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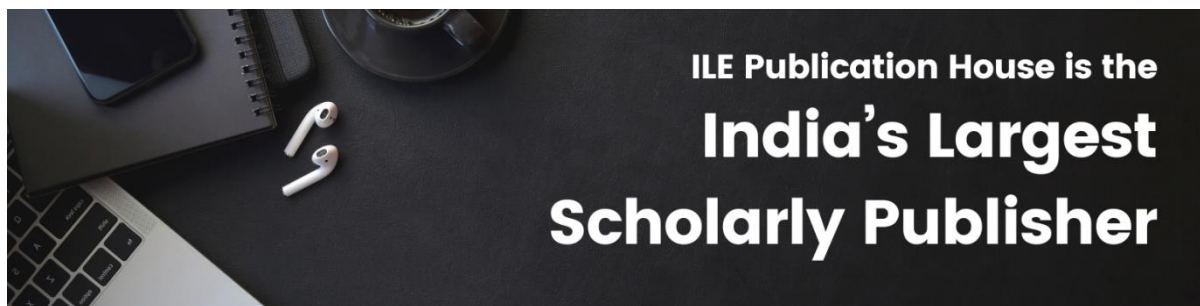
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## LEGISLATION REVIEW ON THE MATERNITY BENEFIT ACT, 1961

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### I. ABSTRACT

The Maternity Benefit Act, 1961 is an important piece of legislation in India that seeks to provide maternity benefits to women employees. The Act applies to all establishments that employ ten or more people and aims to protect the health and well-being of women during their pregnancy and after childbirth.<sup>43</sup> This abstract will provide a brief overview of the provisions of the Act and its importance for women employees in India. The Act also prohibits the employer from terminating the employment of a woman during her maternity leave or immediately after it. This provision ensures that women employees are not discriminated against on the basis of their pregnancy or childbirth and have job security. If an employer violates this provision, the employee can file a complaint with the appropriate authority.

In addition, the Act mandates that every establishment employing 50 or more employees must provide a creche or a day-care facility for the benefit of the children of women employees. The creche or day-care facility should be located within a prescribed distance from the workplace and equipped with all necessary facilities. This provision helps women employees to continue working without worrying about the well-being of their children. The Act also provides for the appointment of Inspectors to enforce its provisions. These Inspectors have the power to enter any establishment and inspect its records, premises, and documents related to maternity benefits.

In conclusion, the Maternity Benefit Act, 1961 is an important legislation that seeks to protect

the rights of women employees in India. The Act ensures that women employees are able to take adequate time off from work during their pregnancy and after childbirth, without fear of losing their job. The Act also provides for the well-being of the children of women employees by mandating the provision of creches or day-care facilities. Several times the act has been amended to keep with changing social and economic realities and remains a crucial tool for promoting gender equality in the workplace.<sup>44</sup>

**Keywords:** Maternity Benefit Act, motherhood, pregnant women, childbirth, lactating mothers, paid leave, medical benefits, creche facilities, female workers, entitlements.

### MATERNITY BENEFIT ACT, 1961

(Act No. 53 of 1961)

**Passing Authority:** The authority for implementing the Maternity Benefit Act lies with the Ministry of Labour and Employment, Government of India. The Maternity Benefit Act was first enacted by the Parliament of India in the year 1961

### II. INTRODUCTION

The Maternity Benefit Act is a law that provides for certain benefits to working mothers in India. This legislation is passed by the Indian government to provide maternity benefits to women who are employed in certain establishments. The authority to pass this act lies with the *Indian Parliament*.

The Maternity Benefit Act, 1961 is an Indian legislation that aims to providing maternity

<sup>43</sup> Maternity Benefit Act, 1961, No.53, Acts of Parliament, 1961 (India).

<sup>44</sup> India const. art. 14.

benefits to women employees working in certain establishments.<sup>45</sup> The Act provides for paid maternity leave, medical benefits, nursing breaks, and other related benefits to women employees who are pregnant or have given birth to a child.

The Act is applicable to women who are working in factories, mines, plantations, shops, and other establishments where ten or more people are employed. Under the Act, eligible women employees are entitled to a maximum of 26 weeks of paid maternity leave, of which up to eight weeks can be taken before the expected date of delivery.<sup>46</sup> The Act also provides for a six-week leave period in case of a miscarriage or medical termination of pregnancy.

