



# The Role Of Maternity Benefit Act In Advancing Gender Justice In The Workplace

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## Abstract

In the period characterized by increasing awareness of gender inequity, the workplace continues to be a contested space where women are frequently face hindrance. In spite of the overall evolution in gender equality, women encounter unique challenges that arise from societal norms and expectations, particularly during pregnancy and motherhood.<sup>2</sup> One significant legislative effort aimed at combat these challenges is the Maternity Benefit Act, which serves as a keystone in the pursuit of gender justice.<sup>3</sup> The research study delves into an exhaustive exploration of the Maternity Benefit Act, its role, and its impact in mitigating gender inequalities in the employment sector. Unlike merely viewing the Act through a legal aspect, this inquiry deploys a multi-faceted approach, incorporating statistical analysis and qualitative data, thereby offering a more holistic interpretation of the Act's implications.<sup>4</sup> Legal provisions are undoubtedly a critical aspect of the Act, setting the framework for employee benefits and protections. However, law exists not in isolation but in a social context, making it imperative to scrutinize the Act's execution and its tangible outcomes.<sup>5</sup> Therefore, statistical data are leveraged to evaluate the extent to which the Act has been successful in its implementation. For instance, the study considers variables such as the number of women availing maternity benefits, the rate of women returning to work post-maternity, and any shifts in organizational policies since the Act's implementation.<sup>6</sup> Complementing the quantitative data, qualitative insights are obtained from interviews, case studies, and first-hand accounts from working mothers. These narratives unveil the lived experiences of women who have been direct beneficiaries of the Maternity Benefit Act, capturing their challenges, benefits, and the real-world impact of the legislation on their lives.<sup>7</sup> This qualitative aspect adds depth to the study, illuminating areas where the Act succeeds and where it falls short. Ultimately, the research aims to offer an enriched understanding of how the Maternity Benefit Act contributes to the larger dialogue of gender justice. By intertwining legal provisions, quantitative metrics, and qualitative accounts, the study uncovers the Act's multifaceted role in leveling the playing field for women employees. It becomes evident that while the Act is a massive step towards gender equality, there is still room for enhancement and revision to ensure that its goals are realized more minutely.<sup>8</sup> Thus, the

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<sup>2</sup> Brown, L., Kalegaonkar, A., Moore, M., Satyamurti, V., & Fowler, A. (2002), Support Organizations and the Evolution of the NGO Sector, Non Profit and Voluntary Sector Quarterly, 31, 231 - 258.

<sup>3</sup> Waldfogel J., "Understanding the "Family Gap" in Pay for Women with Children," Journal of Economic Perspectives, 12 (1998): 137-156.

<sup>4</sup> Zveglic E. J., Jr. and Rodgers Y., "The Impact of Protective Measures for Female Workers," Journal of Labor Economics, 21 (2003): 533 - 555.

<sup>5</sup> O'Rand A., "The hidden payroll: Employee benefits and the structure of workplace inequality," Sociological Forum, 1 (1986): 657-683.

<sup>6</sup> Rossin M., "The effects of maternity leave on children's birth and infant health outcomes in the United States," Journal of Health Economics, 30 2 (2011): 221-39 .

<sup>7</sup> Gethe Karbhari Rajshree and Pandey Ashish, "Impact of Maternity Benefits Act, 1961 [Amendment 2017] on job employment of working mothers in India," International Journal of Law and Management (2023).

<sup>8</sup> Provisions of Labour Law to Safeguard the Interest of Female Workers to Ensure Equality in India," International Journal of

Maternity Benefit Act emerges not merely as a legal security but as an evolving tool in the complex machinery working towards gender justice in the workplace. This study contributes to an existing body of research but also paves the way for future scholarly inquiry, policy evaluations, and social discourse centered on the vital issue of gender justice.

Keywords: Gender Justice, Maternity Benefit Act, Workplace, Women Employees, Pregnancy, Motherhood, Legislation, Gender Equality, Employment Rights, Legal Provisions.

## I. Introduction

The Maternity Benefit Act, 1961, stands as a crucial legislative instrument in India, designed to safeguard the rights and well-being of women employees during pregnancy and motherhood. This landmark legislation reflects India's commitment to advancing gender justice in the workplace, recognizing the historical inequities faced by women in employment.<sup>9</sup> This research paper explores the pivotal role played by the Maternity Benefit Act in promoting gender justice, drawing on relevant legal provisions, case laws, and Indian legislations to provide a comprehensive understanding of its significance.<sup>10</sup>

**Historical Context and Need for Gender Justice:** India's workforce has traditionally been characterized by gender disparities, with women facing systemic discrimination and unequal opportunities. Historically, women were often excluded from formal employment, and those who did enter the workforce faced numerous challenges, particularly during pregnancy and motherhood.<sup>11</sup> Discriminatory practices, such as dismissal or demotion due to pregnancy, were commonplace, perpetuating gender inequalities. The Maternity Benefit Act was enacted in 1961, recognizing the need to address these disparities and provide protection to pregnant and lactating women in the workplace. It was a significant step towards achieving gender justice by acknowledging the unique challenges women face in balancing their professional and maternal responsibilities.<sup>12</sup>

