



# THE NEW HORIZONS OF MATERNITY BENEFITS IN INDIA: IT'S IMPACT ON THE EMPLOYABILITY OF WOMEN WORKERS\*

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## Abstract

*In a progressive society, it has been gradually realized that women along with the men play a significant role in making the country prosper and as well as raising the standard of living. There has been an evidence of tremendous change in the status of women with increasing their engagement in labour market, even though the inclination towards their social protection and social security is still under the question mark and unsatisfactory. The usual phenomenon behind this mindset of the society is the perception of women as housewives, caregivers, mothers and secondary sources of household activities. But now the time has come to change this traditional perception of the society. The government of India, in order to ensure gender neutrality has passed number of enactments which provide employment benefits such as wage benefits, better working conditions, maternity benefits and social security. Maternity benefits act as facilitator which believed to create an environment that assist and improve a women worker's capability to maintain balance in work and family engagements.*

**KEY WORDS-** Social Security, Maternity, Informal/Formal Sector, Social Safety Net, Social Justice, Welfare State

## 1. INTRODUCTION

Nature has made women to bear child in order to keep the generations going on. Bearing of child is also a family as well as social obligation of a married woman and an employed married woman cannot be an exception or immune from this obligation. Thus maternity is unavoidable. Historically, maternity has been treated as a state of disability in women workers from undertaking any work during the few weeks immediately preceding and following child birth.<sup>1</sup> With the emergence of the system of wage labour in the industrial undertakings, many employees tended to terminate the services of the women workers when they found that maternity interfered with the performance of normal duties by women workers. Many women workers, therefore, had to go on leave without pay during this period in order to retain their employment. Many others had to bear a heavy strain to keep their efficiency during the periods of pregnancy, which was injurious to health of both, the mother and the child. To remove this hardship of the women workers, the concept of maternity benefit came about in order to enable the women workers to carry on the social function of child; bearing and rearing without undue strain on their health and loss of wages. Looking at the large number of women employment in broad occupational categories, it was but natural the protective laws to safeguard their in relation to maternity and the children are enacted by the central and state governments. Article 42 of our Constitution contains the directive that the State shall make provision for securing just and humane conditions of work and maternity benefit.

<sup>1</sup> Bala Shashi, Implementation of Maternity Benefit Act, V.V. Giri National Labour Institute, 2012, p. 2.

## 1.1. THE MATERNITY BENEFIT ACT, 1961

The Maternity Benefit Act 1961 extends to the whole of India and applies to every factory, mine, plantation & circus industry including any such establishment belonging to government but excluding the entire establishment covered under the provisions of the Employees' State Insurance Act, 1948. The Act also applies to shops & commercial establishments in which 10 or more persons are employed or were employed for the exhibition of equestrian, acrobatic and other performance.<sup>2</sup>

In **Municipal Corporation of Delhi V. Female Workers (Muster Roll)**, the Apex Court held that "The Maternity Benefit Act, 1961 aims to provide all the facilities to a working women in a dignified manner, so that she may overcome, the state of motherhood honorably, peacefully, undeterred by the fear of being victimized for forced absence during the pre or post natal period".<sup>3</sup>

### 1.1.1. Benefits Covered Under the Act of 1961

The Act imposes an obligation on the employer not to employ knowing women worker in any establishment during the six weeks immediately before the day her delivery or her miscarriage or medical termination of pregnancy. No woman shall work in any establishment during the 6 weeks immediately following the day of her delivery or her miscarriage. On a request being made by the employed woman, the employer shall not require such women to do any work-

- which causes ill effect on her pregnancy or the normal development of the foetus or
- any work which is likely to cause her miscarriage or otherwise to adversely affect her health.<sup>4</sup>

Every woman shall be entitled to & 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, i.e.

- a- the period immediately preceding the day of her delivery,
- b- the actual day of her delivery and any period immediately following that day.

### 1.1.2. Conditions for Claiming Maternity Benefit

Maternity benefit can be claimed only when a woman has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.<sup>5</sup>

### 1.1.3. Period of Maternity Benefit

The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery;<sup>6</sup>

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

After sub section (3) of following provision 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".

Sub section (4) provides that a woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefits 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.

