



# A CRITICAL ANALYSIS OF THE MATERNITY BENEFIT ACT- A MECHANISM FOR UPHOLDING GENDER EQUALITY

Bonnie Sarma

Research Scholar, Royal School of Law and Administration

The Assam Royal Global University, Betkuchi, Guwahati

## Abstract

Conferring to the law of nature, women in our society, have been granted with the divine blessing of experiencing motherhood. After undergoing the medical procedure of child delivery, both the mother along with her child are entitled to receive postnatal care and nourishment. Going through this vital aspect, various measures have been undertaken and implemented by putting women who have experienced motherhood along with their infant at the forefront at every corner in India. The notion of Maternity Benefit revolves around the concept that women in our society irrespective of their social strata are entitled to receive Maternity Benefit on the account of their nature as women of our society are the cornerstone for a developing nation.

The Maternity Benefit Act, 1961 has been enacted by the Government of India with the primary goal of carrying forward the obligation which has been cherished through Article 42 of the Constitution of India which provides that “The State shall make provisions for securing just and humane conditions of work and for maternity relief”. The said Maternity Benefit Act has proved to be a valuable piece of legislation for women undergoing pregnancy and its primary goal is safeguarding the dignity of women. This piece of legislation provides certain kinds of benefits to especially working women which in turn provides them with aid during their pregnancy period and post-natal care. This research paper is an attempt to highlight the current provisions of the said legislation alongside having a detailed discussion of the how the said legislation plays an pivotal role in upholding gender equality.

**Keywords:** Motherhood, Post- Natal Care, Maternity Benefit, Pregnancy

## 1. INTRODUCTION

The abstraction of the term 'Gender' is considered to be one of the most crucial aspects of a developing society. The dimension of the said term covers a wide area as it governs how a modern-day society should exist in a state of cohesiveness following the principles of law of nature. Biologically speaking both men and women have their vital role to play in a developing society which ultimately contributes to its growth. However, centuries earlier, women did not possess the same social strata in the society as it is seen today. Years ago, women were kept within the four walls of their household and were expected to carry out their household chores, while men were expected to earn a living for their families. Women were considered a tool for raising children and were often deprived of all the rights which men enjoyed in the society, however as time flew by, drastic changes were brought into the lives of women on the account of the Feminist movement which ushered in a new era where women were made aware of their basic social and political rights and that they would not need to lead a life in isolation. India is a country, where women are respected and cared for thereby providing them with a special status on the account of their nature in all aspects. The Constitution of India which is the largest written constitution of the world has got several provisions within it which is safeguarding the dignity of women by all means.

Article 42 of the Constitution of India [1] which speaks about the Directive Principles of State Policy states that "The State shall make provisions for securing just and human conditions of work and maternity benefits." This principle implies that the State is under an obligation to create reasonable and safe working conditions for women who are undergoing their pregnancy term and ensure that maternity benefits are provided to them for their post-natal care. The concept of Maternity Benefits is considered to be a crucial aspect for women to fully realize their reproductive freedom and autonomy. Maternity Benefits are crucial for women who are employed in services as these ensure women's stability and security in their jobs. The history involving Maternity Benefits is a lengthy one and now they are incorporated through various provisions into the country's legal system. In fulfilment of the obligations set by the Constitution of India, in order to ensure the security of women's employment at certain places of work, prior to and after childbirth, to ensure women's health conditions are properly taken care of, the Parliament of India has enacted The Maternity Benefit Act 1961 [2]. The Maternity Benefit Act was put into motion by the Republic of India on December 12, 1961 after the country had gained independence from the British empire. The said piece of legislation had a proportionately wider dimension covering various aspects of providing maternity benefit to women. The applicability of the said piece of legislation covers establishments of factories, plantations, mines alongside covering certain establishments under the government.

The primary goal of The Maternity Benefit Act, 1961 is to ensure that women experiencing motherhood or while undergoing their pregnancy term are given care and protection while providing them with the opportunity to excel in their respective career prospects alongside re-enforcing a women's faith in embracing motherhood and also promoting equality and fairness at workplace.

## 2. MATERIALS AND METHODS

This research work involves a doctrinal approach of legal research, primarily relying on secondary sources of data to critically evaluate the strategy of maternity benefit in India. The researcher in this paper has adopted a qualitative and analytical approach which constitutes a thorough examination of statutory materials, judicial decisions, legal provisions which are embodied in the concept of maternity benefit. Through this approach the researcher has attempted to make a critical analysis of the Maternity Benefit Act and its applicability for safeguarding women's rights in India.