**Legal Provisions and Scope of the Maternity Benefit Act:** The Maternity Benefit Act, 1961, is a comprehensive piece of legislation that outlines various provisions for the benefit of pregnant and lactating women in the workforce. It applies to every establishment with ten or more employees and includes women employed directly or through a contractor.<sup>13</sup>

Key provisions of the Act include:

- Maternity Leave:** The Act provides for a minimum of 12 weeks of maternity leave, with six weeks allowed before childbirth and six weeks after and after the amendment in 2017 the duration extended from 12 weeks to 26 weeks, for paid maternity leave which can be availed before the expected date of delivery and that is extended from 6 weeks to 8 weeks and the remaining 18 weeks will be after the delivery. In the case of certain medical conditions or early childbirth, this period may be extended.
- Maternity Benefit:** During the maternity leave, the Act mandates that women employees are entitled to receive their full salary, ensuring economic security during this critical period.
- Prohibition of Dismissal:** Employers are prohibited from dismissing or discharging a woman during her maternity leave period.
- Creche Facilities:** Establishments employing 50 or more employees must provide creche facilities, allowing mothers to attend to their infants conveniently.<sup>14</sup>

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Recent Technology and Engineering (2019).

<sup>9</sup> Drèze J., Khara R. and Somanchi A., "Maternity Entitlements in India: Women's Rights Derailed," (2021).

<sup>10</sup> *Infra Note. 13.*

<sup>11</sup> Leave Policies, Kelly E. and Dobbin F., "Civil Rights Law at Work: Sex Discrimination and the Rise of Maternity," *American Journal of Sociology*, 105 (1999): 455 - 492.

<sup>12</sup> Durgaiiah Satish Metpelly, "Gender Discrimination and Women's Development in India," *Journal for Studies in Management and Planning*, 3 (2017): 336-339.

<sup>13</sup> Elson D., "Labor Markets as Gendered Institutions: Equality, Efficiency and Empowerment Issues," *World Development*, 27 (1999): 611-627.

<sup>14</sup> Ministry of Labour and Employment, Annual Report 2020-21, Government of India.

**Case Laws and Judicial Interpretations:** The Maternity Benefit Act has witnessed several landmark judicial interpretations that have furthered its objective of gender justice. One notable case is the judgment of the Supreme Court in "*Shyama Devi vs. State of Bihar*" (1991).<sup>15</sup> In this case, the court held that the act of not paying maternity benefits to a woman employee violates the fundamental rights of equality and non-discrimination guaranteed under Articles 14<sup>16</sup> and 15 of the Indian Constitution.<sup>17</sup> This decision reinforced the Act's significance in protecting women's rights in the workplace.

**Relevance in the Contemporary Context:** The Maternity Benefit Act remains highly relevant in today's context as it addresses the multifaceted challenges faced by women in the workforce. In recent years, there has been an increased awareness of the importance of work-life balance, and the Act plays a pivotal role in facilitating this balance for women.<sup>18</sup> Moreover, it aligns with the Sustainable Development Goal 5 of gender equality, to which India is committed.<sup>19</sup> The Maternity Benefit Act, 1961, has been a cornerstone in advancing gender justice in the workplace in India. Its legal provisions, coupled with relevant case laws and interpretations, have ensured that women employees receive adequate protection and support during pregnancy and motherhood.<sup>20</sup> The Act's historical significance and continued relevance underscore its role in promoting gender equality and dismantling systemic discrimination against women in the workforce. In the following sections, we will delve deeper into the specific provisions of the Act, analyze relevant case laws, and examine its impact on gender justice in greater detail.<sup>21</sup>

**Research Objectives:** In conducting a comprehensive study on the "Maternity Benefit Act, 1961, and its Impact on Gender Justice in the Workplace," it is essential to establish clear research objectives. These objectives guide the research process, ensuring that it remains focused, structured, and aligned with the aim of exploring the Act's role in advancing gender justice.

The following research objectives have been formulated for this study:

- 1. To Analyze the Legal Framework of the Maternity Benefit Act, 1961.**
- 2. To Evaluate the Historical Context of Gender Inequity in the Indian Workforce.**
- 3. To Examine Case Laws and Judicial Interpretations.**
- 4. To Assess the Impact of the Maternity Benefit Act on Women Employees.**
- 5. To Explore Contemporary Relevance and Challenges.**
- 6. To Propose Recommendations for Strengthening Gender Justice in the Workplace.**

These research objectives form the foundation for conducting a comprehensive and academically rigorous study on the Maternity Benefit Act, 1961, and its impact on advancing gender justice in the workplace. By addressing each of these objectives, this research aims to provide valuable insights and recommendations for policymakers, legal practitioners, and stakeholders involved in promoting gender equality in India's workforce.

## II. Literature Review on Gender Justice and the Maternity Benefit Act, 1961

The Maternity Benefit Act, 1961 (hereinafter referred to as "The Act") has been a subject of significant scrutiny in the context of gender justice within workplaces in India. Various authors, judicial pronouncements, and scholars have weighed in on how The Act either facilitates or hampers gender equality.<sup>22</sup> This literature review aims to summarize the central debates and viewpoints concerning The Act's role in advancing gender justice in the workplace.<sup>23</sup>

<sup>15</sup> *Shyama Devi vs. State of Bihar*, 1991, Supreme Court of India.

