



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Maternity Benefit Act, 1961: Benefits and Protection

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*Received 17 November 2022; Accepted 29 November 2022; Published 10 December 2022*

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*During pregnancy and after childbirth, a woman faces lots of challenges that she desires and overcomes gradually. She and her child need love and affection during that time. She should also be free from any kind of stress. The benefits provided to pregnant women during their pregnancy and after childbirth are known as "maternity benefits." One of the beneficial pieces of legislation is the Maternity Benefit Act of 1961. This article has been written to discuss the benefits and protections under the Act. The paper provides a comparison of maternity leave in India with that in other nations. It also gives brief details of various maternity schemes under the Indian government. It also provides personal suggestions. The primary goal of this page is to give individuals a basic grasp of the Act.*

**Keywords:** *maternity, benefit, leave, crèche, protection.*

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### INTRODUCTION

Motherhood is a beautiful period in the life of women but it comes with many challenges. Post-delivery is a stressful period for a mom. The International Labour Organization, an agency of the United Nations has taken a positive step toward maternity benefits and has approved three conventions to establish maternity protection standards, the first in 1919, the second in 1952, and the most recent in 2000, The Maternity Protection Convention (No. 183). These conventions gave rise to maternity benefit rules and act in various nations. They guarantee the right to return to

work following maternity leave and provide safeguards to protect expectant mothers and new mothers from health and safety risks. They also guarantee paid maternity leave, access to healthcare for mother and child during that time, and time to breastfeed.

The Maternity Benefit Act of 1961 is a piece of legislation that safeguards female employees' right to work during pregnancy. It is noted to be a beneficial piece of legislation and its object is to ensure the security of tenure for the working woman. It gives female employees the right to maternity benefits, which include fully paid salaries for the time they miss working to care for a kid. Any establishment with 10 or more employees is subject to the Act. The Maternity (Amendment) Bill 2017 was approved by the Lok Sabha and Rajya Sabha on March 9, 2017, and August 11, 2016, respectively. Additionally, on March 27, 2017, the President of India gave his approval. It must be noted that this act does not apply to women who are entitled to benefits of the Employees' State Insurance Act, 1948 except under Sections 5A and 5B.

## SCOPE OF THE ACT

The objective of the Maternity Benefit Act 1961:

- To regulate the employment of women in certain establishments for a certain period before and after childbirth; and
- To provide for maternity benefits and certain other benefits.<sup>1</sup>

The Supreme court in *Municipal Corporation of Delhi v Female Workers (Master Roll)* has made the following observation “*The Maternity Benefit Act, 1961 aims to provide all the facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear, of being victimized for forced absence during the pre or post-natal period.*”<sup>2</sup>

The maternity benefit Act of 1961 complies with the directive principles of state policy outlined in Part IV of the Indian Constitution. Article 39 states that:

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<sup>1</sup> Maternity Benefit Act 1961

<sup>2</sup> *Municipal Corporation of Delhi v Female Workers (Master Roll)* Special Leave Petition (Civil) 12797/1998

- the citizens, men, and women equally have the right to an adequate means to livelihood; and
- there is equal pay for equal work for both men and women;<sup>3</sup>

Additionally, Article 42 of the Indian Constitution mandates the state create provisions for just and humane conditions of work, including maternity relief.<sup>4</sup>

## **BENEFITS UNDER THE ACT**

A woman who is expecting to deliver a child can avail of the following benefits under the Maternity Benefit Act:

### **1. Right to receive maternity benefits under section 5**

According to this clause, every woman is entitled to maternity benefits for 6 weeks following the day of her delivery, as well as the length of her actual absence before and including that day. Maternity benefits are calculated based on the average daily pay. Her employer is also obligated to pay these benefits.

In *B Shah v Presiding Officer, Labour Court, Coimbatore and Ors* the question of discussion was about the term "week" used in sub-section (1) and (3) of section 5 read with sub-sections 2(1), 3 (n) and 4 of the Maternity Benefits Act (1961). The apex court observed that "*The term "week", in the context of sub-section (1) and (3) of section 5 of the Act has to be taken to signify a cycle of seven days including Sundays. The language in which the aforesaid sub-sections are couched also shows that the Legislature intended that computation of maternity benefit is to be made for the entire period of the woman worker's actual absence i.e. for all the days including Sundays which may be wageless holidays falling within that period and not only for intermittent periods of six days thereby excluding Sundays.*"<sup>5</sup>

