

# AN ANALYSIS ON MATERNITY BENEFIT ACT

## INTRODUCTION:

Motherhood is a very special experience in woman's life. It remodels her lifestyle. That is where the concept of maternity leave and the benefits it entails, comes in handy.



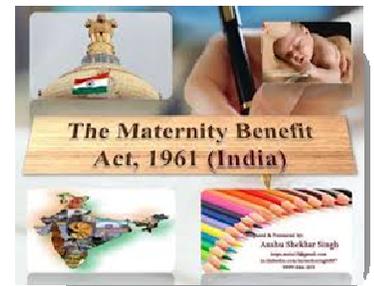
A maternity benefit is one that every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of the average daily wage for the period of her actual absence.

There is need for maternity benefits so that a woman is to be able to give quality time to her child without having to worry about whether she will lose her job and her source of income.

The women need to be withdrawn from the workforce during pregnancy and after the birth also they need the steady income for medical expenses etc. and therefore to preserve her health law should make provisions for maternity benefit so women can ensure their productivity as well as reproductivity.

Maternity benefits were first recognized when the Maternity Protection Conference was held by the International Labour Organization in 1919.

As per Maternity Benefits Act, 1961 which was assented by President on 12th December, 1961 and published in Gazette of India, the object is "to regulate the employment of 10 women in certain establishments for certain period before and after child-birth and to provide for maternity benefit and certain other benefits."



## Key Points of Maternity Benefit Act, 1961:

The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, has given its ex-post facto approval for amendments to the Maternity Benefit Act, 1961 by introducing the Maternity Benefit (Amendment) Bill, 2016 in Parliament and the same has come into as the Maternity Benefit (Amendment) Act, 2016 from April 01, 2017. The option to "work from home" will come to effect from July 01, 2017.

The maternity benefit Act 1961 protects the employment of women during the time of her maternity and entitles her of a 'maternity benefit' - i.e. full paid absence from work - to take care for her child. The act is applicable to all establishments employing 10 or more persons. The amendments will help 1.8 million (approx.) women workforce in organized sector.

**The amendments to Maternity Benefit Act, 1961 are as follows:**

- Increase Maternity Benefit from 12 weeks to 26 weeks for two surviving children and 12 weeks for more than two children.
- 12 weeks Maternity Benefit to a 'Commissioning mother' and 'Adopting mother'.
- Facilitate 'Work from home'.
- Mandatory provision of Creche in respect of establishment having 50 or more employees.



**Justification:**

Maternal care to the Child during early childhood - crucial for growth and development of the child.

- The 44<sup>th</sup>, 45<sup>th</sup> and 46<sup>th</sup> Indian Labour Conference recommended enhancement of Maternity Benefits to 24 weeks.
- Ministry of Women & Child Development proposed to enhance Maternity Benefit to 8 months.
- In Tripartite consultations, all stake holders, in general supported the amendment proposal.

**Key changes as compared with provisions of the 1961 Act:**

The Maternity Benefits Act, 1961	The Maternity Benefits (Amendment) Act, 2016
<b>Duration of Maternity Leave</b>	
<ul style="list-style-type: none"> <li>• Women employed in factories, mines, shops and establishments with 10 or more employees, and other notified establishments, are entitled to maternity leave of 12 weeks, with full wages.</li> <li>• This maternity leave should not be</li> </ul>	<ul style="list-style-type: none"> <li>• Duration of maternity leave increased to 26 weeks.</li> <li>• Changed to eight weeks.</li> <li>• For a woman who has two or more children, the maternity leave will be 12 weeks, which can only be availed six weeks before the date of the expected delivery.</li> </ul>