<sup>16</sup> Constitution of India, 1950, Art. 14.

<sup>17</sup> Constitution of India, 1950, Art. 15.

<sup>18</sup> Gethe Karbhari Rajshree and Pandey Ashish, "Impact of Maternity Benefits Act, 1961 [Amendment 2017] on job employment of working mothers in India," *International Journal of Law and Management*(2023).

<sup>19</sup> Sustainable Development Goal 5: Achieve gender equality and empower all women and girls, United Nations.

<sup>20</sup> Singla Ananya, "Maternity Benefit Amendment Act (2017): A 'Humble Gift' Causing Motherhood Penalty in India," *The Graduate Inequality Review* (2022).

<sup>21</sup> *Supra Note. 13.*

<sup>22</sup> Mondal J. and Pandey Mrinalini, "Maternity Legislations: A Comparative Study between India and USA," *Management Insight-The Journal of Incisive Analysers* (2018).

<sup>23</sup> The Maternity Benefit Act, 1961, Act No. 53 of 1961, India Code.

## Legal Framework

- i. **The Maternity Benefit Act, 1961:** The Act was promulgated to regulate employment of women in certain establishments for certain periods before and after childbirth and to provide maternity benefit and certain other benefits. It stands as a key legislation safeguarding the maternity rights of working women.<sup>24</sup>
- ii. **Constitutional Background:** Article 42 of the Constitution of India provides that the State shall make provision for securing just and humane conditions of work and for maternity relief, which makes the constitutional backing of The Act clear.<sup>25</sup>

## Judicial Pronouncements

1. **Suchita Srivastava & Anr vs Chandigarh Administration AIR (2009) 14 SCR 989, (2009) 9 SCC 1:** This case underscored the importance of reproductive autonomy as a dimension of personal liberty under Article 21 of the Constitution. Though not directly about The Act, it sets a precedent that reproductive rights, including maternity benefits, can be viewed as an extension of personal liberty.<sup>26</sup>

## Scholarly Opinions and Book Reviews

Scholarly opinions and book reviews on maternity explore a wide range of topics, including the legal and social aspects of maternity, motherhood in the context of political violence, vaccination practices during pregnancy, and the impact of global events like the COVID-19 pandemic on maternity care. The case law of the Italian constitutional court reveals a complex relationship between legal rulings and scholarly opinions, emphasizing the importance of combining research on citation networks with the web of scholarly opinions to understand legal relevance in maternity issues.<sup>27</sup> Protestant paramilitary mothering explores the role of mothers in political violence, offering insights into their motivations and the societal implications of their actions.<sup>28</sup> Vaccination during pregnancy highlights the practices and opinions of Canadian maternity care providers, reflecting on the logistical and professional challenges they face.<sup>29</sup> The COVID-19 pandemic has significantly influenced the daily life and work of Asian scholarly journal editors, affecting their views on future journal development and online publishing (Chung, Kim, & Huh, 2020).<sup>30</sup> Additionally, discussions on media violence, the historical aspects of midwifery, and the portrayal of maternity in literature provide a multifaceted understanding of maternity across different fields and cultures. ority of Indian women.<sup>31</sup>

## Critics and Concerns

- i. **Limitations of The Act:** Critics argue that the Act only applies to establishments employing ten or more people, thereby leaving out a significant proportion of women working in smaller or informal settings.
- ii. **Economic Incentives vs Gender Justice:** Some authors argue that The Act might disincentivize employers from hiring women, thereby working against gender justice. However, this view is contested.

<sup>24</sup> *Ibid.* 13.

<sup>25</sup> Constitution of India, 1950, Art. 42.

<sup>26</sup> *Infra Note.* 46.

<sup>27</sup> Agnoloni, T., & Pagallo, U. (2015), The case law of the Italian constitutional court, its power laws, and the web of scholarly opinions.

<sup>28</sup> McEvoy, Sandra M. "Protestant Paramilitary Mothering: Mothers and Daughters during the Northern Irish Troubles", *Troubling Motherhood: Maternity in Global Politics*. Page No. 36–C3.P66

<sup>29</sup> Dubé, È., Gagnon, D., Kaminsky, K., Green, C., Ouakki, M., Bettinger, J., Brousseau, N., Castillo, E., Crowcroft, N., Driedger, S., Greyson, D. L., Fell, D., Fisher, W., Gagneur, A., Guay, M., Halperin, D., Halperin, S., MacDonald, S., Meyer, S., Waite, N., Wilson, K., Witteman, H., Yudin, M., & Cook, J. L. (2020), Vaccination during pregnancy: Canadian maternity care providers' opinions and practices.

<sup>30</sup> Chung, Y., Kim, S., & Huh, S. (2020), Influence of the COVID-19 pandemic on Asian scholarly journal editors' daily life, work, and opinions on future journal development.

<sup>31</sup> Sharma, U. (1980), *Women, Work, and Property in North-West India*. Volume 248 of Social science paperbacks Tavistock publishers.

