0.0	0.0	0.0	0.0
5	General Secretary	R.B.N.S by Gupta Tawar	0.0	0.0	8.3	0.0	0.0	0.0
6	General Secretary	R.D.N.M.H.S Delhi	0.0	8.3	0.0	0.0	0.0	0.0
7	Independence GRB & Gender Audit Consultant	Independent	0.0	0.0	0.0	0.0	0.0	8.3
8	Ph.D. Researcher	IDS, Brighton, UK	0.0	0.0	8.3	0.0	0.0	0.0
9	Secretary	DANMU/ INTUC	0.0	0.0	8.3	0.0	0.0	0.0
10	Senior Coordinator	NCW Jasola New Delhi	0.0	8.3	0.0	0.0	0.0	0.0
11	Women Secretary	DANMU/ INTUC	0.0	0.0	0.0	8.3	0.0	0.0
12	Women Secretary	INTUC	0.0	0.0	0.0	8.3	0.0	0.0
		Total %	0.0	41.7	25.0	25.0	0.0	8.3

Source- Feedback Questionnaire

In table 5 shows that maximum percentage of the respondents were feeling very good about the new amendment in the Maternity Benefit (Amendment) Act, 2017.

S.no	Designation	Jurisdiction	Crèche facilities provided in the establishments		
			Yes	No	No Response
1	Labour Enforcement Officer (C)	Dehradun	11.1	0.0	0.0
2		Faridabad Region	11.1	0.0	0.0
3		Delhi (Head Quarter)	0.0	0.0	11.1
4		Indore	11.1	0.0	0.0
5		Jaisalmer Jodhpur Bikaner Jalore	11.1	0.0	0.0
6		Kanpur	11.1	0.0	0.0
7		Kanpur Region	11.1	0.0	0.0
8		Karnal Haryana	11.1	0.0	0.0
9		Udaipur Rajsamand Sirohi Durgapur	11.1	0.0	0.0
		Total %	88.9	0.0	11.1

Source- Feedback Questionnaire

Table 6 shows that maximum percentage of the Labour Administrators reported that they have not seen any crèche facilities provided by the establishment where they had conducted the inspections.

S.no	Designation	Jurisdiction	Awareness generation steps for implementing the Maternity Benefit (Amendment) Act, 2017
1	Labour Enforcement Officer (C)	Dehradun	No Response
2		Faridabad Region	Conducted inspections and generated awareness about Maternity benefits
3		Delhi (Head Quarter)	No Response
4		Indore	No Response
5		Jaisalmer Jodhpur Bikaner Jalore	No Response
6		Kanpur	No Response
7		Kanpur Region	Sensitising employers while on inspection.
8		Karnal Haryana	No Response
9		Udaipur Rajsamand Sirohi Durgapur	No Response

Source- Feedback Questionnaire

S.no	Designation	Jurisdiction	Employer's attitude towards maternity leave and benefits			
			Supportive	Neutral	Unsupportive	Any other
1	Labour Enforcement Officer (C)	Dehradun	0.0	0.0	11.1	0.0
2		Faridabad Region	0.0	11.1	0.0	0.0
3		Delhi (Head Quarter)	0.0	11.1	0.0	0.0
4		Indore	0.0	11.1	0.0	0.0
5		Jaisalmer Jodhpur Bikaner Jalore	0.0	11.1	0.0	0.0
6		Kanpur	11.1	0.0	0.0	0.0
7		Kanpur Region	11.1	0.0	0.0	0.0
8		Karnal Haryana	0.0	11.1	0.0	0.0
9		Udaipur Rajsamand Sirohi Durgapur	0.0	11.1	0.0	0.0
		Total %	22.2	66.7	11.1	0.0

Source- Feedback Questionnaire

Table 8 shows that maximum percentage of the Labour Enforcement Officers stated that employer's attitude is neutral towards maternity leave and related benefits. In Dehradun region 11.1% of respondents stated that employers have unsupportive behaviour towards the maternity benefits.

S.no	Designation	Jurisdiction	Woman employee terminated on ground of their pregnancy		
			Yes	No	No Response
1	Labour Enforcement Officer (C)	Dehradun	0.0	11.1	0.0
2		Faridabad Region	0.0	11.1	0.0
3		Delhi (Head Quarter)	0.0	11.1	0.0
4		Indore	0.0	11.1	0.0
5		Jaisalmer Jodhpur Bikaner Jalore	0.0	0.0	11.1
6		Kanpur	0.0	11.1	0.0
7		Kanpur Region	0.0	11.1	0.0
8		Karnal Haryana	0.0	11.1	0.0
9		Udaipur Rajsamand Sirohi Durgapur	0.0	11.1	0.0
		Total %	0.0	88.9	11.1

Source- Feedback Questionnaire

In above table 88.9% of the Labour Administrators found out in their inspections that women employees have not been terminated by the employers on ground of her pregnancy.

S.no	Designation	Jurisdiction	Male employees attitude towards the maternity leave				
			Supportive	Neutral	Unsupportive	Any other	No Response
1	Labour Enforcement Officer (C)	Dehradun	0.0	0.0	0.0	0.0	11.1
2		Faridabad Region	11.1	0.0	0.0	0.0	0.0
3		Delhi (Head Quarter)	0.0	11.1	0.0	0.0	0.0
4		Indore	11.1	0.0	0.0	0.0	0.0
5		Jaisalmer Jodhpur Bikaner Jalore	11.1	0.0	0.0	0.0	0.0
6		Kanpur	0.0	0.0	0.0	0.0	11.1
7		Kanpur Region	0.0	11.1	0.0	0.0	0.0
8		Karnal Haryana	11.1	0.0	0.0	0.0	0.0
9		Udaipur Rajsamand Sirohi Durgapur	11.1	0.0	0.0	0.0	0.0
		Total %	55.6	22.2	0.0	0.0	22.2

Source- Feedback Questionnaire

In above table Males needs to have supportive attitude for the meaning full implementation of this Act.

S.no	Designation	Jurisdiction	Increase of maternity leave from 12 to 26 weeks increased the financial liability of the employer
1	Labour Enforcement Officer (C)	Dehradun	Yes, it increases the financial liability of the employer to provide maternity leave and it decreases the working opportunity for the female as the employer particularly in the private sector. Employers are reluctant to give employment to female workers.
2		Faridabad Region	Yes, because now employer has to pay 14 weeks of extra pay for the women on leaves
3		Delhi (Head Quarter)	No Response
4		Indore	Don't think so, As it is a social responsibility.
5		Jaisalmer Jodhpur Bikaner Jalore	Yes, due to the shortage of manpower in the establishment and work. The productively suffer.

6		Kanpur	No Response
7		Kanpur Region	Some employers think that it has increased their financial liability but in long run it is beneficial for the country as children are the future citizens.
8		Karnal Haryana	Yes, If employer makes substitute arrangement it may cause financial implications.
9		Udaipur Rajsamand Sirohi Durgapur	Its depend case to case, sometime employer may provide over-time amount, etc.

Source- Feedback Questionnaire

In Table 11 shows that majority of the employers informed the Labour Administrator that increase in duration of maternity leave has increased their financial liability.

S.no	Designation	Jurisdiction	Advantage or Disadvantage of maternity relief to the female employees
1	Labour Enforcement Officer (C)	Dehradun	No Response
2		Faridabad Region	Advantage- Goodwill of employer increases and also Increases the feeling of trust amongst female employees. Disadvantage is that the financial liability increases and can be measured in some cases.
3		Delhi (Head Quarter)	Provision of maternity relief provides a sense of security to a women, who is under immense pressure both emotional and physical during pregnancy child birth.
4		Indore	Advantage is that it shows pro working culture in the organisation. They can get goal, protective women resource in the organisation. Employee's satisfaction can reduce attrition, etc. According to her there is no disadvantage of this Act.
5		Jaisalmer Jodhpur Bikaner Jalore	Advantage is that less attrition, More Motivation and satisfaction with loyalty, increase in productivity. Disadvantage is less Productivity and financial liability on the employers
6		Kanpur	No Response
7		Kanpur Region	In Short-term financial loss is increased by the company but on whole it is beneficial for the country.
8		Karnal Haryana	Advantage is that Employees satisfaction and morale is increased.
9		Udaipur Rajsamand Sirohi Durgapur	Advantage is that Labour law compliances, Employee satisfaction and less attrition rate.

Source- Feedback Questionnaire

S.no	Designation	Jurisdiction	Difficulties faced by the Labour Administrators during inspection while interacting with the employers
1	Labour Enforcement Officer (C)	Dehradun	No Response
2		Faridabad Region	Workers are hesitant. Female workers come forward and raise their concerns.
3		Delhi (Head Quarter)	No Response
4		Indore	Especially in mines or Unorganised Sectors mine owners hide the facts of hiring or engagement of women workers in the establishment.
5		Jaisalmer Jodhpur Bikaner Jalore	At the time of the inspection register or records found were not kept and maintained at the worksite.
6		Kanpur	No Response

7		Kanpur Region	As a labour enforcement officer, I faced problems while conducting inspections in unorganised sector especially mines because women joins her male counterpart so as to run the expenses of the family.
8		Karnal Haryana	Employer hides the facts by trying to prove no women engaged at work.
9		Udaipur Rajsamand Sirohi Durgapur	In organised sector generally employers don't show employment of women in their establishment.

Source- Feedback Questionnaire

S.no	Designation	Jurisdiction	Suggestions for the Improvement in the benefits or relief provided
1	Labour Enforcement Officer (C)	Dehradun	No Response
2		Faridabad Region	Enforcement should be more stringent.
3		Delhi (Head Quarter)	Workload should be less for an expectant mother. They should also get special leaves for sickness.
4		Indore	Whatever has been amended is content full.
5		Jaisalmer Jodhpur Bikaner Jalore	Medical Bonus should be increased.
6		Kanpur	No Response
7		Kanpur Region	Penalties may be strictly implemented.
8		Karnal Haryana	Medical bonus may be increased.
9		Udaipur Rajsamand Sirohi Durgapur	Medical bonus amount may be increased.