## 3. DISCUSSIONS AND FINDINGS

### 3.1 Historical Progression of Maternity Benefit

The abstraction of the term maternity benefit in India advanced over a period of time in response to the increasing need to protect and safeguard the health of women employed at different workplaces in India. The origin of safeguarding the health of women at workplace can be traced back to the 20<sup>th</sup> century on the account of various reforms alongside increasing international labor standards. When the country was under the British empire, the industrial revolution led to an increase in the number of women who played a vital role in different sectors of the economy like plantation sector, factories, textiles. Nevertheless, women who were employed in these sectors were subjected to a lot of exploitation without having any concern regarding their health issues from the higher authorities. In consequence, to fill in the lacuna, the initial effort towards maternity care appeared in the arrangement of a legislation. One of earlier laws which existed during the British dominance in India was The Bombay Maternity Benefit Act of 1929 which paved the way towards recognizing that women employed at workplaces need care and protection on the account of their very nature. This said piece of legislation suffered from a very limited scope, however, it created a scenario when reproductive health care was brought into light as a part of labor welfare. A major milestone occurred after India got independence from the British Crown in the year 1947, when there was a dire need for implementation of standardized labour laws in the country. India, as a country was a part of the International Labour Organization (ILO) which stressed upon creating adequate provisions and guidelines for maternity benefits. All of these factors led the Government of India to enact the Maternity Benefit Act, 1961 which focused on creating better working conditions and providing maternity benefit to women undergoing pregnancy. The provisions of the said piece of legislation ensures that women workers are not assigned any hazardous tasks which may pose as a threat to their health and ensures their job security during the period of maternity leave.

Hence, the Maternity Benefit Act, 1961 is a welcomed piece of legislation in India which seeks to uphold the dignity of women with the increasing demand of productivity with respect to the Indian economy. Hence, the Maternity Benefit Act seeks to establish the role played by women professionally and their commitment towards carrying the society forward to the next millennium.

### 3.2 Constitutional Pledge Towards The Maternity Benefit Act

After India's independence from the British empire, the Constitution of India was adopted in the year 1950. The Indian Constitution is considered to be the foremost document which contains the ideal principles on how laws and regulations need to be framed which upholds the individual rights and liberties of the citizens of the country without any encroachments. The rights and privileges which have been enshrined within the Fundamental Rights (Part III) and the Directive Principles of State Policy (Part IV) of the Constitution of India. Article 14 of the Constitution mentions about 'right to equality' [3] which in terms of maternity benefit implies to social equality as women should be treated with respect and dignity at workplace. [4], right to equal pay for equal work for both men and women [5], right to just and humane conditions of work.

Article 21 of the Constitution of India which speaks about "Right to Life and Personal Liberty" is regarded as the most important fundamental right to which an individual is entitled to [6]. This article embodies within itself the entire fundamental belief of the principles which have been mentioned through the Constitution of India. Article 21 in consonance to maternity benefit ensures that every single woman who is undergoing their pregnancy term is entitled to avail the benefits and facilities which the State provides in order to ensure her health as well as her child's health.

Article 42 of the Constitution of India which expressively mentions that "The State is under an obligation to make provisions for securing just and humane conditions of work and for maternity relief". Consequently, with respect to these provisions, to safeguard the health of women at workplace, to provide them with pre-natal and post-natal care during and after childbirth, the Parliament of India has enacted the Maternity Benefit Act, 1961.

### 3.3 Critical Analysis of the Maternity Benefit Act, 1961

Prior to the enactment of the Maternity Benefit Act, 1961, India's perspective towards maternity benefits was applicable to women who were employed at workplaces like factories, mines etc. The Maternity Benefit Act, 1961 was put into motion with the primary goal to safeguard the health and safety of women workers employed at various sectors of the Indian economy. The provisions of the Maternity Benefit Act, 1961 was to ensure there exist a structural uniformity with respect to salary structure, duration of maternity leave, benefits. The inception of the term 'maternity benefits' can be attributed to the Government of India where it was used for the first time in the year 1928 in the city of Bombay during the term of British India. As far as literature review is concerned, Dr. Babasaheb Ambedkar was a strong advocate for maternity benefits. The Maternity Benefit Act, 1961 was enacted by the Republic of India on December 12, 1961 after the country's independence from the British Crown. The said piece of legislation provided for the care and safety of women undergoing their pregnancy term and post-natal care which is in uniformity with the international perspective. The Maternity Benefit Act, 1961 provides that the provisions of the same will not be applicable to an establishment or premises which is under the Employee's State Insurance Act, 1948.

According to Section 4 of the Maternity Benefit Act, 1961, “no employee shall knowingly employ a woman in any establishment during six weeks immediately following the day of her delivery or miscarriage. During the same period, no women shall be engaged in any work involving hefty strain for long hours [7].