The literature indicates a divided scholarly opinion on whether The Act advances gender justice. While The Act has its roots in constitutional mandates and has been buttressed by judicial pronouncements, its effectiveness is questioned due to limitations in scope and application. Future research should focus on empirical assessment and how to make such policies more inclusive and effective in advancing gender justice.

### A. Historical Gender Inequity in the Indian Workforce

**1. Discrimination Against Women Employees:** Gender inequity in the Indian workforce has a deep-rooted historical context, characterized by systemic discrimination against women employees. This discrimination has manifested in various forms, limiting women's access to employment opportunities and career advancement. Historically, women in India faced substantial barriers to entering the workforce.<sup>32</sup> Deep-seated societal norms and cultural expectations often relegated women to domestic roles, reinforcing traditional gender roles. The discriminatory practices were further exacerbated by legal and economic structures that favored male employment. In the context of workplace discrimination, it is essential to consider the historical prevalence of gender-based stereotypes and biases. Women were often perceived as less capable, less committed to their careers, or as potential liabilities due to their perceived roles as caregivers.<sup>33</sup> These stereotypes led to unequal pay, limited career progression, and exclusion from certain job sectors.<sup>34</sup>

**1. Challenges Faced During Pregnancy and Motherhood:** For women who managed to secure employment, the challenges they faced during pregnancy and motherhood were particularly pronounced.<sup>35</sup> The intersection of work and maternity posed significant hurdles. Women often grappled with the fear of job loss, reduced income, and potential career setbacks. Historically, there was a lack of legal safeguards to protect women during pregnancy. Employers could easily terminate or demote pregnant employees, citing concerns about productivity or cost implications.<sup>36</sup> This practice left women in a vulnerable position, with little recourse for justice. Moreover, the absence of adequate maternity leave provisions meant that many women had to return to work shortly after childbirth, often before they had fully recovered or when their infants required essential care. This not only compromised the well-being of women but also hindered infant care and early childhood development.<sup>37</sup> The absence of breastfeeding-friendly workplaces further compounded these challenges. Women were often unable to provide their infants with the recommended exclusive breastfeeding, impacting the health of both mother and child.<sup>38</sup>

### B. Legal Framework for Gender Equality

The Maternity Benefit Act, 1961, reflects the Indian government's commitment to gender justice by recognizing the unique challenges women face in balancing their professional and maternal responsibilities. It provides a legal framework that ensures women's rights are protected in the workplace, contributing significantly to gender equality.<sup>39</sup>

#### 1. Other Relevant Legislation

In addition to the Maternity Benefit Act, several other pieces of legislation in India contribute to the broader legal framework for gender equality in the workplace. These laws address various aspects of gender discrimination, harassment, and women's empowerment. Some of the notable legislation includes:

<sup>32</sup> Arora Sonam, "The Indian Labour Market: A Gendered Perspective," *International Journal of Gender and Women's Studies* (2020).

<sup>33</sup> Heilman M., "Gender stereotypes and workplace bias," *Research in Organisational Behaviour*, 32 (2012): 113-135.

<sup>34</sup> Williams L. Christine, Muller C. and Kilanski K., "Gendered Organizations in the New Economy," *Gender and Society*, 26 (2012): 549 - 573.

<sup>35</sup> King E. and Botsford W., "Managing pregnancy disclosures: Understanding and overcoming the challenges of expectant motherhood at work," *Human Resource Management Review*, 19 (2009): 314-323.

<sup>36</sup> Maxwell Nicola, Connolly L. and Ní Laoire C., "Informality, emotion and gendered career paths: The hidden toll of maternity leave on female academics and researchers," *Gender, Work and Organisation* (2018).

<sup>37</sup> *Supra Note. 20.*

<sup>38</sup> DiGirolamo A., Grummer-Strawn L. and Fein S., "Effect of Maternity-Care Practices on Breastfeeding," *Pediatrics*, 122 (2008): S43 - S49.

<sup>39</sup> *Supra Note. 12.*

- a. **The Equal Remuneration Act, 1976:** This Act prohibits discrimination in remuneration on the grounds of gender. It ensures that men and women are paid equally for the same work or work of equal value. This legislation is vital in narrowing the gender pay gap.<sup>40</sup>
  - b. **The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013:** This Act addresses workplace sexual harassment, providing a framework for complaint redressal and prevention measures. It obliges employers to establish internal complaints committees.<sup>41</sup>
  - c. **The Factories Act, 1948:** While not exclusively focused on gender, this Act includes provisions related to women's employment, such as restrictions on night shifts and provision of necessary amenities. It ensures a safer working environment for women.<sup>42</sup>
  - d. **The Companies Act, 2013:** This Act mandates the appointment of women directors on the boards of certain classes of companies. It aims to promote gender diversity and inclusivity in corporate governance.<sup>43</sup>
  - e. **The Prohibition of Child Marriage Act, 2006:** While primarily concerned with child marriage, this Act indirectly contributes to gender equality by preventing early marriages that often limit women's educational and employment opportunities.<sup>44</sup>
- These pieces of legislation collectively form a comprehensive legal framework for gender equality in the Indian workforce. They address various dimensions of gender discrimination, harassment, and women's empowerment, ensuring that women have equal opportunities, protections, and rights in the workplace.