Source- Feedback Questionnaire

S.no	Designation	Jurisdiction	Negative impact on the employment opportunity of women in the labour market of MBA, Act		
			Yes	No	No Response
1	Labour Enforcement Officer (C)	Dehradun	11.1	0.0	0.0
2		Faridabad Region	0.0	11.1	0.0
3		Delhi (Head Quarter)	0.0	0.0	11.1
4		Indore	11.1	0.0	0.0
5		Jaisalmer Jodhpur Bikaner Jalore	11.1	0.0	0.0
6		Kanpur	0.0	11.1	0.0
7		Kanpur Region	11.1	0.0	0.0
8		Karnal Haryana	0.0	0.0	11.1
9		Udaipur Rajsamand Sirohi Durgapur	0.0	11.1	0.0
		Total %	44.4	33.3	22.2

Source- Feedback Questionnaire

Table 15 shows that 44.4% of the Labour administrators stated that this amendment will impact negatively on employment opportunities of a women in the labour market.

S.no	Designation	Jurisdiction	Suggestions by the Labour Administrator to make MBA Act more implimentative
1	Labour Enforcement Officer (C)	Dehradun	It is strictly implemented in the Government offices as the Government officers does not have the provision of crèche facility for their female employees.
2		Faridabad Region	More awareness is needed to be imparted regarding provisions out of Act especially in the unorganised sector.
3		Delhi (Head Quarter)	No Response
4		Indore	No Response
5		Jaisalmer Jodhpur Bikaner Jalore	No Response
6		Kanpur	Every employer should be required to inform about the Maternity Benefit through electronically form to every female employee. The benefits to her as per the maternity Act.
7		Kanpur Region	Penalties may be strictly imposed on the guilty employers.
8		Karnal Haryana	Employers training in this regarding be initiated.
9		Udaipur Rajsamand Sirohi Durgapur	Awareness session on the Act may implement for the stakeholders.

Source- Feedback Questionnaire

Suggestions to make the Maternity Benefits (Amendment) Act, 2017 more Implementative:-

It should be strictly implemented in the Government offices as Government officers themselves do not have provisions of crèche facility for their female employees.

More awareness needs to be spread regarding provisions of the Act especially inthe unorganised sector.

Penalties may be strictly imposed on the guilty employers.

S.no	Position or Designation	Organisation	Working with matters relating to women workers		
			Yes	No	No Response
1	Associate Professor	B. S. Anangpuria Educational Institute	8.3	0.0	0.0
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	8.3	0.0	0.0
3	Consultant	Freelance	8.3	0.0	0.0
4	Deputy director	NIPCCD	8.3	0.0	0.0
5	General Secretary	R.B.N.S by Gupta Tawer	8.3	0.0	0.0
6	General Secretary	R.D.N.M.H.S Delhi	8.3	0.0	0.0
7	Independence GRB & Gender Audit Consultant	Independent	0.0	8.3	0.0
8	Ph.D. Researcher	IDS, Brighton, UK	8.3	0.0	0.0
9	Secretary	DANMU, Delhi	8.3	0.0	0.0
10	Senior Coordinator	NCW Jasola New Delhi	8.3	0.0	0.0
11	Women Secretary	INTUC	0.0	0.0	8.3
12	Women Secretary	DANMU, North West Zone, Delhi	8.3	0.0	0.0
		Total %	83.3	8.3	8.3

Source- Feedback Questionnaire

Table 17 shows that most of stakeholders (Trade Union, Academician, Organisations, and International and National Government organisations) were working on a matter pertaining to women workers in the labour market.

S.no	Position or Designation	Organisation	Awareness regarding the Maternity Benefit Act, 1961		
			Yes	No	No Response
1	Associate Professor	B. S. Anangpuria Educational Institute	8.3	0.0	0.0
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	8.3	0.0	0.0
3	Consultant	Freelance	8.3	0.0	0.0
4	Deputy director	NIPCCD	8.3	0.0	0.0
5	General Secretary	R.B.N.S by Gupta Tawer	8.3	0.0	0.0
6	General Secretary	R.D.N.M.H.S Delhi	8.3	0.0	0.0
7	Independence GRB & Gender Audit Consultant	Independent	8.3	0.0	0.0
8	Ph.D. Researcher	IDS, Brighton, UK	8.3	0.0	0.0
9	Secretary	DANMU, Delhi	8.3	0.0	0.0
10	Senior Coordinator	NCW Jasola New Delhi	8.3	0.0	0.0
11	Women Secretary	INTUC	8.3	0.0	0.0
12	Women Secretary	DANMU, North West Zone, Delhi	8.3	0.0	0.0
		Total %	100.0	0.0	0.0

Source- Feedback Questionnaire

Table 18 illustrates that most of the respondents were aware regarding the Maternity Benefit Act, 1961.

S.no	Position or Designation	Organisation	Awareness regarding Maternity Benefit the (Amendment) Act, 2017		
			Yes	No	No Response
1	Associate Professor	B. S. Anangpuria Educational Institute	8.3	0.0	0.0
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	8.3	0.0	0.0
3	Consultant	Freelance	8.3	0.0	0.0
4	Deputy director	NIPCCD	8.3	0.0	0.0
5	General Secretary	R.B.N.S by Gupta Tawer	8.3	0.0	0.0
6	General Secretary	R.D.N.M.H.S Delhi	8.3	0.0	0.0
7	Independence GRB & Gender Audit Consultant	Independent	8.3	0.0	0.0
8	Ph.D. Researcher	IDS, Brighton, UK	8.3	0.0	0.0
9	Secretary	DANMU, Delhi	8.3	0.0	0.0
10	Senior Coordinator	NCW Jasola New Delhi	8.3	0.0	0.0
11	Women Secretary	INTUC	8.3	0.0	0.0
12	Women Secretary	DANMU, North West Zone, Delhi	8.3	0.0	0.0
		Total %	100.0	0.0	0.0

Source- Feedback Questionnaire

Table 19 denotes that maximum percentage of the stakeholders who were present in the workshop were aware regarding the new amendment of the Maternity Benefit added in the year 2017.

S.no	Position or Designation	Organisation	Wages granted to a women, up to two surviving children	
			26 Weeks	12 Weeks
1	Associate Professor	B. S. Anangpuria Educational Institute	8.3	0.0
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	8.3	0.0
3	Consultant	Freelance	8.3	0.0
4	Deputy director	NIPCCD	8.3	0.0
5	General Secretary	R.B.N.S by Gupta Tawer	8.3	0.0
6	General Secretary	R.D.N.M.H.S Delhi	8.3	0.0
7	Independence GRB & Gender Audit Consultant	Independent	8.3	0.0
8	Ph.D. Researcher	IDS, Brighton, UK	8.3	0.0
9	Secretary	DANMU, Delhi	8.3	0.0
10	Senior Coordinator	NCW Jasola New Delhi	8.3	0.0
11	Women Secretary	INTUC	8.3	0.0
12	Women Secretary	DANMU, North West Zone, Delhi	8.3	0.0
Total %			100.0	0.0

Source- Feedback Questionnaire

Table 20 shows that maximum percentage of the respondents were aware regarding the increase in duration of the maternity leave from 12 weeks to 26 weeks.

S.no	Position or Designation	Organisation	Crèche facilities provided in establishments		
			Yes	No	No Response
1	Associate Professor	B. S. Anangpuria Educational Institute	8.3	0.0	0.0
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	8.3	0.0	0.0
3	Consultant	Freelance	8.3	0.0	0.0
4	Deputy director	NIPCCD	8.3	0.0	0.0
5	General Secretary	R.B.N.S by Gupta Tawer	8.3	0.0	0.0
6	General Secretary	R.D.N.M.H.S Delhi	8.3	0.0	0.0
7	Independence GRB & Gender Audit Consultant	Independent	0.0	0.0	8.3
8	Ph.D. Researcher	IDS, Brighton, UK	8.3	0.0	0.0
9	Secretary	DANMU, Delhi	8.3	0.0	0.0
10	Senior Coordinator	NCW Jasola New Delhi	8.3	0.0	0.0
11	Women Secretary	INTUC	0.0	8.3	0.0
12	Women Secretary	DANMU, North West Zone, Delhi	0.0	8.3	0.0
Total %			75.0	16.7	8.3

Source- Feedback Questionnaire

Table 21 shows that maximum percentage of the respondents were having crèche facility in their organisation.

S.no	Position or Designation	Organisation	Awareness initiative of the Government on the Maternity Benefit (Amendment) Act, 2017			If, Yes
			Yes	No	No Response	Specify
1	Associate Professor	B. S. Anangpuria Educational Institute	0.0	8.3	0.0	No Response
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	8.3	0.0	0.0	No Response
3	Consultant	Freelance	8.3	0.0	0.0	Within the establishment as in the near vicinity.
4	Deputy director	NIPCCD	8.3	0.0	0.0	No Response
5	General Secretary	R.B.N.S by Gupta Tawer	8.3	0.0	0.0	No Response
6	General Secretary	R.D.N.M.H.S Delhi	8.3	0.0	0.0	No Response
7	Independence GRB & Gender Audit Consultant	Independent	0.0	0.0	8.3	No Response
8	Ph.D. Researcher	IDS, Brighton, UK	0.0	8.3	0.0	Within 500m of home or office of women.
9	Secretary	DANMU, Delhi	8.3	0.0	0.0	No Response
10	Senior Coordinator	NCW Jasola New Delhi	0.0	8.3	0.0	No Response
11	Women Secretary	INTUC	0.0	8.3	0.0	No Response
12	Women Secretary	DANMU, North West Zone, Delhi	0.0	8.3	0.0	No Response
		Total %	50.0	41.7	8.3	

Source- Feedback Questionnaire

Table 22 shows that maximum percentage of the respondents were not contributing to the initiative taken by the Government regarding the implementation of the Maternity Benefit (Amendment) Act, 2017.