Sub section (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.<sup>7</sup>

<sup>2</sup> Section 2 of the Maternity Benefit Act, 1961

<sup>3</sup> 2000 ILJ 846 (SC)

<sup>4</sup> Section 4 of the Maternity Benefit Act, 1961

<sup>5</sup> Section 5 (2) of the Act 1961

<sup>6</sup> Section 5 (3) Amended by the Maternity Benefit (Amendment) Act 2017

The Maternity Benefit Act 1961 has laid emphasis on providing payment of medical bonus to the beneficiary by her employer upto 1000 rupees if no pre-natal confinement & post natal care is provided for by the employer free of charge. The amount of medical bonus is increased to 20,000 rupees by the central government.<sup>8</sup> The woman is entitled to get leave with wages in case of miscarriage or any kind of complication during pregnancy.<sup>9</sup> On the proof of any illness arising out of pregnancy an additional leave with wages for a period of 30 days is granted to the beneficiary.<sup>10</sup> After returning to duty, the mother shall be entitled to interval of rest and be permitted to two breaks to feed the child until the child attains the age of 15 months.<sup>11</sup> The establishment having fifty or more women workers shall have the 'facility of crèche' at convenient places.<sup>12</sup> On the proof given the women shall be entitled to leave with wages for Tubectomy operation.<sup>13</sup> The Act provides that it shall be unlawful for her employer to discharge or dismiss a pregnant woman during or on account of her 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 condition of her service.<sup>14</sup> The Act states that no deduction of wages is allowed by reason of light work assigned to a pregnant women & breaks for feeding the child.<sup>15</sup>

## 1.2. NATIONAL MATERNITY BENEFIT SCHEME

Under NMBS, cash assistance of Rs. 500/- is provided to the women of household below poverty line and 19 years of age and above, up to first two live births, it covers both pre-deliver payment and post delivery payment. The scheme is into an action since 1995. The scheme aims at to assure monetary aid to the needy women at the time of their pregnancy and in case of the death of the child the women can still get the benefit of the same. To improve its efficacy and coverage the National Maternity Benefit Scheme (NBMS) got updated by modified scheme called "Janani Suraksha Yojana" (JSY).<sup>16</sup>

## 1.3. JANANI SURAKSHA YOJANA

In 2005 the National Rural Health Mission initiates a centrally sponsored program called Janani Suraksha Yojana with a primary motive to reduce maternal and neonatal mortality by promoting institutional delivery among the women belong to vulnerable segment of the society. The yojana divides low-performing states (LPS) and high-performing states (HPS) depending on the pre-programme level of institutional deliveries. The Janani Suraksha Program introduced frontline health workers, called Accredited Social Health Activists (ASHAs). Monetary Assistance is granted to the selected target beneficiaries with deliver and post delivery care.<sup>17</sup>

## 1.3. VANDE MATARAM SCHEME

This is a voluntary scheme wherein any obstetric and gynaecological society of India and private clinics can volunteer themselves for providing safe motherhood services. The aim of the scheme is to reduce the maternal mortality and morbidity of the pregnant and expected mothers by involving and utilizing the vast resources of specialist / trained workforce available in the private sector. The scheme intends to provide free antenatal and post natal check up, counselling on nutrition, breastfeeding through public private partnership etc.<sup>18</sup>

## 1.4. PRADHAN MANTRI MATRU VANDANA YOJANA

Pradhan Mantri Matru Vandana Yojana is a maternity benefit programme initiated by the government of India with effect from 2017 to provide cash incentive of rupees 5000 to pregnant women and lactating mother. The Yojana aims at to provide partial compensation for the wage loss in terms of monetary assistance so that the woman can take adequate rest before and after delivery of the first living child. The benefit under the scheme is

<sup>7</sup> As per the Maternity Benefit (Amendment) Act 2017

<sup>8</sup> Section 8 of the Maternity Benefit (Amendment) Act 2008

<sup>9</sup> Section 9 of the Maternity Benefit Act 1961

<sup>10</sup> Section 10 of the Maternity benefit Act 1961

<sup>11</sup> Section 11 of the Maternity benefit Act 1961

<sup>12</sup> Section 11 A Inserted by the Maternity Benefit (Amendment) Act 2017

<sup>13</sup> Section 9A of the Maternity Benefit Act, 1961

<sup>14</sup> Section 12 of Act, 1961

<sup>15</sup> Section 13 of the Act 1961

<sup>16</sup> National Maternity Benefit Scheme, available at [www.planningcommission.nic.in/sereport...](http://www.planningcommission.nic.in/sereport...)