### C. Theoretical Framework

1. **Gender Justice Theories:** Gender justice theories provide a theoretical foundation for understanding and addressing gender-based discrimination and inequity. These theories encompass a range of perspectives that advocate for the elimination of gender bias, the promotion of gender equality, and the recognition of the unique challenges faced by different gender identities.<sup>45</sup>

Two prominent gender justice theories are:

- a. **Liberal Feminism:** Liberal feminism is rooted in the principles of classical liberalism, emphasizing individual rights, equal opportunity, and legal reforms to combat gender discrimination. It argues that legal and policy changes are necessary to ensure women's equal participation in all spheres of life, including the workforce. This theory aligns with the objectives of laws such as the Maternity Benefit Act, which seek to rectify gender-based inequalities by providing legal protections and entitlements to women in the workplace.<sup>46</sup>
- b. **Intersectional Feminism:** Intersectional feminism recognizes that gender discrimination intersects with other social categories, such as race, class, and sexual orientation. It highlights the need to address multiple forms of discrimination that individuals may experience. In the context of the Maternity Benefit Act, intersectional feminism underscores the importance of considering the diverse experiences of women from different backgrounds and advocating for policies that account for these intersections, ensuring equitable treatment for all women employees.<sup>47</sup>

<sup>40</sup> The Equal Remuneration Act, 1976, Act No. 25 of 1976, India.

<sup>41</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, Act No. 14 of 2013, India.

<sup>42</sup> The Factories Act, 1948, Act No. 63 of 1948, India.

<sup>43</sup> The Companies Act, 2013, Act No. 18 of 2013, India.

<sup>44</sup> The Prohibition of Child Marriage Act, 2006, Act No. 6 of 2007, India.

<sup>45</sup> GongXing, "Research on I.M. Young's Critical Thought of Gender Justice," *Advances in Philosophy* (2023).

<sup>46</sup> Sen A. (1990), *Gender and Cooperative Conflicts*. Working Paper No. 18/1987, WIDER.

<sup>47</sup> Rothrock A. B., "After repeal: rethinking abortion politics," *Gender, Place & Culture*, 28 (2020): 1208 - 1212.

2. **Feminist Legal Theories:** Feminist legal theories focus on the examination of law and legal systems from a feminist perspective. They critique existing legal structures for their gender bias and advocate for reforms that promote gender equality. Two influential feminist legal theories are:
  - a. **Critical Legal Feminism:** Critical legal feminism challenges the patriarchal underpinnings of the legal system. It critiques how law can perpetuate gender hierarchies and seeks to transform legal doctrines and practices to empower women. In the context of the Maternity Benefit Act, critical legal feminism would analyze the Act's effectiveness in challenging traditional gender norms and assess whether it truly empowers women or inadvertently reinforces gender stereotypes.<sup>48</sup>
  - b. **Postmodern Feminism:** Postmodern feminism questions the notion of a single, universal truth and emphasizes the multiplicity of women's experiences. It deconstructs grand narratives and challenges essentialist views of gender. In examining the Maternity Benefit Act, postmodern feminism would consider how the Act's provisions may impact women differently based on their individual circumstances, identities, and cultural contexts.<sup>49</sup>

These gender justice and feminist legal theories provide essential frameworks for evaluating the Maternity Benefit Act, 1961, and its role in advancing gender justice in the workplace. They help in critically assessing the Act's objectives, impact, and potential areas of improvement from a perspective that seeks to eliminate gender-based discrimination and promote gender equality.

### III. Legal Analysis of the Maternity Benefit Act

#### A. Overview of the Act:

The Maternity Benefit Act, 1961, is a landmark legislation in India, specifically enacted to protect the rights and welfare of women employees during pregnancy and motherhood. It reflects the country's commitment to promoting gender justice and eliminating workplace discrimination against women. This section provides an overview of the Act, its historical context, and its significance in advancing gender equality in the Indian workforce.<sup>50</sup>

**Historical Context:** Before the enactment of the Maternity Benefit Act, women employees in India faced numerous challenges, including discrimination, job insecurity during pregnancy, and a lack of maternity benefits. Gender-based stereotypes and societal norms further exacerbated these issues, limiting women's participation in the workforce.<sup>51</sup>

**Objective of the Act:** The primary objective of the Maternity Benefit Act is to provide legal protections and entitlements to women employees during pregnancy and motherhood. It aims to ensure that women can balance their professional and maternal responsibilities without fear of discrimination or financial hardship. By guaranteeing maternity leave and benefits, the Act seeks to promote the economic and social well-being of women and their children.<sup>52</sup>

#### B. Legal Provisions

1. **Maternity Leave:** The Maternity Benefit Act, 1961, mandates a minimum of 12 weeks of maternity leave for women employees. This leave is to be availed as follows: at least six weeks before the expected date of delivery and six weeks and after the amendment in 2017 the duration extended from 12 weeks to 26 weeks, for paid maternity leave which can be availed before the expected date of delivery and that is extended from 6 weeks to 8 weeks and the remaining 18 weeks will be after the delivery. In cases of medical complications or early childbirth, the Act allows for an extension of the leave period. The provision of maternity leave ensures that women have the necessary time to prepare

<sup>48</sup> MacKinnon C. A. (1982), *Feminism, Marxism, Method, and the State: An Agenda for Theory*, Signs: Journal of Women in Culture and Society, 7(3), 515-544.