As per Section 5 of the Maternity Benefit Act, 1961, “every woman is entitled to maternity benefit which is equivalent to the amount of wages a woman earns on a daily basis and it shall be computed from the time period of her availing leave till her delivery and afterwards which will include six weeks from the day of her delivery [8].

Under Section 8, of the Maternity Benefit Act, 1961, “every woman is entitled to receive maternity benefit alongside receiving a medical claim of twenty-five, provided there is no pre-natal confinement and post-natal treatment and benefit has to be provided by the employer [9].

### 3.4 Judicial Pronouncements in Consonance with The Maternity Benefit Act, 1961

The Judiciary is regarded as one of the cornerstones of the Government of India, which is entrusted with the role of interpreting the provisions and values of the Constitution of India. The key responsibility of the judiciary is to apply the said principles of natural justice in securing justice, fairness and liberty to the citizens of the nation and safeguarding the rights of its citizens. While implementing the provisions of the Maternity Benefit Act, 1961, the judiciary has to assume the role of a guardian in order to ensure that the provisions mentioned through the Maternity Benefit Act, 1961 are safeguarded and duly cared for. The judiciary therefore has got a pivotal responsibility in securing policies and initiatives which are in consistency with the Maternity Benefit Act, 1961 while ensuring that women on account of their nature are respected and cared for, thereby upholding the trust of the people in the judicial system of the country.

In the case of *Municipal Corporation of Delhi v. Female Workers* [10], the Apex Court stated that the provisions of the Maternity Benefit Act 1961, does not only grant the benefit of maternity benefit to women who are regularly employed but also to other women who have been employed on casual work and a master role basis. The most important aspect of a women’s life is to embrace motherhood, therefore, in order to facilitate a woman to give birth to a child, the employer at a particular workplace must ensure all necessary care and be considerate about it. The primary goal of the Maternity Benefit Act, 1961 is to ensure women who are employed are provided with all the necessary care to experience motherhood and embrace their child.

Similarly, in the case of *J. Sharmilla v. The Secretary to Government, Edu. Dept* [11], the petitioner gave birth to twins, and she conceived a third child on her second, Subsequently, the provisions of the maternity benefits were restricted to having a second child and there were no provisions for conceiving a third one. The court after going through the facts of the said case, stated that the provisions of the said piece of legislation is not to be based upon the number of children she conceived during her pregnancy, but the purpose of the said Maternity Benefit Act, 1961 should be to ensure the health and safety of the women employee, as a result the petitioner has got the right to receive her entire salary for the whole duration of her maternity leave.



In the case of *B. Shah v. Presiding Officer, Labour Court Coimbatore* [12], the Apex Court reiterated the point that the primary goal of enacting the Maternity Benefit Act, 1961 is to ensure the health and safety of all female workers who are employed in the plantation sector and those individuals who fall under the domain of Article 42 of the Constitution of India and therefore, the provisions of the said piece of legislation should be interpreted keeping those said objectives in mind.

### 3.5 Amendments to the Maternity Benefit Act, 1961

The Maternity Benefit (Amendment) Act, 2017 brought a major change to the Indian economy regarding the welfare of the labourers employed as the workforce of the country. The current Maternity Benefit (Amendment) Act, 2017 was put into motion with the primary goal to bring into alignment the Indian maternity laws in conformity with the international perspectives and standards in order to keep up with the evolving requirements of working women employed in the Indian sector. The provisions of the current Maternity Benefit (Amendment) Act, 2017 was put into motion on 1<sup>st</sup> April 2017.

The latest amendments augmented the duration of maternity leave from twelve weeks to twenty-six weeks. Nevertheless, women who are two or more than two children are excused from the said provision. Those women shall be qualified for a twelve week leave. The sole reason behind the amendment of the said provision is to safeguard the health of a newly born infant while ensuring that the baby receives adequate maternal care and nutrition. This is vital as it plays a significant role in the infant's mental growth and physical well-being.

Another significant change brought by the Maternity Benefit (Amendment) Act, 2017 is it removed the distinction between natural and adoptive or commissioning mothers who wish to adopt a child below 3 months of age, in addition, women who consent to be surrogates for commissioning mothers shall be entitled to twelve weeks of maternity leave from the date when the surrogate hands over the infant to the commissioning parents.

The current Maternity Benefit (Amendment) Act, 2017 has also introduced the system of creche facility in an establishment where there are fifty or more than fifty employees within the agreed distance.

The Amendment made to the Maternity Benefit Act in 2017 has shown significant progress of the current laws towards safeguarding women's health in the context of India. The increase of maternity leave from twelve weeks to twenty-six weeks in the current piece of legislation has shown the country's stand towards promoting gender equality, women empowerment along with job security for women workers employed within the private sector.