<p>availed before six weeks from the date of expected delivery.</p> <ul style="list-style-type: none"> <li>• Maternity leave applicable irrespective of number of children.</li> </ul>	
<b>Maternity leave for adoptive and commissioning mothers</b>	
<ul style="list-style-type: none"> <li>• No provision.</li> </ul>	<ul style="list-style-type: none"> <li>• Provides 12 weeks of maternity leave to: (i) a woman who legally adopts a child below three months of age; and (ii) a commissioning mother. A commissioning mother is defined as a biological mother who uses her egg to have a surrogate child.</li> <li>• The 12-week period of maternity leave will be calculated from the date the child is handed over to the adoptive or commissioning mother.</li> </ul>
<b>Creche facilities</b>	
<ul style="list-style-type: none"> <li>• No provision.</li> </ul>	<ul style="list-style-type: none"> <li>• Requires every establishment with 50 or more employees to provide crèche facilities within a prescribed distance. The woman will be allowed four visits to the crèche in a day. This will include her interval for rest.</li> </ul>
<b>Option to work from home</b>	
<ul style="list-style-type: none"> <li>• No provision.</li> </ul>	<ul style="list-style-type: none"> <li>• An employer may permit a woman to work from home, if the nature of work assigned permits her to do so.</li> <li>• This option can be availed of, after the period of maternity leave, for a duration that is mutually decided by the employer and the woman.</li> <li>• With effect from July 01, 2017.</li> </ul>
<b>Employer to inform the woman of maternity benefits</b>	
<ul style="list-style-type: none"> <li>• No provision.</li> </ul>	<ul style="list-style-type: none"> <li>• Every establishment has to inform a woman at the time of her appointment of the maternity benefits available to her. This communication must be in writing and electronically.</li> </ul>

## CRITICS

### **Unorganised women workers not covered under the Act**

- The law will benefit only a minuscule percentage of women, while ignoring the majority who are working as contractual labour, farmers, self-employed women and housewives.

The 1961 Act covers women workers employed in factories, mines, plantations, shops and establishments with 10 or more employees, and



any other establishments. This constitutes about 18 lakh women workers.

Note that about 90% of working women are in the unorganized sector and are not covered by the 1961 Act.

In 2015, the Law Commission of India recommended that the provisions of the 1961 Act should cover all women, including women working in the unorganized sector.

Women workers in the unorganized sector include agricultural labourers, seasonal workers, domestic workers or construction workers. They often work in unstructured conditions, and may have multiple employers. Due to such employment conditions, they may not be able to prove eligibility under the 1961 Act such as continuous employment for a period of 80 days in the one year prior to the date of delivery.

Currently, such women may claim maternity benefits under the Indira Gandhi Matritva Sahyog Yojana, a conditional cash transfer scheme.

Under the scheme, Rs 6,000 is provided to a pregnant woman for the birth of two children. Such schemes provide a lump sum payment but do not fully address the issue of loss of income or assure job security. This could make it difficult for such women to afford rest from work to take care of their child and their own health.

### **Woman with two or more children entitled to only 12 weeks of leave**

The Amendment extends the period of maternity leave from 12 to 26 weeks. However, this increase in maternity leave does not apply to women with two or more surviving children. Such women will be entitled to 12 weeks of leave. The government has stated that the amendment seeks to extend the period of maternity leave to 26 weeks to ensure maternal care to the child during early childhood. It has also noted that such early care is essential for the growth and development of the child.

This objective could be defeated if sufficient maternity leave is not given in the case of a third born child. Currently under the 1961 Act, the minimum maternity leave of 12 weeks applies in all cases, regardless of the number of previous children.

### **Lack of uniformity across labour laws related to maternity benefits**

Currently, there are various labour laws that provide maternity benefits to women in different sectors. These laws differ in their coverage, benefits and financing of the benefits. The Second National Commission on Labour (2002) had recommended rationalization of various labour laws with regard to providing social security, including maternity benefits.

#### **Labour Laws across different sectors that provide maternity benefits**

<b><u>Sr. No.</u></b>	<b><u>Labour Law applicable to women</u></b>	<b><u>Coverage</u></b>	<b><u>Maternity benefit provisions</u></b>	<b><u>Financing</u></b>
1.	Labour Law applicable to women	Factories; mines; plantations; Shops and establishments with	12 weeks (with full wages)	Employer