<sup>17</sup> Janani Suraksha Yojana, Available at <https://nhm.gov.in/index1.php?lang=1&level=3&lid=309&sublinkid=841>

<sup>18</sup> Vande Mataram Scheme, Available at <https://www.telegraphindia.com/india/maternity-scheme-unveiled/cid/775081>



not allowable to those women who are in regular employment with the Central/State Government or Public Sector Undertakings (PSUs) or those who are in receipt of similar benefits under any law.<sup>19</sup>

### 1.5. PRADHAN MANTRI SURAKSHIT MATRITVA ABHIYAN

The government of India initiates Pradhan Mantri Surakshit Matritva Abhiyan to ensure quality antenatal care (a type of preventive healthcare) to pregnant women in the nation. Under the Abhiyan a minimum package of preventive healthcare service would be given to the beneficiaries on the 9<sup>th</sup> day of every month at the Pradhan Mantri Surakshit Matritva Clinics to promote healthy lifestyles that benefit both mother and child.<sup>20</sup>

## 2. ADVERSE IMPACT OF THE MATERNITY BENEFIT (AMENDMENT) ACT 2017 ON EMPLOYABILITY

- Seeing women workers as a burden- Many of the employers in private firms may avoid giving jobs to such women who may enter into pregnancy period as they are under an obligation to grant them maternity leave and payment for that period (upto 26 weeks). After the amendment many of employers takes the women employee as a burden.
- Increase in costs of production- A sole responsibility of employer for full payment of wages during the specified period increase costs for employers.
- The amendment creates a financial apprehension in the minds of employer's, it could result in increased preference for hiring male workers.
- Loses due to enhanced maternity leave with benefits to industries engaging predominately women workers.
- Reduces the employment opportunities for women workers, employers are either not very keen on hiring female workers or they are being asked to leave just before maternity to avoid additional liability.<sup>21</sup>

## 3. JUDICIAL RESPONSE

The judiciary has played a vital role for ensuring maternity benefits to the women in India by giving interpretation to true intention of legislations and schemes-

**In B. Shah V. Presiding Officer, Labour Court Coimbatore,**<sup>22</sup> The Supreme court regarding the significance of maternity benefit to woman employees observed that it has to be kept in mind that in interpreting the provision of beneficial pieces of legislation like Maternity Benefit Act, 1961 which is intended to achieve the object of ensuring social justice to female employee employed in the plantation and which squarely fall within the purview of Article 42 of the Constitution, the beneficent rule of construction which would enable the woman employee not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output has to be adopted by the Court.

**In Municipal Corporation of Delhi V. Female Workers (Muster Roll) and another,**<sup>23</sup> in this case the Supreme Court held that there is nothing in the Act which entitles only regular woman employees to the benefit of maternity leave and not to other female employees who are employed on casual basis or on the muster roll in daily wages basis. To become a mother is most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of a child to a woman who is in service, the employer has to be considerate and sympathetic towards her must realize the physical difficulties which a working women would face in doing 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 honorably, peaceably, undeterred by the fear of being victimized for forced absence during the pre or post natal period.

<sup>19</sup> Pradhan Mantri Matru Vandana Yojana, available at <https://www.paisabazaar.com/saving-schemes/pradhan-mantri-matru-vandana-yojana/>

<sup>20</sup> Pradhan Mantri Surakshit Matritva Abhiyan, Maternal Health Division, Ministry of Health and Family Welfare, GOI, Available at [https://pmsma.nhp.gov.in/wp-content/uploads/2016/09/Pradhan\\_Mantri\\_Surakshit\\_Matritva\\_Abhiyan-2.pdf](https://pmsma.nhp.gov.in/wp-content/uploads/2016/09/Pradhan_Mantri_Surakshit_Matritva_Abhiyan-2.pdf)

<sup>21</sup> Koneru anuradha, The Maternity Benefit ( Amendment) Act 2017 A Big and Positive Step towards Improvement in Securing, <http://www.legalserviceindia.com/legal/article-176-the-maternity-benefit-amendment-act-2017-a-big-and-p..>

<sup>22</sup> AIR 1978 SC 12

<sup>23</sup> 2000 SCC(L&S) 331

**In Mrs. Savita Ahuja V. State of Haryana & others,**<sup>24</sup> The Hon'ble court held that merely because the appointment of the petitioner was purely on temporary/adhoc basis, she should not be disentitled to maternity leave. She is entitled to grant of maternity leave on full pay for the period of confinement & that termination of her service on account of her pregnancy was illegal. Therefore maternity leave also be granted to such female government employees who have been recruited on ad-hoc basis.