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<sup>3</sup> Constitution of India 1950, art. 39

<sup>4</sup> Constitution of India 1950, art. 42

<sup>5</sup> *Municipal Corporation of Delhi v Female Workers (Master Roll) Special Leave Petition (Civil) 12797/1998*

## **2. Duration of maternity leave under section 5(3)**

The maximum amount of time that any woman entitled to maternity benefits can receive them is 26 weeks, no more than 8 weeks before the anticipated delivery date. Given that a working mother who has two or more living children is only competent for maternity benefits for a maximum of 12 weeks, which shall not be more than 6 weeks before the date of her anticipated delivery. Furthermore, the maternity benefit will only be paid for the days leading up to and including the day of the woman's death if she passes away within this time. Additionally, if a woman dies while giving birth and leaves behind her child, her employer is liable for the maternity benefit for the entire period up to and including the date of her death. If the child also perishes during the said period, however, the employer is only responsible for the days preceding and including the child's death.

## **3. Maternity leave for adoptive and commissioning mothers under section 5(4):**

The phrase “commissioning mother” has been described in section 3(ba) of the Act. “Commissioning mother means a biological mother who uses her egg to create an embryo implanted in any other woman” The 2017 Amendment to Maternity Benefit Act has inserted a leave period of 12 weeks for the commissioning mother and adoptive parents. A woman who lawfully adopts a child under three months old or a commissioning mother has the right to maternity benefits for twelve weeks starting on the day the child is given to the adopting mother or the commissioning mother, as the case may be.

## **4. Option to work from home under section 5(5):**

An innovative feature included in the 2017 amendment permits female employees to work from home based on the type of work they would be doing. The task can be agreed upon by both the employer and the employee through a mutual agreement. This option is available even after birth and may be used for a period that is mutually agreed upon by the company and the female employee.

**5. Payment of maternity benefits in the event of a woman's death under Section 7:**

A female employee qualified for maternity benefit or any other payments under this Act dies before obtaining such benefit or other payments, the employer must pay such benefit or amount to the person named by the employee as a nominee made under Section 6, or to her legal representative if no such nominee exists.

**6. Payment of a medical bonus under section 8:**

Every female employee who is eligible for maternity benefits is also eligible for an Rs. 1000 medical incentive. It is only possible if the employer does not supply free prenatal confinement and postnatal care. Furthermore, the central government may enhance the amount of the medical bonus once every 3 years by issuing a notification in the official gazette, up to a limit of twenty thousand rupees.

**7. Leave for miscarriage under section 9:**

The expression miscarriage is described in the Act under section 3(j) as “expulsion of the contents of a pregnant uterus at any period before or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code”.

According to section 9, a female employee is entitled to leave with wages in case of:

- Miscarriage or
- Medical termination of pregnancy which is defined under section 2 (ha) as

*“Medical termination of pregnancy” means “the termination of pregnancy permissible under the provisions of the Medical Termination of Pregnancy Act, 1971.”<sup>6</sup>*

To claim to leave with wages for miscarriage or medical termination of pregnancy, she has to produce proof of her miscarriage or medical termination of pregnancy. The leaves with wages

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<sup>6</sup> Maternity Benefit Act 1961, s 2 (ha)

are provided at the rate of maternity benefit for 6 weeks from the day of her miscarriage or medical termination of pregnancy.

In *Management of Kallayar Estate, Jay Shree Tea and Industries Limited, Coimbatore v Chief Inspector of Plantations, Madras and Another* it was held that “leave for miscarriage can be claimed even if the women worker had not worked for 160 days in the period of 12 months preceding the date of miscarriage.”<sup>7</sup> (1999 (81) FLR 639, (1999) ILLJ 180 Mad, (1998) IIIMLJ 315)

#### **8. Leave with pay for tubectomy surgery under Section 9A:**

A female employee is also eligible to leave with pay for her tubectomy operation. For this, she has to produce proof of the tubectomy operation. And if she does so, she would be eligible to leave with salary at the rate of maternity benefit for two weeks immediately following her tubectomy surgery.

#### **9. Leave for illness arising out of pregnancy under section 10:**

A female employee shall be eligible to leave with salary if she suffers from an illness from:

- Pregnancy;
- Delivery;
- Premature birth of the child;
- Miscarriage;
- Medical termination of pregnancy or
- Tubectomy operation.