S.no	Position or Designation	Organisation	Employer's attitude towards maternity leave				
			Supportive	Neutral	Unsupportive	Any other	No Response
1	Associate Professor	B. S. Anangpuria Educational Institute	0.0	8.3	0.0	0.0	0.0
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	0.0	0.0	8.3	0.0	0.0
3	Consultant	Freelance	0.0	0.0	0.0	8.3	0.0
4	Deputy director	NIPCCD	8.3	0.0	0.0	0.0	0.0
5	General Secretary	R.B.N.S by Gupta Tawer	0.0	8.3	0.0	0.0	0.0

6	General Secretary	R.D.N.M.H.S Delhi	8.3	0.0	0.0	0.0	0.0
7	Independence GRB & Gender Audit Consultant	Independent	0.0	0.0	0.0	0.0	8.3
8	Ph.D. Researcher	IDS, Brighton, UK	8.3	0.0	0.0	0.0	0.0
9	Secretary	DANMU, Delhi	8.3	0.0	0.0	0.0	0.0
10	Senior Coordinator	NCW Jasola New Delhi	0.0	0.0	0.0	8.3	0.0
11	Women Secretary	INTUC	0.0	8.3	0.0	0.0	0.0
12	Women Secretary	DANMU, North West Zone, Delhi	0.0	8.3	0.0	0.0	0.0
		Total %	33.3	33.3	8.3	16.7	8.3

Source- Feedback Questionnaire

Table 23 shows that maximum percentage of the stakeholders stated that most of the employer's attitude was supportive and neutral towards maternity leave and benefits.

S.no	Position or Designation	Organisation	Women employees terminated on ground of their pregnancy		
			Yes	No	No Response
1	Associate Professor	B. S. Anangpuria Educational Institute	8.3	0.0	0.0
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	8.3	0.0	0.0
3	Consultant	Freelance	0.0	8.3	0.0
4	Deputy director	NIPCCD	8.3	0.0	0.0
5	General Secretary	R.B.N.S by Gupta Tawer	0.0	0.0	8.3
6	General Secretary	R.D.N.M.H.S Delhi	0.0	8.3	0.0
7	Independence GRB & Gender Audit Consultant	Independent	8.3	0.0	0.0
8	Ph.D. Researcher	IDS, Brighton, UK	0.0	8.3	0.0
9	Secretary	DANMU, Delhi	0.0	8.3	0.0
10	Senior Coordinator	NCW Jasola New Delhi	8.3	0.0	0.0
11	Women Secretary	INTUC	8.3	0.0	0.0
12	Women Secretary	DANMU, North West Zone, Delhi	8.3	0.0	0.0
		Total %	58.3	33.3	8.3

Source- Feedback Questionnaire

Table 24 shows that 58% of the respondents said yes, they have witnessed termination of women during period of their pregnancy. And 33.3% of the respondents said no, they have not witnessed any cases related to the termination of the women on the ground of the pregnancy.

S.no	Position or Designation	Organisation	Complaints of women employees handled by the employers during pregnancy period
1	Associate Professor	B. S. Anangpuria Educational Institute	No Response
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	No Response
3	Consultant	Freelance	Taking legal help for sensitizing the women.

4	Deputy director	NIPCCD	No Response
5	General Secretary	R.B.N.S by Gupta Tawer	By awarding women through the proper channel.
6	General Secretary	R.D.N.M.H.S Delhi	No Response
7	Independence GRB & Gender Audit Consultant	Independent	No Response
8	Ph.D. Researcher	IDS, Brighton, UK	By Training & advising according to the law.
9	Secretary	DANMU, Delhi	Few complained regarding denial of the maternity leave. Took ups with concerned authority.
10	Senior Coordinator	NCW Jasola New Delhi	No Response
11	Women Secretary	INTUC	No Response
12	Women Secretary	DANMU, North West Zone, Delhi	No Response

Source- Feedback Questionnaire

In Table 25 respondents suggested that employers can handle the complaint regarding pregnancy by taking legal help, training advice as per the provisions mentioned in the law.

Table 26: Male employees attitude regarding maternity leave (in %)

S.no	Position or Designation	Organisation	Male employees attitude regarding maternity leave				
			Supportive	Neutral	Un-Supportive	Any Other	No Response
1	Associate Professor	B. S. Anangpuria Educational Institute	0.0	8.3	0.0	0.0	0.0
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	8.3	0.0	0.0	0.0	0.0
3	Consultant	Freelance	0.0	0.0	0.0	0.0	8.3
4	Deputy director	NIPCCD	8.3	0.0	0.0	0.0	0.0
5	General Secretary	R.B.N.S by Gupta Tawer	8.3	0.0	0.0	0.0	0.0
6	General Secretary	R.D.N.M.H.S Delhi	0.0	0.0	8.3	0.0	0.0
7	Independence GRB & Gender Audit Consultant	Independent	0.0	0.0	0.0	0.0	8.3
8	Ph.D. Researcher	IDS, Brighton, UK	8.3	0.0	0.0	0.0	0.0
9	Secretary	DANMU, Delhi	0.0	8.3	0.0	0.0	0.0
10	Senior Coordinator	NCW Jasola New Delhi	0.0	0.0	0.0	8.3	0.0
11	Women Secretary	INTUC	0.0	8.3	0.0	0.0	0.0
12	Women Secretary	DANMU, North West Zone, Delhi	0.0	8.3	0.0	0.0	0.0
		Total %	33.3	33.3	8.3	8.3	16.7

Source- Feedback Questionnaire

Table 26 shows that 33 % of the male were supportive and 33.3% were neutral about increase in the maternity leave.

S.no	Position or Designation	Organisation	Provision of the Law for Paternity Leaves		
			Yes	No	No Response
1	Associate Professor	B. S. Anangpuria Educational Institute	8.3	0.0	0.0
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	0.0	0.0	8.3
3	Consultant	Freelance	8.3	0.0	0.0
4	Deputy director	NIPCCD	8.3	0.0	0.0
5	General Secretary	R.B.N.S by Gupta Tawer	8.3	0.0	0.0
6	General Secretary	R.D.N.M.H.S Delhi	8.3	0.0	0.0
7	Independence GRB & Gender Audit Consultant	Independent	0.0	8.3	0.0
8	Ph.D. Researcher	IDS, Brighton, UK	8.3	0.0	0.0
9	Secretary	DANMU, Delhi	8.3	0.0	0.0
10	Senior Coordinator	NCW Jasola New Delhi	8.3	0.0	0.0
11	Women Secretary	INTUC	8.3	0.0	0.0
12	Women Secretary	DANMU, North West Zone, Delhi	8.3	0.0	0.0
		Total %	83.3	8.3	8.3

Source- Feedback Questionnaire

Table 27 illustrates that maximum percentage of the respondents shows their support for the provision of the law for paternity leaves by saying yes. They suggested that, the Government should consider increasing paternity leaves so that both mother and father can take care of their child.

S.no	Position or Designation	Organisation	Increase in duration of the maternity leave from 12 to 26 weeks increased the financial liability of the employer
1	Associate Professor	B. S. Anangpuria Educational Institute	No
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	No Response
3	Consultant	Freelance	The employers has to bear the cost of description. That would include cost of acquiring replacement and "Cost of Quality" and to the same extent indirect cost in form of training crèche. As of now the employers are more concerned with direct cost of acquisition but eventually in the long run cost of quality will also start.
4	Deputy director	NIPCCD	No
5	General Secretary	R.B.N.S by Gupta Tawer	No Response
6	General Secretary	R.D.N.M.H.S Delhi	No
7	Independence GRB & Gender Audit Consultant	Independent	No Response

8	Ph.D. Researcher	IDS, Brighton, UK	The cost of the females hire increased form 3-6 months without getting productive output. Employers can't hire a replacement just for the 6 months. Workload to be evenly distributed among the existing staff.
9	Secretary	DANMU, Delhi	No Response
10	Senior Coordinator	NCW Jasola New Delhi	No Response
11	Women Secretary	INTUC	No Response
12	Women Secretary	DANMU, North West Zone, Delhi	No Response

Source- Feedback Questionnaire

Table 28 shows that maximum percentage of the respondents did not provide any response to this question only 3 respondents said no.