**In J. Sharmila V. The Secretary to Government, Edu. Deptt. Madras,**<sup>25</sup> The questions raised in the writ petition was that whether a married woman Government servant is entitled to get fully paid towards maternity leave availed if she has already two surviving children? The petitioner had delivered during her first delivery twins and the second delivery was a single child. Therefore, the maternity leave was confined only to the second delivery and not based on the third child norm. The court held that it is suffice to state that if the intention of the State government is to afford protection of the woman for her second delivery, then it should not be based upon the number of children she delivers during those two deliveries. The importance has to be seen only from the health point of the women Government servant and not the numbers of children one delivers during each delivery. The petitioner who had availed maternity leave during her second pregnancy is entitled to be paid full salary for the period.

**In K.C Chandrika V. Indian Red Cross Society,**<sup>26</sup> the post of the petitioner as appointed by the Red Cross Society as a clerk is temporary in nature but is likely to continue. The petitioner applied for maternity leave and the same is granted to her by the respondent. The duration of the leave was three months. While on leave, the petitioner was surprised to receive a communication from the respondents wherein it was stated that her services stood terminated. The question for determination was that whether termination of services of K. Chandrika is illegal. After taking into consideration all the relevant facts the Hon'ble court held that the respondent is directed to reinstate the petitioner in service with continuity of service for the purpose of computation of service benefits. So far as the grant of back wages is concerned, the workman may be called up to do a sacrifice which would be purely in public interest & therefore deserves to be paid wages.

**In Smt. Archana Panedy V. State of M.P & others,**<sup>27</sup> the question in issue was that the petitioners a contractual employee is entitled to get the benefit of maternity leave. High court after taking into consideration the various judgment opined that when it comes to granting her the benefit of facilities required to give birth to a child the employer is duty bound under the Constitution to provide her all the amenities and that the Court see no reason as to why the benefit of Maternity Benefit Act should not be given to a woman contractual employee. The respondents are directed to grant maternity benefit to the petitioner.

### 3. COCLUSION AND SUGGESTION

To provide maternity benefit is a significant piece of legislation/schemes which provides employment, health, economic security to a pregnant worker. Increasing maternity benefit is a welcome step but the government should make a blueprint to introduce such an effective mechanism that aims at to insure upon the benefits of employers so that the competitiveness of private sector is not affected by creating a burden on the entrepreneur. Recently to reduce the sole burden from the employers, the government of India came with a proposal to fund half of the paid leave amount that employers give in the extended maternity leave benefit scheme. The scheme is pending for approval. As per the proposal, the government will ready to pay the salary for seven weeks of extended leave under maternity benefits.<sup>28</sup> Beside the positive aspect of various schemes and legislation relating to maternity benefits its suffers from some drawbacks, which are -

- Under the Maternity Benefit Act, 1961 benefit only availed by a majority of women worker employed in the organized sector. In India only 4 percent of women of the total women workforce in India are employed in the formal sector. The moment a woman becomes pregnant she is seen as a burden. The Act is biased towards the workers in formal labour force.
- The Act does not provide for paternity leave, it put the onus of the newborn's rearing on the mother. The inclusion of paternity leave is felt to be important to create a system through which a balance can be achieved to meet the responsibilities.
- The paid maternity leave period is discriminatory in a case of biological mothers it is 26 weeks & on the other hand for adopting & commissioning mothers it is only 12 weeks. It is important to note that time and attention required rising and looking after the child is similar in both the cases.

<sup>24</sup> 1998 (1) SLR 735

<sup>25</sup> W.P. (MD) No 13555 of 2009.

<sup>26</sup> 131 (2006) DLT 585

<sup>27</sup> Writ Petition No. 15523 of 2016

<sup>28</sup> Government to Pay Half of Extended Maternity Leave Benefit, The Economic Times, Jan.31,2019 Available at <https://economictimes.indiatimes.com/news/politics-and-nation/govt-to-pay-half-of-extended-maternity-leave->

- The number of paid weeks reduces to twelve weeks in case of third birth; it has an impact on the upbringing of the child.
- Increased maternity period creates a financial burden on the employers.
- The amount as paid through various schemes is not adequate to meet out the exigencies of pregnancy.
- An independent body should be constituted to analyze the application and progress of the Act.
- Awareness towards the Act/ schemes through various means should be done at ground level.

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