The Act aims to promote the welfare of women employees and ensure that they are not discriminated against on the grounds of pregnancy or childbirth. It recognizes the importance of maternity and child care and aims to provide a supportive environment for working mothers.<sup>47</sup>

### III. HISTORICAL BACKGROUND

Prior to the Maternity Benefit Act, there were no legal provisions in India to protect the interests of pregnant working women. Women were expected to work until they went into labor and were only entitled to a six-week postnatal leave period. This practice was not only harmful to the health of the mother but also put the newborn at risk. The first attempt to address this issue was made by the Indian government in 1955 when it set up a committee to look into the problems faced by working women. The committee recommended that working mothers be given paid leave for six weeks before and after childbirth. However, this recommendation was not implemented, and women continued to face discrimination in the workplace.

It was only in 1961 that the Maternity Benefit Act was enacted to provide legal protection to pregnant women. The law has undergone numerous revisions throughout the years to suit societal developments and the demands of working women. In 1972, the Act was amended to increase the duration of paid leave from twelve weeks to sixteen weeks. In 2017, the Act was further amended to increase the duration of paid leave to twenty-six weeks, making India one of the countries with the longest maternity leave periods in the world. The Act has also been amended to include provisions for adoptive mothers and surrogacy. In 2008, the Act was amended allowing twelve weeks of paid leave to the adoptive mothers. In 2017, the Act was further amended to provide maternity benefits to women who have children through surrogacy.<sup>48</sup>

### IV. ANALYSIS OF LEGAL PROVISIONS

The Maternity Benefit Act is an Indian law that provides maternity benefits to women who are pregnant or have recently given birth. The Maternity Benefit Act, of 1961 has 30 sections. Some of the important provisions are as follows:

A. Maternity Leave: Section 5(3) of the Maternity Benefit Act prevails woman can avail maternity leave up to 26 weeks. This leave may be used for up to 8 weeks prior to the anticipated due date, with the remaining period being used following the delivery.. In the case of *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, the Supreme Court held that the purpose of maternity leave is to give the woman time to recover from childbirth and to provide care for the child. The Court also observed that the employer has a duty to ensure that the woman is able to take care of her child during this period, and the denial of maternity leave can amount to discrimination against women.<sup>49</sup>

<sup>45</sup> Maternity Benefit Act, 1961, No.53, Acts of Parliament, 1961 (India).

<sup>46</sup> Maternity Benefit Act, 1961, § 5(3), No.53, Acts of Parliament, 1961 (India).

<sup>47</sup> India code, [https://www.indiacode.nic.in/handle/123456789/1681?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/1681?sam_handle=123456789/1362) (last visited on April 22, 2023).

<sup>48</sup> India code, [https://www.indiacode.nic.in/handle/123456789/1681?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/1681?sam_handle=123456789/1362) (last visited on April 22, 2023).

<sup>49</sup> *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, (2000) 10 SCC 60.

B. Payment during maternity leave: payment to employee is equivalent to average daily wage for the period of leave.

C. Leave for miscarriage or medical termination of pregnancy: A woman is entitled to a leave of 6 weeks in case of a miscarriage or medical termination of pregnancy, subject to the production of a certificate from a registered medical practitioner.<sup>50</sup>

D. Nursing breaks: Women who return to work after maternity leave are also entitled to nursing breaks of up to four times a day, and the employer is required to provide a suitable place for the employee to nurse her child.<sup>51</sup>

E. Prohibition of dismissal and discrimination: Section 12 of the Maternity Benefit Act provides that an employer cannot dismiss a woman during her maternity leave or during the period of 6 months after her return to work.

In the case of *V. T. Khanzode v. Reserve Bank of India*, the Bombay High Court held that the prohibition on dismissal during maternity leave is a mandatory provision, and any violation of this provision can lead to reinstatement of the employee with back wages.<sup>52</sup> The Maternity Benefit Act prohibits discrimination against women on the basis of pregnancy or maternity leave.