To be eligible for paid leave, she must provide proof of sickness as prescribed. It is to be noted that she will be provided with 1 month's leave with wages at the rate of maternity benefit. The leave with wages under section 10 is provided to the woman in addition to the duration of absence permitted by section 6 or, as the case may be, by section 9 of the Act.

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<sup>7</sup> *Management of Kallayar Estate, Jay Shree Tea and Industries Limited, Coimbatore v Chief Inspector of Plantations, Madras & Anr* 1999 (81) FLR 639

**10. Rest periods for nursing the toddler under section 11:**

Every female employee who has delivered a child and has returned to work shall be allowed two breaks in her daily course of work to breastfeed her kid. These are for a specific period and are in addition to the rest periods she is permitted. Women are permitted to take a breastfeeding break until their kid reaches the age of 15 months. Furthermore, under Section 13(b), employers are not permitted to withhold from the normal daily wages of the women for breaks for nursing the child.

**11. Crèche facilities under section 11A(1):**

With the 2017 amendment to the Act, a new Section 11 was inserted which provides for crèche facilities. Every establishment having 50 or more employees shall have a crèche facility within a prescribed distance. The employer shall allow 4 visits a day to the crèche by the woman which shall so include the interval for rest allowed to her.

**12. Intimation of every benefit to every woman under section 11A(2):**

The clause demands raising awareness among female employees about the maternity benefits that are accessible to them during their employment.

**PROTECTION UNDER THE ACT**

**1. No dismissal during absence due to pregnancy under section 12**

When a woman employee is absent from work under the terms of the Maternity Benefit Act 1961, it is prohibited for her employer to:

- Discharge or dismiss her during or as a result of her absence; or
- Provide notice of discharge or dismissal on the day the notice will expire during such absence; or
- To change any of the terms of her service to her detriment.

Section 12(2) deals with dismissal and discharge during pregnancy. Clause (a) of sub-section (2) of section 12, states that a woman may be discharged or dismissed at any time during her pregnancy when she is not absent. But such dismissal or discharge shall not disentitle the female employee to claim the maternity benefit or medical incentives to which she otherwise is entitled. However, the employer may refuse maternity benefits or medical bonuses, or both if the woman is dismissed or discharged for prescribed gross misconduct.

## **2. No wage deduction in certain instances under Section 13**

Any reduction from a woman's earnings should not be made because of lighter labour assigned to her during a certain phase of pregnancy or breaks assigned to her for breastfeeding her kid.

## **3. Appointment of inspectors**

The government is in charge of administering and enforcing the Act and has to appoint inspectors. Accordingly, under section 16, this inspector shall be a public servant as defined in section 21 of the Indian Penal Code.

## **4. Authority and responsibility of inspectors**

Certain authority and responsibility are imposed on the inspector for the administration of the Act under sections 15 and 17 of the Act. According to section 15, An Inspector may, subject to any limits or conditions imposed, use all or all of the following powers:

- To enter the property at any reasonable hours;
- To examine persons employed in the establishment;
- To get information from the employer;
- To make replicas of any registered materials, notifications, or parts thereof.

Section 17 contains provisions relating to the Inspector's authority to direct payments to female employees. An inspector may investigate on his own or in response to a complaint filed by an aggrieved employee. If the allegation is confirmed to be true following an inquiry, the inspector may order the company to reimburse the employee. If the employee is dissatisfied with the



inspector's decision, he or she may file an appeal with the appropriate authority within 30 days of receiving notification of the inspector's decision.

#### **5. Punishment for contravention of the Act by employers under section 21**

If the employer is unable to pay any maternity allowance or discharges or fires, such lady, during or because of her absence during maternity leave, he will be penalized in line with the Act's requirements. He will be imprisoned for three months, which can be extended to a year, and fined two thousand rupees, which can be increased to five thousand rupees. If an employer violates the requirements of this Act or the rules issued thereunder, he shall be punished by imprisonment for up to a year, a fine of up to five thousand rupees, or both:

#### **MATERNITY BENEFIT SCHEME UNDER CENTRAL GOVERNMENT**

**The Pradhan Mantri Matru Vandana Yojana (PMMVY)** is a national health protection initiative that distributes financial incentives of Rs. 5000/- in three payments to pregnant women and nursing mothers' bank accounts.

**The Janani Suraksha Yojana (JSY)** is a safe motherhood program run by the National Health Mission. Its mission is to minimize maternal and infant mortality by boosting institutional delivery among low-income pregnant mothers.