Moreover, with the introduction of creche facilities at certain workplaces has enabled women to be in a healthy work environment ensuring women on account of their nature are ensured certain facilities which again paves the way towards gender neutrality at workplace.

### 3.6 Nurturing Gender Equality Through The Maternity Benefit (Amendment) Act 2017

In order to achieve the true sense of gender neutrality in a developing society, it is a mandatory step to take a stand and challenge the old traditional patriarchal system which has been prevalent even today in some remote parts of the Indian society which involves taking a significant step towards pull apart the earlier roles that men and women were assigned, thereby promoting educational values and setting up an environment which is supportive towards women employed at different sectors of the economy. Women's involvement and their contribution towards the growth of a developing society is unparalleled which is affected by a host of factors like biological, economic social and cultural factors which affects their responsibilities at a particular job. Women are often burdened with taking responsibilities of family, child care, which ultimately affects their careers. All these factors play a pivotal role in creating a burden which hinders a women's economic growth and advancement.

Therefore, the Maternity Benefit Act, 1961 (Amended in 2017) was put into motion which is applicable to the entire nation of India to create a scenario where women are provided with special care and assistance on the account of their nature. The Maternity Benefit Act, through its consolidated provisions specifically aims to offer certain safeguard to women employed at workplace while ensuring gender neutrality.

The Maternity Benefit (Amendment) Act 2017 ensures that women in particular after resuming their employment after availing maternity leave are subjected to a lot of biasness which affects their mental wellness. Women may be subjected to certain stereotypic culture which is reflected through denial of proper wages, delay in promotion, etc which the said piece of legislation has tried to identify and create an environment where a women's dignity and self-respect is cared for. However, challenges still persist in different sectors of the economy which needs strengthening the core values of the Indian culture and reminding the employees of a particular working sector that women are a crucial factor in the development of a particular country's growth and creating a mindset that women no longer can be considered as a tool or mechanism for reproduction.

### 4. CONCLUSION

In order to ensure a proper balance of personal and professional obligations for a woman after the birth of a child, providing maternity leave is of utmost importance for a woman who has started a family. The key aspect regarding the applicability of leave, effects of leave on women's position in the market, child's welfare and how the Maternity Benefit Act, 2017 is able to create a gender-neutral society have been the core areas of discussion though this research paper. The current legal framework in the Indian context is in consonance with the international standards which prioritises maternity and child welfare. The legal provisions on availing leave are considered to be sensitive in nature in case it is only for a shorter duration which ultimately can pose as a hindrance for a women and her child's health as time is a crucial factor in the growth and development of a new born infant and post-natal care is vital for a women who has undergone pregnancy to fully recover. Nevertheless, the Maternity Benefit Act, 2017 is a welcomed piece of legislation in the country's legal system whose primary goal is protecting the interest of women who are in the verge of experiencing motherhood, the

role played by the piece of legislation in promoting gender equality at workplace cannot be ignored, however certain grey areas still remain which the current legislation has not been able to address which includes the act's limited applicability for women in the unorganised sector, The grey area which still needs to be brought out to light after the Maternity Benefit Act, 1961 amendment in 2017 is its effects on multi national corporations and small business. Consequently, the Maternity Benefit Act, 2017 needs to be evolving in nature in order to meet the socio-economic challenges to make sure that the applicability of the act is accessible to all women across various sectors.

## REFERENCES

1. Article 42 of the Constitution of India states "The State shall make provisions for securing just and humane conditions of work and maternity relief".
2. Bala Shashi, Implementation of Maternity Benefit Act, Preface. Published by V.V Giri National Labour Institute, Sector -24, Noida-201301, U.P Printed at: Chandu Press, D-97, Shakarpur, Delhi-110092.
3. Article 14 of the Constitution of India states "The State shall not deny to any person equality before the law or the equal protection of laws within the territory of India".
4. Article 16 of the Constitution of India states about "Equality of opportunity in matters of public employment or appointments for all citizens to any office under the State".
5. Article 39 (d) of the Constitution of India states "The State shall strive to ensure equal pay for both men and women".
6. Article 21 of the Constitution of India states "No person shall be denied the right to life and personal liberty except according to the procedure established by law".
7. Section 4 of the Maternity Benefit Act 1961 states-1) No employer shall knowingly employ a woman to any establishment during the six weeks immediately following the day of her delivery or her miscarriage.  
2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.
8. Section 5 of the Maternity Benefit Act states- "Subject to the provisions of the 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 the day.
9. Section 8 of the Maternity Benefit Act states- "Every woman entitled to maternity benefit under the 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.
10. 2000 3 SCC 224.
11. W.P. (MD) No 13555 of 2009.
12. AIR 1978 SC 12.