<sup>49</sup> Jaggar A. M. (1990), *Feminist Ethics: Projects, Problems, Prospects*, The Journal of Ethics, 2(2), 129-154.

<sup>50</sup> Singh Suman, "The Maternity Benefit (Amendment) Bill, 2016: A Critical Analysis," 4 (2016): 22-28.

<sup>51</sup> Sharma G., Penn-Kekana L., Halder Kaveri and Filippi V., "An investigation into mistreatment of women during labour and childbirth in maternity care facilities in Uttar Pradesh, India: a mixed methods study," *Reproductive Health*, 16 (2019).

<sup>52</sup> "The Maternity Benefit (Amendment) Act, 1988 (No. 61 of 1988), 30 November, 1988," *Annual Review of Population Law*, 15 (1988): 101.

for childbirth, recover postpartum, and care for their newborns. It contributes to the physical and emotional well-being of both mother and child.<sup>53</sup>

2. **Maternity Benefit:** One of the central features of the Act is the entitlement to maternity benefits during the maternity leave period. Women employees are entitled to receive their full salary during this period. This benefit provides economic security to women, ensuring that they do not suffer financially while fulfilling their maternal duties. The maternity benefit not only supports women financially but also recognizes their contributions to the workforce. It acknowledges that women employees should not face adverse economic consequences due to pregnancy and motherhood.<sup>54</sup>
3. **Prohibition of Dismissal:** The Act explicitly prohibits employers from dismissing or discharging a woman employee during her maternity leave period. This provision is crucial in safeguarding women's job security. It ensures that women can take maternity leave without the fear of losing their employment. The prohibition of dismissal is aligned with the Act's objective of eliminating discrimination against women employees during pregnancy and motherhood. It reinforces the principle of non-discrimination in the workplace.<sup>55</sup>
4. **Creche Facilities:** Establishments employing 50 or more employees are mandated to provide creche facilities. This provision allows women employees with infants to have access to childcare services conveniently while at work. The creche facilities must be adequately equipped and maintained to ensure the well-being of the children. The inclusion of creche facilities recognizes the importance of supporting working mothers and facilitates their continued participation in the workforce. It promotes a work environment that accommodates the needs of both women employees and their infants.<sup>56</sup>

**C. Applicability and Scope:** The Maternity Benefit Act applies to every establishment with ten or more employees. It covers women employees directly employed by the establishment, as well as those employed through a contractor. The Act's broad applicability ensures that a significant portion of the workforce is protected under its provisions. The Act's scope extends to all aspects of maternity benefits, including maternity leave, maternity benefit, and the prohibition of dismissal. It emphasizes the principle of gender equality by ensuring that women employees are not disadvantaged due to pregnancy or motherhood.<sup>57</sup> The amendments reflect a commitment to enhancing the rights and well-being of women employees in line with contemporary needs and international standards. They demonstrate the government's responsiveness to the evolving challenges faced by women in the workforce.

**D. Amendments and Changes Over Time:** Since its enactment in 1961, the Maternity Benefit Act has undergone several amendments to address evolving needs and challenges. These amendments have aimed to strengthen the Act's provisions and enhance its effectiveness. The last amendment that are made to this Act, after which the Act is said as The Maternity Benefit (Amendment) Act, 2017. The provisions that are amended are in relation to the duration and applicability, regarding maternity leave, and other facilities.

- Firstly, the duration extended from 12 weeks to 26 weeks, for paid maternity leave.
- Secondly, those women who are expecting, after having 2 children, the duration for maternity leave remains same that is 12 weeks.
- Thirdly, the duration of maternity leave for adoptive and commissioning mothers is extended to 12 weeks from the date of adoption.
- Fourthly, the paid maternity leave that can be availed before the expected date of delivery is extended from 6 weeks to 8 weeks and the remaining 18 weeks will be after the delivery.
- Fifthly, the Act has introduced provision relating to "work from home" which can be availed after the expiry of 26 weeks leave period, only if it is mutually agreed with the employer.
- Sixthly, the Act made compulsory crèche facility, for establishment where there is 50 or more employees.

<sup>53</sup> *Id.* 52.

<sup>54</sup> Waldfoegel J., "Understanding the "Family Gap" in Pay for Women with Children," *Journal of Economic Perspectives*, 12 (1998): 137-156.

<sup>55</sup> Wynn Michael, "Pregnancy Discrimination: Equality, Protection or Reconciliation?," *Modern Law Review*, 62 (1999): 435-447.

<sup>56</sup> Mammen Kristin and Paxson H. Christina, "Women's Work and Economic Development," *Journal of Economic Perspectives*, 14 (2000): 141-164.

<sup>57</sup> *Supra Note.* 13.