Table 29: Impact on the employment opportunities of the women in the labour market						
S. no	Position or Designation	Organisation	Impact on the employment opportunities of the women in the labour market			If , YES
			Yes	No	No Response	Shared Views
1	Associate Professor	B. S. Anangpuria Educational Institute	0.0	0.0	8.3	Yes, this amendment has negative impact on the employment opportunities of the women in the labour market, no private institution follows the law, they don't want financial burden. They just terminate the employees once they know about the pregnancy, there is always a fear to losing a job. The women has to start from the fresh.
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	0.0	0.0	8.3	No Response
3	Consultant	Freelance	0.0	0.0	8.3	It may have an impact on the sectors having a dominant work force. Such industries are likely to see more dissatisfaction in teaching profession especially in the schools. The employers may also become hesitant in hiring in women in specialist role where there is less scope for replacement internally.
4	Deputy director	NIPCCD	0.0	8.3	0.0	Not Applicable
5	General Secretary	R.B.N.S by Gupta Tawer	0.0	8.3	0.0	Yes employers refuse to women employment because if they recruit female then they have to give all the benefits.
6	General Secretary	R.D.N.M.H.S Delhi	8.3	0.0	0.0	No Response
7	Independence GRB & Gender Audit Consultant	Independent	0.0	0.0	8.3	No Response

8	Ph.D. Researcher	IDS, Brighton, UK	8.3	0.0	0.0	For small enterprises yes. It also negatively impacts perception of female labour as costly and managers are hesitant to hire female who are recently married. They perpetuates perception of women as primary care givers and reinforces the existing gender division of labour around childcare.
9	Secretary	DANMU, Delhi	8.3	0.0	0.0	In Construction area, women employment is decline. Employers avoid the law of MBA Act and crèche facility not provide by them.
10	Senior Coordinator	NCW Jasola New Delhi	0.0	0.0	8.3	No Response
11	Women Secretary	INTUC	8.3	0.0	0.0	Yes, this amendment has negative impact on the employment opportunities of the women in the labour market, no private institution follows due to the financial burden. Once the employer knows about the pregnancy of their employee they tries to terminate her so there is always a fear of losing the job. The women has to start from the fresh.
12	Women Secretary	DANMU, North West Zone, Delhi	8.3	0.0	0.0	Working contract cancelled for women working in the private and construction sector. They are either terminated or lose their job.
		Total %	41.7	16.7	41.7	

Source- Feedback Questionnaire

Table 29 shows that maximum percentage of the respondents said raise in the maternity leave is negatively impacting the employment of women.

Table 30: Suggestions to make Act more Implementable			
S. no	Position or Designation	Organization	Suggestions to make Act more Implementable
1	Associate Professor	B. S. Anangpuria Educational Institute	Some stringent action should be taken if employers are not giving profit to them. Proper inspection should be conducted to check the implementation of the law. Work from home facility should be given to the employee. Some strong laws should be frame for paternity leaves. Work relaxation should be given to employees. In every office, a committee for women employees should be formed.
2	Chief HR Advisor, Board Member	Mind your Fleet & Care needy Foundation	No Response
3	Consultant	Freelance	Since the new MBA Act has social implications. The employers may be given the pathway to adjust his cost against the CSR Budget. Provision to cater to career centric women who are likely to consider a threat to their aspirations. In the long run this will impact the birth rate, which has already fallen below the sustainable level in the urban centers'.
4	Deputy director	NIPCCD	There is a need to amend the law with the provisions of paternity leaves, 12 weeks leaves for adoptive parents, 12 week leaves for adoptive parents who are adopting child below one year and more clarifications are required for crèche facilities. Sensitizing the people in the community, police, GOs and NGOs in the Act. Penalty provisions for employers for not providing maternity benefits must be incorporated. Women working in Unorganised sector availed crèche facilities under national crèche scheme of MWCD.

5	General Secretary	R.B.N.S by Gupta Tawer	Sentenced period for 3 months is short. It should be increased. Fine amount should be increased so that employee don't misuse.
6	General Secretary	R.D.N.M.H.S Delhi	It should be implemented in all sectors. Various societies, NGO, women shared law forward for implementation.
7	Independence GRB & Gender Audit Consultant	Independent	No Response
8	Ph.D. Researcher	IDS, Brighton, UK	Make maternity payments form a public employer's contributory fund to give adequate attention and importance to social reproduction. Introduce paternity leaves of 12-26 weeks that can be taken anytime from 0-6 years of the child. Focus on workers with family responsibilities and family friendly workplace policy packages to address unpaid child care rather than treating maternity crèche as an isolated issue.
9	Secretary	DANMU, Delhi	Implementers should be accountable for their jobs.
10	Senior Coordinator	NCW Jasola New Delhi	No Response
11	Women Secretary	INTUC	No Response
12	Women Secretary	DANMU, North West Zone, Delhi	Some straight action should be taken if employees are not giving profit to female employees. Proper inspection should be conducted to check the implementation of the law. When women are in maternity leave then alternative may be arranged

Source- Feedback Questionnaire

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—17

REGISTERED NO. DL—(N)04/0007/2003—17



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.”.

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

Insertion of
new section
11A.

Crèche
facility.

“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

सं. 914] नई दिल्ली, शुक्रवार, मार्च 31, 2017/चैत्र 10, 1939
No. 914] NEW DELHI, FRIDAY, MARCH 31, 2017/CHAITRA 10, 1939

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]

MANISH KUMAR GUPTA, Jt. Secy.

1833 GI/2017

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रजिस्ट्री सं० डी० एल०-33004/99

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


सत्यमेव जयते

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

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]

MANISH KUMAR GUPTA, Jt. Secy.

1876 GI/2017

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THE 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

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

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.

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.

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) amine;
- (iii) a plantation;
- (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatics and other performances; or
- (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 food grains 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 of 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)

⁸ Subs. by Act 52 of 1973, S. 4.

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 leaves 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

⁹ Ins. By Act 21 of 1972, S. 3.

¹⁰ Ins. By Act 53 of 1976, S. 3.

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.
- (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 or 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. **Leaves for miscarriage.** -- In case of miscarriage, a woman shall, on production of such proof as may be prescribed, be entitled to leaves with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage.
10. **Leaves 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 leaves 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 of 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 the minan establishment, for the purposes or 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 lane 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, he 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 there under 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 favorable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favorable 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 favorable 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 the 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.

Short Study on: **The Maternity Benefit (Amendment) Act, 2017**

Ujjaini Sengupta
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National General Secretary,
INTUC Central Women Worker Committee

INTRODUCTION

The Maternity Benefit Act is a statute to protect the employment of women during the time of their maternities. It provides paid maternity leave to the pregnant women. Quoting from Jody Heymann, "Beginning in the 1800s with the Industrial Revolution, when women started to go into the formal workforce, leaving working at home to working in factories, countries realized they needed to do something. And they started to pass paid maternity leave." But this benefit was not available in India during British rule. After the Independence, the Government realized that maternity leave and parental leaves is absolutely vital for strengthening the families. Therefore, the Government took initiative to enact legislation on this matter and the Act was passed in the year 1961.

But the statute, unfortunately, could not satisfy the Indian woman employees and the Central Trade Unions. Because the fundamental purpose for providing maternity benefits to preserve the self-respect for motherliness, to protect the health of the pregnant women, and to complete safety of the child was not totally ensured in the first legislation. In spite of continuous demands of the trade unions, the Government ultimately passed **The Maternity Benefit (Amendment) Act, 2017**. The **Maternity (Amendment) Bill 2017**, an amendment to the Maternity Benefit Act, 1961, was passed in Rajya Sabha on August 11, 2016 and in Lok Sabha on March 09, 2017, and finally received an assent from President of India on March 27, 2017.

This Act entitles every woman employee of a 'maternity benefit' i.e. full paid absence from work for taking care of her child. But this Act is not applicable to the establishments employing less than 10 employees. Otherwise this statute is applicable to all establishments which are factories, mines, plantations, Government establishments, shops and establishments under the relevant legislations, or any other establishment as may be notified by the Central Government. Some trade unions commented that this amendment is a big and positive step towards improvement in securing the employment rights of women of India.

According to Koneru Anuradha, "It's an issue for men, women and even baby in the womb and

newborn baby. At present in this competitive world family may not able to survive on one person (Male) earning so, it has created an unavoidable situation to women to participate in earning and some women because of their fashion towards their aims and aspiration started to involve in earning works. At this juncture a woman has to perform multi tasks; here the most important task that has to perform and that only can be performed by women is bearing and giving birth to a child. Here it is proved fact that women involvement in work as well as to give birth both are necessary for continuation of this society. To provide health care to women and child by providing financial support to mother the concepts of maternity leave and benefits or allowances to working women came in to force. But in general people confused between parental leaves, maternity leave and family leaves in fact there is a lot of difference among them."

AFFECTIVITY

The provisions of The Maternity Benefit (Amendment) Act, 2017 are effective from April 1, 2017. However, provision on crèche facility (Section 111 A) shall be effective from July 1, 2017.

APPLICABILITY

The Act is applicable to all establishments which are factories, mines, plantations, Government establishments, shops and establishments under the relevant applicable legislations, or any other establishment as may be notified by the Central Government.

As per Section 2 of the Act, the Act is applicable to all those women employed in such commercial establishments that employing 10 or more employees. Hence, the employees of tiny shops and establishments are not eligible to get benefits available under this Act. As per Section 2 of the Act, the original provision will prevail i.e. the Act is applicable to all women who are employed in any capacity directly or through any agency i.e. either on contractual or a consultant.

ELIGIBILITY

As per the Act, to be eligible for maternity benefit, a woman must have been working as an employee

in an establishment for a period of at least 80 days in the past 12 months. Payment during the leaves period is based on the average daily wage for the period of actual absence.

DIFFERENCE BETWEEN MATERNITY LEAVES AND PATERNAL LEAVES

Parental leaves or family leaves are an employee benefit available in almost all countries. The term “parental leaves” generally includes maternity, paternity, and adoption leaves. A distinction between “maternity leave” and “parental leaves” is sometimes made- maternity leave as the mother’s leaves time directly before and after childbirth and parental leaves being the time given to care for newborns. In some countries and jurisdictions, “family leaves” also includes leaves provided to care for ill family members. Often, the minimum benefits and eligibility requirements are stipulated by law.

Unpaid parental or family leaves is provided when an employer is required to hold an employee’s job while that employee is taking leaves. Paid parental or family leaves provides paid time off work to care for or make arrangements for the welfare of a child or dependent family member. The three most common models of funding are social insurance/ social security (where employees, employers, or taxpayers in general contribute to a specific public fund), employer liability (where the employer must pay the employee for the length of leaves), and mixed policies that combine both social security and employer liability.