		more than 10 employees; Other establishments notified by the state government		
2.	Employees State Insurance Act, 1948	All factories, other than seasonal factories; Others establishments notified by the central or state government, and with employee salary at Rs 15,000 or less.*	12 weeks (with full wages)	Mixed(Employer contribution: 4.75% of wages; Employee contribution 1.75% of wages)
3.	All India Services (Leave) Rules,1955	Indian Administrative Service; Indian Police Service; The Indian Service of Engineer (Irrigation, Power, Buildings and Roads); The Indian Forest Service; The Indian Medical and Health Service	<b>Women:</b> 24 weeks, if less than two surviving children (with full wages); Includes adoptive mothers; Child care leave up to 730 days, for 2 children, until they turn 18 years (with full pay); <b>Men:</b> 15 days, if less than two surviving children (with full pay)	Employer (central government)
4.	Central Civil Services (Leave) Rules, 1972	Government servants appointed to the civil services and posts in connection with the affairs of the Union; Railways servants, casual workers, industrial workers, etc. not covered	<b>Women:</b> 180 days, if less than two surviving children (with full pay); <b>Adoptive mothers:</b> 60 days, to be taken within one year, if less than 2 children Child care leave up to 730 days, for 2 children, until they turn 18 years (with full wages) <b>Men:</b> 15 days, if less than two surviving children (with full pay)	Employer (central government)
5.	The Factories Act, 1948	Workers employed in factories, as defined in the Act	12 weeks (with full wages)	Employer
6.	Working Journalists (Conditions of Service) and	Women journalists employed in newspapers	State welfare boards to make maternity benefit payments to	Employer

	Miscellaneous Provisions Rules, 1957		female beneficiaries	
7.	The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996	Building workers employed by an establishment with 10 or more buildings workers in any building or other construction work	State welfare boards to make maternity benefit payments to female beneficiaries	Mixed. [Payment through a fund with contributions from the central government, beneficiaries, and other sources.]
8.	Unorganized Workers' Social Security Act, 2008	Enterprises engaged in the sale of goods or services with less than 10 employee	Directs the central government to formulate schemes for maternity benefits	Central government

### **MATERNITY LEAVE LAWS IN OTHER COUNTRIES:**

#### **UNITED STATES:**

The US federal government provides no paid maternity or parental leave to its employees, though they can use their sick days or vacation days that they've saved up. Just 11 percent of Americans employed by private industry have access to some sort of paid family leave. For state and government employees, 16 per cent can take paid family leave.

#### **UNITED KINGDOM:**

The length of maternity (or parental) leave in the UK is 52 weeks. However, eligible employees are paid for up to 39 weeks. During the first six weeks, the maternity pay amounts to 90 per cent of whatever the employee earns, and thereafter, they receive £139.58 per week, or 90 per cent of their average weekly earnings, whichever is lower.

#### **AUSTRALIA:**

In Australia, there is no maternity leave. There is "parental leave", which means either the mom or dad can take government-paid leave for up to 18 weeks. Or they can share the leave. In Australia, your job is protected for up to a year after the birth of a child.

#### **GERMANY:**

Working mothers and fathers have equal entitlements to paid parental leave (Elterngeld) of up to 12 - 14 months, which can be taken by one or both parents. The standard leave for one parent caregiver is 12 months, but gets extended to 14 months if the other parent also takes 2 months of leave.

#### **FRANCE:**

French women are guaranteed 100 per cent of their pay for 16 weeks (six weeks before birth and 10 weeks after). For families with two children, women can take an additional 2.5 years of job-protected family leave.

### **DENMARK:**

New moms in Denmark get a total of 18 weeks of maternity leave: four weeks before the birth and 14 weeks after, all at full pay. During the 14-week period, the father can also take two consecutive weeks off. By law, the government covers 52 weeks of paid leave, though not always at the full salary.

### **SWEDEN:**

Swedish couples are entitled to 480 days of parental leave, the longest in the world. Of those, 90 days are reserved for the father. However, parents receive only 80 per cent of their normal pay during their time off work.

### **HOW DO WE HELP?**

We as professionals ensure that within reasonable time period, all the compliances with respect to procedure to be followed for granting maternity leave as per the norms and provisions prescribed under the Maternity Act 1961 and the Maternity Benefit (Amendment) Act, 2016.

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