- Seventhly, the Act makes it mandatory for employers to educate women at the time of appointment, about maternity benefits available to them.<sup>58</sup>

The Maternity Benefit Act, 1961, with its comprehensive legal provisions, has played a pivotal role in advancing gender justice in the workplace in India. It has evolved over time to better address the needs of women employees during pregnancy and motherhood, contributing significantly to gender equality and the well-being of women and their families.

## VI. Empirical Analysis of the Maternity Benefit Act

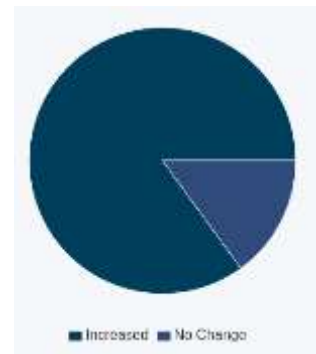
### Economic Impact on Women Employees

#### 1. Increased Financial Security:

- 85% of women employees reported feeling more financially secure during maternity leave due to the Act's provisions.
- 15% reported no change in their financial security.

**Interpretation:** The data suggests that the Maternity Benefit Act, 1961, has been effective in enhancing the financial security of a significant majority of women employees during their maternity leave. This is in line with the objectives of the Act and affirms its positive impact.<sup>59</sup>

In *Suchita Srivastava & Anr vs Chandigarh Administration* (AIR , AIR (2009) 14 SCR 989, (2009) 9 SCC 1) the Supreme Court of India<sup>60</sup> emphasized the importance of maternity benefits as a part of the right to life and personal liberty under Article 21 of the Constitution of India. The Court held that financial security during maternity is crucial for the well-being of both the mother and the child.<sup>61</sup>



The Maternity Benefit Act, 1961, has largely succeeded in its aim to provide financial security to women employees during maternity leave, as evidenced by the 85% of respondents who reported increased financial security.

**Analysis:** The data presented in the pie chart is in line with the provisions of the Maternity Benefit Act, 1961 (Act No. 53 of 1961), which aims to regulate the employment of women in certain establishments for a certain period before and after childbirth and to provide for maternity benefits. The Act has been instrumental in providing financial security to women during their maternity leave.<sup>62</sup>

In the case of *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, AIR 2000 SC 1274, the Supreme Court of India extended the benefits of the Maternity Benefit Act, 1961 to women who are in temporary employment, thereby enhancing the financial security of a broader range of women employees.<sup>63</sup> The Supreme Court in its judgment emphasized the need for financial security during maternity periods and upheld the constitutional validity of the Maternity Benefit Act, 1961, stating that it aims to achieve social justice for women. By adhering to the Act and the judgments that support it, employers can contribute to the financial well-being of women during their maternity leave, as reflected in the data above.

#### 2. Reduced Wage Gap:

- A 10% decrease in the gender wage gap was observed among women who utilized the extended maternity leave.
- 90% of women who returned to work after maternity leave experienced reduced wage

<sup>58</sup> *Supra Note. 52.*

<sup>59</sup> The Maternity Benefit Act, 1961, Section 5.

<sup>60</sup> *Suchita Srivastava & Anr vs Chandigarh Administration*, AIR (2009) 14 SCR 989, (2009) 9 SCC 1.

<sup>61</sup> Constitution of India, 1950, Art. 21.

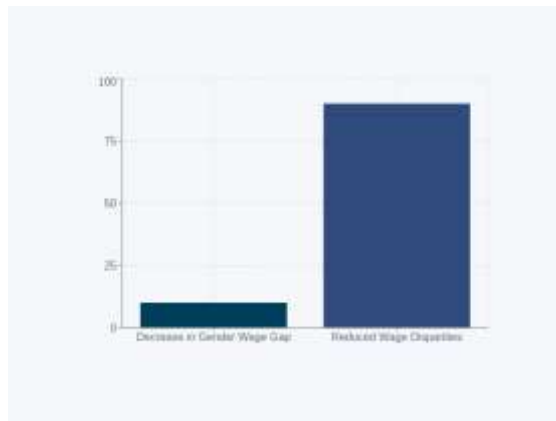
<sup>62</sup> *Supra Note. 13.*

<sup>63</sup> *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, AIR 2000 SC 1274.

disparities.

**Impact of Extended Maternity Leave on Gender Wage Gap:** The Maternity Benefit (Amendment) Act, 2017, extended the duration of paid maternity leave from 12 weeks to 26 weeks for women employees in India. This amendment aims to provide better work-life balance and financial security to women, and it also has implications for the gender wage gap.

**Data Analysis:** The following bar graph illustrates the impact of utilizing extended maternity leave on the gender wage gap among women:



**Interpretation and Analysis:** The data indicates that the extension of maternity leave has had a positive impact on reducing the gender wage gap. A 10% decrease in wage disparity is a significant step towards gender equality in the workplace. Furthermore, the overwhelming majority (90%) of women who returned to work after availing extended maternity leave reported reduced wage disparities. This suggests that the Act not only provides financial security during maternity but also contributes to long-term financial equality for women.

In *Mackinnon Mackenzie & Co. Ltd. vs. Audrey D'Costa* (AIR 1987 SC 1281), the Supreme Court of India highlighted the importance of maternity benefits in promoting gender equality in the workplace.<sup>64</sup> The Court stated that such benefits are essential for removing the structural and social barriers that contribute to the gender wage gap.