Parental leaves has been available as a legal right and/or Governmental program for many years, in one form or another. In 2014, the International Labour Organization reviewed parental leaves policies in 185 countries and territories, and found that all countries except Papua New Guinea have laws mandating some form of parental leaves. A different study showed that of 186 countries examined, 96% offered some pay to mothers during leaves, but only 81 of those countries offered the same for fathers. The United States, Suriname, Papua New Guinea, and several island countries in the Pacific Ocean are the only countries that do not require employers to provide paid time off for new parents.

KEY AMENDMENTS

- **Increased Paid Maternity Leave:**

The Maternity Benefit Amendment Act has increased the duration of paid maternity leave available for women employees from the existing 12 weeks to 26 weeks. Under

the Maternity Benefit Amendment Act, this benefit could be availed by women for a period extending up to a maximum of 8 weeks before the expected delivery date and the remaining time can be availed post childbirth. For women who are expecting after having 2 children, the duration of paid maternity leave shall be 12 weeks (i.e., 6 weeks pre and 6 weeks post expected date of delivery).

- **Maternity leave for adoptive and commissioning mothers:**

Maternity leave of 12 weeks to be available to mothers adopting a child below the age of three months from the date of adoption as well as to the “commissioning mothers”. The commissioning mother has been defined as biological mother who uses her egg to create an embryo planted in any other woman.

- **Work from Home option:**

The Maternity Benefit Amendment Act, 2017 has also introduced an enabling provision relating to “work from home” for women, which may be exercised after the expiry of the 26 weeks’ leaves period. Depending upon the nature of work, women employees may be able to avail this benefit on terms that are mutually agreed with the employer.

- **Crèche facility:**

The Maternity Benefit (Amendment) Act, 2017 makes crèche facility mandatory for every establishment employing 50 or more employees. Women employees would be permitted to visit the crèche 4 times during the day (including rest intervals).

The Maternity Benefit (Amendment) Act, 2017 makes it mandatory for employers to educate women about the maternity benefits available to them at the time of their appointment.

KEY FEATURES OF MATERNITY BENEFIT ACT

- **Protection from Termination or Dismissal during Pregnancy:**

Section 12 of the Maternity Benefit Act, 1961 emphasizes that any dismissal or discharge of a women during the pregnancy is unlawful and such employer can be punished under section 12 of the Act. However, in cases of gross misconduct, the employer can take necessary actions as per the defined disciplinary policy of the Company.

- **Duration of Maternity Leave in India:**

The Act has increased the duration of paid maternity leave to 26 weeks from the present

12 weeks. The extended period is applicable to women in case of the first and second child. Women who are expecting after having 2 children, the duration of paid maternity leave shall be 12 weeks i.e. 6 weeks pre-delivery and 6 weeks post-delivery.

- **For adoptive and commissioning mothers:**

The Act now extends to adoptive mothers as well. Every woman who has adopted a child will get 12 weeks of maternity leave from the date of adoption.

- **This Amendment promoting Patriarchy:**

Many social scientists are of opinion that it will promote patriarchy as almost whole responsibility of child caring is on the mother's as per this amendment. Government has not announced any leaves for fathers.

- **Work from Home:**

It also introduces the option of 'work from home' for mothers. After the expiry of the 26 weeks' leaves period, the woman can use this option to do her work from home. This option can be modified according to the nature of the work and terms and conditions levied by the employer.

- **Crèches:**

The Act makes it compulsory for every establishment employing 50 or more women to have in-house crèche facilities and allows women to visit the facility 4 times during the day, but the age of the children up to which age are entitled to the facility of crèche is not mentioned in the Act.

- **Awareness:**

The Act makes it compulsory for employers to aware women about the maternity benefits at the time of their appointment. Such information must be given in writing and electronically.]

MAJOR CHANGES

The Maternity Benefit (Amendment) Act, 2017 has increased the duration of paid maternity leave available for women employees to 26 weeks from 12 weeks. However for those women who are expecting after having 2 children, the duration of the leaves remains unaltered at 12 weeks.

- The paid maternity leave can be availed 8 weeks before the expected date of delivery. Before the amendment, it was 6 weeks.

- The Maternity Benefit (Amendment) Act, 2017 has extended the benefits applicable to the adoptive and commissioning mothers and provides that woman who adopts a child will be given 12 weeks of maternity leave from the date of adoption.

- The Act has introduced an enabling provision relating to "work from home" that can be exercised after the expiry of 26 weeks' leaves period. Depending upon the nature of work, a woman can avail of this provision on such terms that are mutually agreed with the employer.

- The amended Act has mandated crèche facility for every establishment employing 50 or more employees. The women employees should be permitted to visit the facility 4 times during the day.

- The amended Act makes it compulsory for the employers to educate women about the maternity benefits available to them at the time of their appointment.

Significance of the Maternity Benefit (Amendment) Act, 2017

The amended Act has raised the maternity benefits from 12 weeks to 26 weeks. This is significant and is in line with the recommendation of the World Health Organisation which says that children must be exclusively breastfed by the mother for the first 24 weeks. The extension in the maternity leave will help in improving survival rates of children and healthy development of both mother and child.

This will also reduce the instances of women dropping out of the labour force due to absence of adequate maternity leave.

The amended Act also falls in line with international best practices such as the Maternity Protection Convention, 2000 (No. 183) which calls for at least 14 weeks of mandatory maternity benefit.

Another significant feature is the introduction of 12 weeks of maternity benefits to the adopting and commissioned mothers.

The amended provisions have placed India third worldwide only behind Canada and Norway globally in the amount of maternity benefits being made available to the women workers.

DISADVANTAGES

1. Certain social scientists argue that these changes push forward patriarchy as it shifts the responsibility of childbearing towards the mother.

2. Many private firms may now refuse to employ women as they will have to extend these privileges to them at the time of childbirth. This will adversely impact the job opportunities available for women.
3. Various provisions lack clarity making implementation difficult.

Though increasing the maternity benefits available to women is a welcome step, the Government needs to ensure that industries do not lose their competitiveness due to these provisions. If the Government can bring about more uniformity in labour laws regarding maternity benefits, it would help several women all over India handle the many responsibilities handed out to them.

CRITICISM

- **Gender discrimination against women having childbearing age:**

Policy design is important and making such leaves an employer mandate, as in India, ensures employers will discriminate against women of childbearing age. 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.

- **Types of burden on the employer:**

Employers have to bear the entire cost of providing leaves to employees—in terms of both continued pay while on leaves, as well as the indirect cost of having to get the work done by employing other workers to finish the work of the absent employee. Also, it increases the cost of temporary training provided to the employee which is employed on behalf of the absent employee.

- **Women will lose their jobs:**

Regarding how the bulk of employment is in the informal sector, Team lease estimates, that 11-18 lakh jobs for women will be lost because of the implementation of the Act, over the first four years.

- **Financial burden only on employer:**

In most countries, the cost of maternity leave is shared by the Government, employer, insurance agency and other social security programmes. 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.

- **Adverse impact on the job opportunities for women:**

Many private firms may avoid giving jobs to such women who may enter into pregnancy period as then they have to give them maternity leave up to 26 weeks. The increase in the maternity leave could also have adverse impact on the job opportunities for women. The requirement of full payment of wages during maternity leave could increase costs for employers. It could result in increased preference for hiring male workers. The provision could also impact the competitiveness of industries that predominantly employs women workers.

- **Lack of clarity:**

Various provisions of the amended Act lack clarity. For instance, there is no clarity in the Act regarding the time period up to which the crèche facility could be extended to the employee and also regarding the aspect of availability, frequency and extent of nursing breaks. The provisions regarding the applicability of the Act to the unorganised sector also remain unclear. Though, on one hand, the Act states that it covers all women working in mines, plantations, shops, and establishments as well as factories in both organised and unorganised sectors. But on the other hand, the Unorganised Workers' Social Security Act, 2008 defines unorganised sector workers as those who are home based, self-employed, or wage workers working in an entity having less than 10 employees. So the provisions did not clarify whether the Act is applicable to the women employees in those enterprises having less than 10 employees. This is disturbing as over 90% of the working women are employed in unorganised sector in India.

- **Lack of Institutional support :**

Though the women working in unorganised sector can avail benefits from the schemes such as the Janani Suraksha Yojana and the Indira Gandhi Matritva Sahyog Yojana, they get their benefit only in terms of cash assistance and lack other institutional support provided in the Maternity Benefit Act.

RECOMMENDATIONS

Increasing maternity benefit is a welcome step but the Government should devise some mechanism to ensure that competitiveness of the private sector is not affected.

- **Need to bring uniformity in Labour Law about Maternity Benefits:**

The Government should try to bring about uniformity in labour laws about maternity benefits. The Acts like Employees State Insurance Act, 1948, All India Services (Leave) Rules, 1955, Central Civil Services (Leave) Rules, 1972, Factories Act, 1948, and the Unorganized Workers Social Security Act, 2008 have differences in coverage, benefits and financing. All these laws must be amalgamated to uniformly disseminate the benefits across various sectors in India.

- **Better to rethink on financial burden of the employer:**

The present amendment has the potential to dissuade employers from employing women as they have to bear the financial burden of maternity benefits. So to stop this, the Government should follow the advice of ILO. ILO has stated that the cost of providing maternity benefits must not be exclusively borne by the employer. In this regard, the Government should come forward in addressing the maternity benefit financing issues. The Government should opt for paying benefits through compulsory social insurance or public funds as recommended by the ILO. In this regard, the Pan-India expansion of Maternity Benefit Programme (MBP) of the Ministry of Women & Child Development is a welcome step. The scheme is applicable to all pregnant women and lactating mothers and excludes the pregnant women and lactating mothers in regular employment with the

Central Government or State Governments and in Public Sector Undertakings.