## V. CONSTITUTIONALITY OF THE ACT

The Maternity Benefit Act, 1961 is a social welfare legislation legislated by the Indian Parliament to cover the employment rights of women who are on motherliness leave. The constitutionality of this act has been upheld by the Indian bar in several cases. In the case of *Municipal Corporation of Delhi v. womanish Workers (Muster Roll) and Ors.*, (2000) 1 SCC 566, the Supreme Court of India upheld the constitutionality of the Maternity Benefit Act, 1961, stating that it was a progressive piece of social welfare legislation that aimed to cover the

rights of working women. The Court observed that the Act was in consonance with the Directive Principles of State Policy elevated in the Constitution of India and aimed to achieve the larger thing of gender equivalency and protection of women's rights.<sup>53</sup>

In another case, *Central Inland Water Transport Corporation Ltd.v. Brojo Nath Ganguly and Ors.*, (1986) 3 SCC 156, the Supreme Court held that the Maternity Benefit Act, 1961 was a salutary piece of social welfare legislation legislated in headway of the abecedarian rights guaranteed under Articles 14, 15, 39( e) and 42 of the Constitution of India.<sup>54</sup> Likewise, in the case of *Air India v. Nargesh Mirza*, (1981) 4 SCC 335, the Supreme Court held that the Maternity Benefit Act, 1961 was a piece of social welfare legislation that aimed to cover the rights of women who are on motherliness leave and that it was in consonance with the abecedarian rights guaranteed under Articles 14, 15, and 42 of the Constitution of India.<sup>55</sup>

Therefore, it can be concluded that the Maternity Benefit Act, 1961 is a naturally valid legislation that has been upheld by the Indian bar. It aims to cover the employment rights of women who are on motherliness leave and is in consonance with the abecedarian rights guaranteed under the Constitution of India.

## VI. PROPOSED AMENDMENTS

In recent years, there have been several amendments to this act to improve the benefits available to women. Some of the major amendments in 2017 are in the areas of:

- A. Increase in paid maternity leave.
- B. Extended leave for certain cases..
- C. Work from home option.
- D. Creche facilities.
- E. Nursing breaks..

<sup>50</sup> Maternity Benefit Act, 1961, § 5(1), No.53, Acts of Parliament, 1961 (India).

<sup>51</sup> Maternity Benefit Act, 1961, § 9, No.53, Acts of Parliament, 1961 (India).

<sup>52</sup> *V. T. Khanzode v. Reserve Bank of India*, AIR 1982 Bom 149.

<sup>53</sup> *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Ors.*, (2000) 1 SCC 566.

<sup>54</sup> *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly and Ors.*, (1986) 3 SCC 156.

<sup>55</sup> *Air India v. Nargesh Mirza*, (1981) 4 SCC 335.

These amendments have significantly improved the benefits available to women under the Maternity Benefit Act, making it easier for women to balance work and family responsibilities.

## VII. CRITICAL ANALYSIS AND SUGGESTIONS

The Maternity Benefit Act is a step towards promoting gender equivalency in the plant by furnishing pregnant women with paid motherliness leave and other benefits. The recent amendations to the act have increased the duration of paid leave, handed the option to work from home, and commanded creche installations, among other effects. Still, there are still some areas that need enhancement.<sup>56</sup>

Originally, the act only covers women who work in establishments with further than 10 workers, leaving out a large number of women who work in lower associations or as casual sloggers.

Secondly, the act doesn't give for maternity leave, which puts the burden of child-rearing solely on women.

Eventually, there's a lack of mindfulness among women about their rights under the act, and perpetration of the act is frequently poor.

To ameliorate the situation, the government should consider extending the act to cover all women, including those working in lower establishments, and introduce maternity leave to encourage participated responsibility in child-parenting. Also, there should be further mindfulness-raising juggernauts to insure that women are apprehensive of their rights under the act, and employers should be held responsible for the perpetration of the act.<sup>57</sup>

## VIII. CONCLUSION:

In conclusion, the Maternity Benefit Act is an important legislation in India that provides pregnant women with paid leave and other benefits. The recent amendments to the act

have expanded the benefits available to women, but there are still some areas that need improvement. It is crucial that the act is extended to cover all women, including those working in smaller organizations, and that paternity leave is introduced to encourage shared responsibility in child-rearing. Additionally, awareness-raising campaigns should be conducted to ensure that women are aware of their rights under the act, and employers should be held accountable for the implementation of the act. By addressing these issues, the Maternity Benefit Act can become an effective tool for promoting gender equality in the workplace and improving the lives of women and their families.

<sup>56</sup> Maternity Benefit Act, 1961, No.53, Acts of Parliament, 1961 (India).

<sup>57</sup> REUTERS, <https://www.reuters.com/article/us-india-women-maternity-idUSKBN16H1O5>, (last visited on April 22, 2023).