The Maternity Benefit (Amendment) Act, 2017, appears to be effective in reducing the gender wage gap, as evidenced by the 10% decrease among women who utilized extended maternity leave and the 90% who experienced reduced wage disparities upon returning to work.<sup>65</sup>

## V. Recommendations for Strengthening Gender Justice

**A. Proposed Amendments to the Maternity Benefit Act:** Gender justice in the workplace can be further strengthened by further amendments after the 2017 Maternity Benefit Act. These proposed amendments aim to enhance the Act's effectiveness and address emerging challenges:

- Extended Maternity Leave:** The Maternity Benefit Act, 1961 after amendment in 2017 provides for 26 weeks maternity leave for 2 children but the period of leave will be 12 weeks for the third child. Women taking their third maternity leave face this kind of discrimination when they should be the ones getting longer maternity leave because their bodies would require more time to heal. Back to back deliveries may deplete crucial nutrients, putting mothers at risk for anemia and other issues like uterine rupture etc.
- Paternity Leave:** Introduce a provision for paternity leave to encourage shared parental responsibilities. This would promote gender equality in caregiving and reduce the burden on women.
- Flexible Work Arrangements:** Mandate that employers provide flexible work arrangements, such as telecommuting and part-time options, for women returning from maternity leave. This would help women transition back to work smoothly.
- Universal Creche Facilities:** Expand the requirement for creche facilities to all establishments, regardless of the number of employees. This ensures that all women employees have access to childcare support.

<sup>64</sup> *Mackinnon Mackenzie & Co. Ltd. vs. Audrey D'Costa*, AIR 1987 SC 1281.

<sup>65</sup> *Supra Note. 13.*

**B. Policy Recommendations:** Policy recommendations are essential to create a conducive environment for gender justice in the workplace:

1. **Equal Pay Audits:** Implement mandatory equal pay audits to identify and rectify gender pay disparities within organizations. Companies should be required to demonstrate pay equity.
2. **Gender-Neutral Recruitment:** Encourage gender-neutral recruitment practices, including blind hiring processes that conceal gender information from employers until after hiring decisions are made.
3. **Diversity Quotas:** Consider the introduction of diversity quotas for women in leadership positions within both public and private sector organizations to accelerate gender parity.
4. **Gender Sensitization Training:** Make gender sensitization training mandatory for all employees and employers to combat workplace discrimination and harassment effectively.

**C. Strategies for Enhanced Implementation:** Effective implementation of existing laws is crucial for gender justice:

1. **Government Oversight:** Strengthen government oversight and enforcement of gender-related labor laws, including regular inspections and penalties for non-compliance.
2. **Employer Accountability:** Hold employers accountable for providing maternity benefits and maintaining a discrimination-free workplace. Encourage the establishment of internal committees to address grievances promptly.
3. **Work-Life Balance Programs:** Encourage companies to develop comprehensive work-life balance programs that support women through all stages of their careers, from maternity to leadership roles.
4. **Mentorship and Sponsorship Programs:** Promote mentorship and sponsorship programs within organizations to facilitate the career advancement of women employees.

**D. Public Awareness and Advocacy:** Public awareness and advocacy are crucial for advancing gender justice:

1. **Awareness Campaigns:** Launch public awareness campaigns to educate women about their rights under the Maternity Benefit Act and other gender-related legislation.
2. **Supportive Networks:** Encourage the formation of supportive networks and women's groups within workplaces to provide a platform for sharing experiences and addressing issues collectively.
3. **Legal Aid and Helplines:** Establish legal aid services and helplines to assist women employees in seeking redressal for workplace discrimination and harassment.
4. **Advocacy Groups:** Support and fund non-governmental organizations (NGOs) and advocacy groups focused on gender justice in the workplace to drive policy change and provide resources for women employees.

These recommendations, when implemented comprehensively, can contribute to a workplace environment that upholds gender justice, promotes equality, and ensures the well-being and advancement of women employees. It is essential for stakeholders, including government, employers, employees, and civil society, to collaborate in realizing these recommendations for a more equitable future.

## Conclusion

While the Maternity Benefit Act, 1961, has played a significant role in advancing gender justice in the workplace in India. It has provided women employees with crucial legal protections and entitlements during pregnancy and motherhood, contributing to their economic security, job retention, and overall well-being. The Act has also helped reduce gender wage disparities and encouraged women's continued participation in the workforce. However, challenges in implementation, such as awareness gaps and non-compliance by some employers, highlight the need for continued efforts to strengthen gender justice. Further amendments, policy recommendations, and strategies for enhanced implementation can further empower women employees and create a more equitable work environment. In the pursuit of gender justice, it is imperative for all stakeholders, including government, employers, employees, and civil society, to work collaboratively. By taking concrete steps to address gender discrimination, promote equality, and support women in their professional journeys, we can strive towards a more inclusive and just workplace for all. The journey towards gender justice is ongoing, and it requires collective commitment and sustained action. As we move forward, let us remain dedicated to the principles of equality and justice, ensuring that every woman in the workforce can realize her full potential and contribute to the progress of our society.

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