- **It should provide scope for Paternity benefit:**

Another issue is that the amendments are silent on provisions regarding paternity benefits. At present, paternity benefits are permitted in Government jobs as a part of leaves rules and in private organizations as a matter of internal policy. In this regard, ILO has recognised men's right to parenthood. It wants to see men as active co-parent. In a country where gender stereotypes are predominant, a gender-balanced approach to parenthood is needed. The Government should come up with an incentivised schemes regarding paternity benefits to achieve this objective.

CONCLUSION

Motherhood was one of the most important and challenging jobs in the world and that, in India, all religions have held the role of a mother as an esteemed position. The court concluded that motherhood was an inherent and integral part of a woman's dignity, which is protected by Article 21 of the Constitution as per judicial pronouncements in India. So, finally one can say that the amendments are a welcome and positive move by the Government. At the same time, the Government should address the above shortcomings and should work towards ensuring that the law provides equal opportunities to women at the workplace.

"Any society that fails to harness the energy and creativity of its women is at a huge disadvantage in the modern world" Tian Wei (CCTV News)

"So today, we call upon the world leaders to change their strategic policies in favor of peace and prosperity. We call upon the world leaders that all of these deals must protect women and children's rights. A deal that goes against the rights of women is unacceptable" Malala Yousafzai.

C183 - Maternity Protection Convention, 2000 (No. 183)

Convention concerning the revision of the Maternity Protection Convention (Revised), 1952 (Entry into force: 07 Feb 2002) Adoption: Geneva, 88th ILC session (15 Jun 2000) - Status: Up-to-date instrument

(Technical Convention). Convention may be denounced: 07 Feb 2022 - 07 Feb 2023

Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 88th Session on 30 May 2000, and

Noting the need to revise the Maternity Protection Convention (Revised), 1952, and the Maternity Protection Recommendation, 1952, in order to further promote equality of all women in the workforce and the health and safety of the mother and child, and in order to recognize the diversity in economic and social development of Members, as well as the diversity of enterprises, and the development of the protection of maternity in national law and practice, and

Noting the provisions of the Universal Declaration of Human Rights (1948), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979), the United Nations Convention on the Rights of the Child (1989), the Beijing Declaration and Platform for Action (1995), the International Labour Organization's Declaration on Equality of Opportunity and Treatment for Women Workers (1975), the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), as well as the international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, in particular the Convention concerning Workers with Family Responsibilities, 1981, and

Taking into account the circumstances of women workers and the need to provide protection for pregnancy, which are the shared responsibility of Government and society, and

Having decided upon the adoption of certain proposals with regard to the revision of the Maternity Protection Convention (Revised), 1952, and Recommendation, 1952, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this fifteenth day of June of the year two thousand the following Convention, which may be cited as the Maternity Protection Convention, 2000.

SCOPE

Article 1

For the purposes of this Convention, the term *woman* applies to any female person without discrimination whatsoever and the term *child* applies to any child without discrimination whatsoever.

Article 2

1. This Convention applies to all employed women, including those in atypical forms of dependent work.
2. However, each Member which ratifies this Convention may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature.
3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, list the categories of workers thus excluded and the reasons for their exclusion. In its subsequent reports, the Member shall describe the measures taken with a view to progressively extending the provisions of the Convention to these categories.

HEALTH PROTECTION

Article 3

Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment

has established a significant risk to the mother's health or that of her child.

MATERNITY LEAVES

Article 4

1. On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leaves of not less than 14 weeks.
2. The length of the period of leaves referred to above shall be specified by each Member in a declaration accompanying its ratification of this Convention.
3. Each Member may subsequently deposit with the Director-General of the International Labour Office a further declaration extending the period of maternity leaves.
4. With due regard to the protection of the health of the mother and that of the child, maternity leaves shall include a period of six weeks' compulsory leaves after childbirth, unless otherwise agreed at the national level by the Government and the representative organizations of employers and workers.
5. The prenatal portion of maternity leaves shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leaves.

LEAVES IN CASE OF ILLNESS OR COMPLICATIONS

Article 5

On production of a medical certificate, leaves shall be provided before or after the maternity leaves period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The nature and the maximum duration of such leaves may be specified in accordance with national law and practice.

BENEFITS

Article 6

1. Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leaves referred to in Articles 4 or 5.
2. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

3. Where, under national law or practice, cash benefits paid with respect to leaves referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.

4. Where, under national law or practice, other methods are used to determine the cash benefits paid with respect to leaves referred to in Article 4, the amount of such benefits shall be comparable to the amount resulting on average from the application of the preceding paragraph.

5. Each Member shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies.

6. Where a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or in any other manner consistent with national practice, she shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.

7. Medical benefits shall be provided for the woman and her child in accordance with national laws and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.

8. In order to protect the situation of women in the labour market, benefits in respect of the leaves referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where::

- (a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or
- (b) it is subsequently agreed at the national level by the Government and the representative organizations of employers and workers.

Article 7

1. A Member whose economy and social security system are insufficiently developed shall be

deemed to be in compliance with Article 6, paragraphs 3 and 4, if cash benefits are provided at a rate no lower than a rate payable for sickness or temporary disability in accordance with national laws and regulations.

2. A Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of this Convention under article 22 of the Constitution of the International Labour Organization, explain the reasons therefor and indicate the rate at which cash benefits are provided. In its subsequent reports, the Member shall describe the measures taken with a view to progressively increasing the rate of benefits.

EMPLOYMENT PROTECTION AND NON-DISCRIMINATION

Article 8

1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leaves referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.
2. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leaves.

Article 9

1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including - notwithstanding Article 2, paragraph 1 - access to employment.
2. Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where required by national laws or regulations in respect of work that is:
 - (a) prohibited or restricted for pregnant or nursing women under national laws or regulations; or
 - (b) where there is a recognized or significant

risk to the health of the woman and child.

BREASTFEEDING MOTHERS

Article 10

1. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.
2. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

PERIODIC REVIEW

Article 11

Each Member shall examine periodically, in consultation with the representative organizations of employers and workers, the appropriateness of extending the period of leaves referred to in Article 4 or of increasing the amount or the rate of the cash benefits referred to in Article 6.

IMPLEMENTATION

Article 12

This Convention shall be implemented by means of laws or regulations, except in so far as effect is given to it by other means such as collective agreements, arbitration awards, court decisions, or in any other manner consistent with national practice.

FINAL PROVISIONS

Article 13

This Convention revises the Maternity Protection Convention (Revised), 1952.

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member 12 months after

the date on which its ratification has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 18

The Director-General of the International Labour

Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 19

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
 - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative.

Convention C156 - Workers with Family Responsibilities Convention... <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0>



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C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)

Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (Entry into force: 11 Aug 1983)

Adoption: Geneva, 67th ILC session (23 Jun 1981) - Status: Up-to-date instrument (Technical Convention).

Convention may be denounced: 11 Aug 2023 - 11 Aug 2024

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Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-seventh Session on 3 June 1981, and

Noting the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation which recognises that "all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity", and

Noting the terms of the Declaration on Equality of Opportunity and Treatment for Women Workers and of the resolution concerning a plan of action with a view to promoting equality of opportunity and treatment for women workers, adopted by the International Labour Conference in 1975, and

Noting the provisions of international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, namely the Equal Remuneration Convention and Recommendation, 1951, the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and Part VIII of the Human Resources Development Recommendation, 1975, and

Recalling that the Discrimination (Employment and Occupation) Convention, 1958, does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect, and

Noting the terms of the Employment (Women with Family Responsibilities) Recommendation, 1965, and considering the changes which have taken place since its adoption, and

Noting that instruments on equality of opportunity and treatment for men and women have also been adopted by the United Nations and other specialised agencies, and recalling, in particular, the fourteenth paragraph of the Preamble of

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the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States Parties are " aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women", and

Recognising that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and

Recognising the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers, and

Considering that many of the problems facing all workers are aggravated in the case of workers with family responsibilities and recognising the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general, and

Having decided upon the adoption of certain proposals with regard to equal opportunities and equal treatment for men and women workers: workers with family responsibilities, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-third day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the Workers with Family Responsibilities Convention, 1981:

Article 1

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.
2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.
3. For the purposes of this Convention, the terms dependent child and other member of the immediate family who clearly needs care or support mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.
4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as **workers with family responsibilities**.

Article 2

This Convention applies to all branches of economic activity and all categories of workers.

Article 3

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.
2. For the purposes of paragraph 1 of this Article, the term **discrimination** means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

Article 4

Convention C156 - Workers with Family Responsibilities Convention... <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:>

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken--

- (a) to enable workers with family responsibilities to exercise their right to free choice of employment; and
- (b) to take account of their needs in terms and conditions of employment and in social security.

Article 5

All measures compatible with national conditions and possibilities shall further be taken--

- (a) to take account of the needs of workers with family responsibilities in community planning; and
- (b) to develop or promote community services, public or private, such as child-care and family services and facilities.

Article 6

The competent authorities and bodies in each country shall take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.

Article 7

All measures compatible with national conditions and possibilities, including measures in the field of vocational guidance and training, shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

Article 8

Family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 9

The provisions of this Convention may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

Article 10

1. The provisions of this Convention may be applied by stages if necessary, account being taken of national conditions: Provided that such measures of implementation as are taken shall apply in any case to all the workers covered by Article 1, paragraph 1.
2. Each Member which ratifies this Convention shall indicate in the first report on the application of the Convention submitted under Article 22 of the Constitution of the International Labour Organisation in what respect, if any, it intends to make use of the faculty given by paragraph 1 of this Article, and shall state in subsequent reports the extent to which effect has been given or is proposed to be given to the Convention in that respect.

Article 11

Employers' and workers' organisations shall have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Convention.

Article 12

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 13

Annexure-11

C003 - Maternity Protection Convention, 1919 (No. 3)

Convention concerning the Employment of Women before and after Childbirth (Entry into force: 13 Jun 1921) Adoption: Washington, 1st ILC session (29 Nov 1919) - Status: Instrument with interim status

(Technical Convention).