**The Pradhan Mantri Surakshit Matritva Abhiyan** has been launched by the Ministry of Health and Family Welfare (MoHFW) of the Government of India. The program aspires to provide comprehensive, full, and high-quality primary care to all pregnant women at no expense on the 9th of each month. PMSMA assures that women in their second and third trimesters of gestation get a basic set of prenatal care facilities at government-approved healthcare facilities.

#### **COMPARISON WITH OTHER COUNTRIES**

- **JAPAN**

In Japan, maternity leave (*sanzen sango key*) is guaranteed for 6 weeks before the anticipated delivery period and 8 weeks after the kid is born. If the scheduled delivery date is extended

ahead, the days between the predicted due date and the genuine birth are also counted as maternity leave. She will be paid 2/3 of her normal monthly salary as maternity leave allowance. The pregnant woman is entitled to a one-time lump sum amount of ¥420,000 for childbirth, known as *shan ikuji ichijikin*.

- **RUSSIA**

Working moms in Russia are authorized to have 140 days of paid maternity leave. Maternity leave begins 70 days before the actual and finishes 70 days after the kid is born. In the event of multiple deliveries or complications, additional days might be added up to a total of 194 days of maternity leave.

- **PAKISTAN**

In Pakistan, a pregnant female employee is entitled to 12 weeks of maternity leave. She can claim them six weeks before her due date and six weeks after the delivery. She is also entitled to maternity benefits at the extent of her most recent pay throughout her 12-week maternity leave. She cannot, however, collect maternity benefits if she has not worked for the company for at least 4 months before the due date.

- **SINGAPORE**

A working woman in Singapore who wishes to take 16 weeks of paid maternity leave from her employer and the government must fulfill the following criteria:

- The child is a Singaporean citizen.
- The mother was employed by the company or self-employed for at minimum three months before the child's birth.
- She must be legally married to the child's father.
- Before one week, the employee was obligated to notify the employer about her maternity leave.

If the infant is not a Singaporean national, the leave is limited to 12 weeks.

- **CHINA**

Pregnant women who are Chinese nationals are entitled to 90 days of leave following the birth of their newborn, according to the Labour Law of the People's Republic of China Act of 1995, which was designed and implemented to safeguard employees. In comparison to the above-discussed countries, India provides more maternity leave and benefits to pregnant women. India mandates provide 26 weeks of maternity leave which is comparatively higher than the nations discussed above. That is to say that Japan provides only 14 weeks while Russia and Singapore provide 20 weeks and, 16 weeks respectively and Pakistan and China provide 12 weeks of maternity leave. Moreover, every working female employee is entitled to maternity benefits irrespective of her marital status and not like in Singapore where legal marriage is mandatory for claiming any maternity benefit. The 2017 amendment has introduced a crèche facility which is not available in most countries. But the only drawback is that providing maternity benefits is entirely burdened upon the employer only. The government does not contribute its share in the maternity benefit. It would be better if the government contributed some part of maternity benefits as it is done in Singapore. In Singapore, the employer will pay the regular wage during the leave time, but he can seek financial assistance from the government for the last eight weeks for the first and second children. For subsequent children, the full amount shall be reimbursed by the Singaporean government.

## **SUGGESTIONS**

- Just like pension schemes, the government can create maternity schemes where both husband and wife and the wife's employer and the government can contribute their share so that the burden on the employer can be reduced to a greater extent.
- Maternity insurance should be created where the husband and wife can pay premiums.
- A maternity benefit fund must be created which would be under the control of central governments.
- The act should be made gender-neutral. That is to say, some benefits must be given to the father also.

## CONCLUSION

During the birth of the child, a woman takes rebirth as a mother. It is a time when both the mother and newborn need attention and care. It is a curial period that requires love and affection free from stress. The Maternity Benefit Act of 1956 helps working mothers lead stress-free life and take care of their newborns. It provides job security and mandates that the employer shall not dismiss or remove pregnant women or lactating mothers from the job during maternity leave. Moreover, the benefits provided under the act are given regardless of the marital status of the women. The 2017 amendment has brought a tremendous change to the Maternity Benefit Act 1961. It has introduced the crèche facility and leaves for adoptive and commissioning mothers for giving them proper time to spend and take care of their little ones. It has also introduced the work-from-home option which is a needful step in the present era. But some loopholes must be taken into consideration by the labour department.