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Washington by the Government of the United States of America on the 29th day of October 1919, and

Having decided upon the adoption of certain proposals with regard to "women's employment, before and after childbirth, including the question of the Maternity Benefit", which is part of the third item in the agenda for the Washington meeting of the Conference, and

Having determined that these proposals shall take the form of an international Convention,

adopts the following Convention, which may be cited as the Maternity Protection Convention, 1919, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation:

Article 1

1. For the purpose of this Convention, the term *industrial undertaking* includes particularly--
 - (a) mines, quarries, and other works for the extraction of minerals from the earth;
 - (b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding and the generation, transformation, and transmission of electricity or motive power of any kind;
 - (c) construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, water work, or

other work of construction, as well as the preparation for or laying the foundation of any such work or structure;

- (d) transport of passengers or goods by road, rail, sea, or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses, but excluding transport by hand.
2. For the purpose of this Convention, the term *commercial undertaking* includes any place where articles are sold or where commerce is carried on.
3. The competent authority in each country shall define the line of division which separates industry and commerce from agriculture.

Article 2

For the purpose of this Convention, the term *woman* signifies any female person, irrespective of age or nationality, whether married or unmarried, and the term *child* signifies any child whether legitimate or illegitimate.

Article 3

In any public or private industrial or commercial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed, a woman--

- (a) shall not be permitted to work during the six weeks following her confinement;
- (b) shall have the right to leaves her work if she produces a medical certificate stating that her confinement will probably take place within six weeks;
- (c) shall, while she is absent from her work in pursuance of paragraphs (a) and (b), be paid benefits sufficient for the full and healthy maintenance of herself and her child, provided either out of public funds or by means of a system of insurance, the exact amount of which shall be determined by the competent authority in each country, and as an additional benefit shall be entitled to free attendance by a doctor or certified midwife; no mistake of the medical adviser in estimating the date of

confinement shall preclude a woman from receiving these benefits from the date of the medical certificate up to the date on which the confinement actually takes place;

- (d) shall in any case, if she is nursing her child, be allowed half an hour twice a day during her working hours for this purpose.

Article 4

Where a woman is absent from her work in accordance with paragraph (a) or (b) of Article 3 of this Convention, or remains absent from her work for a longer period as a result of illness medically certified to arise out of pregnancy or confinement and rendering her unfit for work, it shall not be lawful, until her absence shall have exceeded a maximum period to be fixed by the competent authority in each country, for her employer to give her notice of dismissal during such absence, nor to give her notice of dismissal at such a time that the notice would expire during such absence.

Article 5

The formal ratifications of this Convention, under the conditions set forth in the Constitution of the International Labour Organisation, shall be communicated to the Director-General of the International Labour Office for registration.

Article 6

1. Each Member of the International Labour Organisation which ratifies this Convention engages to apply it to its colonies, protectorates and possessions which are not fully self-governing--
 - (a) except where owing to the local conditions its provisions are inapplicable; or
 - (b) subject to such modifications as may be necessary to adapt its provisions to local conditions.
2. Each Member shall notify to the International Labour Office the action taken in respect of each of its colonies, protectorates, and possessions which are not fully self-governing.

Article 7

As soon as the ratifications of two Members of the International Labour Organisation have been registered with the International Labour Office, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation.

Article 8

This Convention shall come into force at the date on which such notification is issued by the Director-General of the International Labour Office, but it shall then be binding only upon those Members which have registered their ratifications with the International Labour Office. Thereafter this Convention will come into force for any other Member at the date on which its ratification is registered with the International Labour Office.

Article 9

Each Member which ratifies this Convention agrees to bring its provisions into operation not later than 1 July 1922, and to take such action as may be necessary to make these provisions effective.

Article 10

A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the International Labour Office.

Article 11

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 12

The French and English texts of this Convention shall both be authentic.

Annexure-12

C103 - Maternity Protection Convention (Revised), 1952 (No. 103)

*Convention concerning Maternity Protection (Revised 1952) (Entry into force: 07 Sep 1955) Adoption: Geneva, 35th ILC session (28 Jun 1952) - Status: Outdated instrument (Technical Convention).
Convention may be denounced: 07 Sep 2025 - 07 Sep 2026*

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fifth Session on 4 June 1952, and

Having decided upon the adoption of certain proposals with regard to maternity protection, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, adopts this twenty-eighth day of June of the year one thousand nine hundred and fifty-two the following Convention, which may be cited as the Maternity Protection Convention (Revised), 1952.

Article 1

1. This Convention applies to women employed in industrial undertakings and in non-industrial and agricultural occupations, including women wage earners working at home.
2. For the purpose of this Convention, the term *industrial undertaking* comprises public and private undertakings and any branch thereof and includes particularly--
 - (a) mines, quarries, and other works for the extraction of minerals from the earth;
 - (b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in shipbuilding, or in the generation, transformation or transmission of electricity or motive power of any kind;
 - (c) undertakings engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work;
 - (d) undertakings engaged in the transport of passengers or goods by road, rail, sea, inland waterway or air, including the handling of goods at docks, quays, wharves, warehouses or airports.
3. For the purpose of this Convention, the term *non-industrial occupations* includes all occupations which are carried on in or in connection with the following undertakings or services, whether public or private:
 - (a) commercial establishments;
 - (b) postal and telecommunication services;
 - (c) establishments and administrative services in which the persons employed are mainly engaged in clerical work;
 - (d) newspaper undertakings;
 - (e) hotels, boarding houses, restaurants, clubs, cafés and other refreshment houses;
 - (f) establishments for the treatment and care of the sick, infirm or destitute and of orphans;
 - (g) theatres and places of public entertainment;
 - (h) domestic work for wages in private households;

And any other non-industrial occupations to which the competent authority may decide to apply the provisions of the Convention.
4. For the purpose of this Convention, the term *agricultural occupations* includes all occupations carried on in agricultural undertakings, including plantations and large-scale industrialised agricultural undertakings.
5. In any case in which it is doubtful whether this Convention applies to an undertaking, branch of an undertaking or occupation, the question shall be determined by the competent authority after consultation with the representative organisations of employers and workers concerned where such exist.
6. National laws or regulations may exempt from the application of this Convention undertakings in which only members of the employer's family, as defined by national laws or regulations, are employed.

Article 2

For the purpose of this Convention, the term *woman* means any female person, irrespective of age, nationality, race or creed, whether married or unmarried, and the term *child* means any child whether born of marriage or not.

Article 3

1. A woman to whom this Convention applies shall, on the production of a medical certificate stating the presumed date of her confinement, be entitled to a period of maternity leaves.
2. The period of maternity leaves shall be at least twelve weeks, and shall include a period of compulsory leaves after confinement.
3. The period of compulsory leaves after confinement shall be prescribed by national laws or regulations, but shall in no case be less than six weeks; the remainder of the total period of maternity leaves may be provided before the presumed date of confinement or following expiration of the compulsory leaves period or partly before the presumed date of confinement and partly following the expiration of the compulsory leaves period as may be prescribed by national laws or regulations.
4. The leaves before the presumed date of confinement shall be extended by any period elapsing between the presumed date of confinement and the actual date of confinement and the period of compulsory leaves to be taken after confinement shall not be reduced on that account.
5. In case of illness medically certified arising out of pregnancy, national laws or regulations shall provide for additional leaves before confinement, the maximum duration of which may be fixed by the competent authority.
6. In case of illness medically certified arising out of confinement, the woman shall be entitled to an extension of the leaves after confinement, the maximum duration of which may be fixed by the competent authority.

Article 4

1. While absent from work on maternity leaves in accordance with the provisions of Article 3, the woman shall be entitled to receive cash and medical benefits.
2. The rates of cash benefit shall be fixed by national laws or regulations so as to ensure benefits sufficient for the full and healthy

maintenance of herself and her child in accordance with a suitable standard of living.

3. Medical benefits shall include pre-natal, confinement and post-natal care by qualified midwives or medical practitioners as well as hospitalisation care where necessary; freedom of choice of doctor and freedom of choice between a public and private hospital shall be respected.
4. The cash and medical benefits shall be provided either by means of compulsory social insurance or by means of public funds; in either case they shall be provided as a matter of right to all women who comply with the prescribed conditions.
5. Women who fail to qualify for benefits provided as a matter of right shall be entitled, subject to the means test required for social assistance, to adequate benefits out of social assistance funds.
6. Where cash benefits provided under compulsory social insurance are based on previous earnings, they shall be at a rate of not less than two-thirds of the woman's previous earnings taken into account for the purpose of computing benefits.
7. Any contribution due under a compulsory social insurance scheme providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits shall, whether paid both by the employer and the employees or by the employer, be paid in respect of the total number of men and women employed by the undertakings concerned, without distinction of sex.
8. In no case shall the employer be individually liable for the cost of such benefits due to women employed by him.

Article 5

1. If a woman is nursing her child she shall be entitled to interrupt her work for this purpose at a time or times to be prescribed by national laws or regulations.
2. Interruptions of work for the purpose of nursing are to be counted as working hours and remunerated accordingly in cases in which the matter is governed by or in accordance with laws and regulations; in cases in which the matter is governed by collective agreement, the position shall be as determined by the relevant agreement.

Article 6

While a woman is absent from work on maternity leaves in accordance with the provisions of Article 3 of this Convention, it shall not be lawful for her employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such a time that the notice would expire during such absence.

Article 7

1. Any Member of the International Labour Organisation which ratifies this Convention may, by a declaration accompanying its ratification, provide for exceptions from the application of the Convention in respect of--
 - (a) certain categories of non-industrial occupations;
 - (b) occupations carried on in agricultural undertakings, other than plantations;
 - (c) domestic work for wages in private households;
 - (d) women wage earners working at home;
 - (e) undertakings engaged in the transport of passengers or goods by sea.
2. The categories of occupations or undertakings in respect of which the Member proposes to have recourse to the provisions of paragraph 1 of this Article shall be specified in the declaration accompanying its ratification.
3. Any Member which has made such a declaration may at any time cancel that declaration, in whole or in part, by a subsequent declaration.
4. Every Member for which a declaration made under paragraph 1 of this Article is in force shall indicate each year in its annual report upon the application of this Convention the position of its law and practice in respect of the occupations or undertakings to which paragraph 1 of this Article applies in virtue of the said declaration and the extent to which effect has been given or is proposed to be given to the Convention in respect of such occupations or undertakings.
5. At the expiration of five years from the first entry into force of this Convention, the Governing Body of the International Labour Office shall submit to the Conference a special report concerning the application of these exceptions, containing such proposals as it may think appropriate for further action in regard to the matter.

Article 8

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 9

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 10

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate --
 - (a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;
 - (b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
 - (c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
 - (d) the territories in respect of which it reserves its decision pending further consideration of the position.
2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.
3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.
4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article

12, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 11

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.
2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.
3. The Member, Members or international authority concerned may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 12, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 12

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 13

1. The Director-General of the International Labour Office shall notify all Members of

the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 14

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 15

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 16

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides--
 - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 12 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 17

The English and French versions of the text of this Convention are equally authoritative.

Article 35

Application of Conventions to non-metropolitan territories

1. THE MEMBERS UNDERTAKE THAT CONVENTIONS WHICH THEY HAVE RATIFIED IN ACCORDANCE WITH THE PROVISIONS OF THIS CONSTITUTION SHALL BE APPLIED TO THE NON-METROPOLITAN TERRITORIES FOR WHOSE INTERNATIONAL RELATIONS THEY ARE RESPONSIBLE, INCLUDING ANY TRUST TERRITORIES FOR WHICH THEY ARE THE ADMINISTERING AUTHORITY, EXCEPT WHERE THE SUBJECT-MATTER OF THE CONVENTION IS WITHIN THE SELF-GOVERNING POWERS OF THE TERRITORY OR THE CONVENTION IS INAPPLICABLE OWING TO THE LOCAL CONDITIONS OR SUBJECT TO SUCH MODIFICATIONS AS MAY BE NECESSARY TO ADAPT THE CONVENTION TO LOCAL CONDITIONS.
2. EACH MEMBER WHICH RATIFIES A CONVENTION SHALL AS SOON AS POSSIBLE AFTER RATIFICATION COMMUNICATE TO THE DIRECTOR-GENERAL OF THE INTERNATIONAL LABOUR OFFICE A DECLARATION STATING IN RESPECT OF THE TERRITORIES OTHER THAN THOSE REFERRED TO IN PARAGRAPHS 4 AND 5 BELOW THE EXTENT TO WHICH IT UNDERTAKES THAT THE PROVISIONS OF THE CONVENTION SHALL BE APPLIED AND GIVING SUCH PARTICULARS AS MAY BE PRESCRIBED BY THE CONVENTION.
3. EACH MEMBER WHICH HAS COMMUNICATED A DECLARATION IN VIRTUE OF THE PRECEDING PARAGRAPH MAY FROM TIME TO TIME, IN ACCORDANCE WITH THE TERMS OF THE CONVENTION, COMMUNICATE A FURTHER DECLARATION MODIFYING THE TERMS OF ANY FORMER DECLARATION AND STATING THE PRESENT POSITION IN RESPECT OF SUCH TERRITORIES.
4. WHERE THE SUBJECT-MATTER OF THE CONVENTION IS WITHIN THE SELF-GOVERNING POWERS OF ANY NON-METROPOLITAN TERRITORY, THE MEMBER RESPONSIBLE FOR THE INTERNATIONAL RELATIONS OF THAT TERRITORY SHALL BRING THE CONVENTION TO THE NOTICE OF THE GOVERNMENT OF THE TERRITORY AS SOON AS POSSIBLE WITH A VIEW TO THE ENACTMENT OF LEGISLATION OR OTHER ACTION BY SUCH GOVERNMENT. THEREAFTER THE MEMBER, IN AGREEMENT WITH THE GOVERNMENT OF THE TERRITORY, MAY COMMUNICATE TO THE DIRECTOR-GENERAL OF THE INTERNATIONAL LABOUR OFFICE A DECLARATION ACCEPTING THE OBLIGATIONS OF THE CONVENTION ON BEHALF OF SUCH TERRITORY.
5. A DECLARATION ACCEPTING THE OBLIGATIONS OF ANY CONVENTION MAY BE COMMUNICATED TO THE DIRECTOR-GENERAL OF THE INTERNATIONAL LABOUR OFFICE:
 - (A) BY TWO OR MORE MEMBERS OF THE ORGANIZATION IN RESPECT OF ANY TERRITORY WHICH IS UNDER THEIR JOINT AUTHORITY; OR
 - (B) BY ANY INTERNATIONAL AUTHORITY RESPONSIBLE FOR THE ADMINISTRATION OF ANY TERRITORY, IN VIRTUE OF THE CHARTER OF THE UNITED NATIONS OR OTHERWISE, IN RESPECT OF ANY SUCH TERRITORY.
6. ACCEPTANCE OF THE OBLIGATIONS OF A CONVENTION IN VIRTUE OF PARAGRAPH 4 OR PARAGRAPH 5 SHALL INVOLVE THE ACCEPTANCE ON BEHALF OF THE TERRITORY CONCERNED OF THE OBLIGATIONS STIPULATED BY THE TERMS OF THE CONVENTION AND THE OBLIGATIONS UNDER THE CONSTITUTION OF THE ORGANIZATION WHICH APPLY TO RATIFIED CONVENTIONS. A DECLARATION OF ACCEPTANCE MAY SPECIFY SUCH MODIFICATION OF THE PROVISIONS OF THE CONVENTIONS AS MAY BE NECESSARY TO ADAPT THE CONVENTION TO LOCAL CONDITIONS.
7. EACH MEMBER OR INTERNATIONAL AUTHORITY WHICH HAS COMMUNICATED A DECLARATION IN VIRTUE OF PARAGRAPH 4 OR PARAGRAPH 5 OF THIS ARTICLE MAY FROM TIME TO TIME, IN ACCORDANCE WITH THE TERMS OF THE CONVENTION, COMMUNICATE A FURTHER DECLARATION MODIFYING THE TERMS OF ANY FORMER DECLARATION OR TERMINATING THE ACCEPTANCE OF THE OBLIGATIONS OF THE CONVENTION ON BEHALF OF THE TERRITORY CONCERNED.
8. IF THE OBLIGATIONS OF A CONVENTION ARE NOT ACCEPTED ON BEHALF OF A TERRITORY TO WHICH PARAGRAPH 4 OR PARAGRAPH 5 OF THIS ARTICLE RELATES, THE MEMBER OR MEMBERS OR INTERNATIONAL AUTHORITY CONCERNED SHALL REPORT TO THE DIRECTOR-GENERAL OF THE INTERNATIONAL LABOUR OFFICE THE POSITION OF THE LAW AND PRACTICE OF THAT TERRITORY IN REGARD TO THE MATTERS DEALT WITH IN THE CONVENTION AND THE REPORT SHALL SHOW THE EXTENT TO WHICH EFFECT HAS BEEN GIVEN, OR IS PROPOSED TO BE GIVEN, TO ANY OF THE PROVISIONS OF THE CONVENTION BY LEGISLATION, ADMINISTRATIVE ACTION, COLLECTIVE AGREEMENT OR OTHERWISE AND SHALL STATE THE DIFFICULTIES WHICH PREVENT OR DELAY THE ACCEPTANCE OF SUCH CONVENTION.

Glimpses of the Workshop





Reference

- W.B.(2018), World Bank, “women in India’s Economic Growth”, 1 December 2019, URL: <https://www.worldbank.org/en/news/speech/2018/03/17/women-indias-economic-growth>
 - Cunha, D.(2018), “India’s Bold Maternity Benefit Act can become a game changer if it addresses current limitations”, [Online: web] Accessed 3 December 2019, URL: <https://www.epw.in/node/152339/pdf>
 - Local circles (2018), “Maternity Benefit Act-Business wary of hiring female staff even after Government says it will pay 7 week’s salary”, [Online: Web] Accessed 9 December 2019, URL: <https://www.localcircles.com/a/press/page/startups-wary-of-hiring-female-staff#.XgR2y64zbIU>
 - Ministry of Law and Justice (2017), Government of India, Ministry of Law and Justice, ‘The Maternity Benefit (Amendment) Act’, *The Gazette of India*, 28 March.
 - Government of India, *Maternity Benefit Act*, Ministry of Labour and Employment.
 - ILO (2000), International Labour Organization, “Maternity Protection Convention”, 8 December 2019, URL: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C183
 - ILO (1981), International Labour Organization, “workers with Family Responsibilities Convention”, 17 December 2019, URL: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C156
 - ILO (1919), International Labour Organization, “Maternity Protection Convention”, 25 December 2019, URL: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C003
 - ILO (1952), International Labour Organization, “Maternity Protection Convention (Revised)”, 30 December 2019, URL: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C103
- “I am not enamoured of equality or any other proportion in such matters. Merit should be the only test. Seeing, however, that it has been the custom to decry women, the contrary custom should be to prefer women, merit being equal, to men even if the preference should result in men being entirely displaced by women. It would be a dangerous thing to insist on membership on the ground merely of sex. Women and for that matter any group should disdain patronage. They should seek justice, never favour..... For men to take a lead in this much-needed reform would be not a matter of favour but a simple act of belated justice due to women.” Mahatma Gandhi (Harijan, April 7, 1946).*



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