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## THE MATERNITY BENEFIT ACT 1961 WITH MATERNITY BENEFIT (AMENDMENT) ACT 2017 - AN OVERVIEW

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### Abstract

Women workers across the world are at a disadvantage because of certain biological reasons. They have to go through with various issues such as menstruation, pregnancy, child birth, lactation, child rearing and menopause, as a result of these problems, various complications are arising. Therefore, suitable measures for protection of women especially health and wages of women workers during maternity period are of significance not only for women but also to the society. Further, maternity benefits are essential to bring about a reduction in infant mortality rates in the country. Moreover, the management also benefits from these maternity benefits since it reduces absenteeism of female labour and allows women to give their undivided attention to their jobs. In this juncture, The Maternity Benefit Act is one of the best steps taken by the government to protect women employment while they experience their Maternity. The present paper focuses on the various important provisions of Maternity Benefit Act 1961 with Salient features of the Maternity Benefit (Amendment) Act 2017 based on secondary source of information for creating awareness on the Act, but not for legal purpose.

**Keywords:** Women Workers, Pregnancy, Delivery, Maternity Benefits, Management, and Employment.

### Introduction

In India, 48.5 percent is women's share in total population, which is 61.6 crore of 127 crore. About, 27 percent is women's share in workforce, which is 13.8 crore of 51.1 crore. The Maternity Benefit Act aims to do social justice to the women workers, hence, in interpreting the various provisions of act the court has to adopt the compassionate rule of construction, which will enable the women worker not only to subsist, but also to regain her dissipated energy, nurse her child and resume her pre-pregnancy level of efficiency and output. Further, The Maternity Benefit Act is one of the best steps taken by the government to protect women employment while they experience their Maternity. Maternity Benefit is basically the benefit of getting full paid absence from work. This benefit is given to the woman with the motive to help her in taking care of her child. As per the government rules, every establishment having 10 or more employees need to apply this act in the organization. Maternity Benefit is basically the benefit of getting full paid absence from work. This benefit is given to the woman with the motive to help her in taking care of her child. The maternity benefit act is the society's contribution to women workers who experience considerable physical pain discomfort and anxiety while bearing children. Keeping the condition of working women in view, the government of India enacted in 1961, an Act called "the Maternity Benefit Act 1961". It was amended quite extensively in 1970, 1972, 1973, 1975, 1976, 1988, and 1995. Based on various provisions of the Act, it can be concluded that Maternity Benefit Act,1961 is a boon for the working women in the sense that they don't have job insecurity during their maternity period. This act regulates the employment of women along with provide maternity and other benefits to them. Maternity Benefit is "A payment (maternity allowance) made to a pregnant woman who usually works but does not qualify for statutory pay."

### Importance

At present on for with men, many women are participating in work force outside the home. Majority of females are working in unorganised sector. Their health status in maternity period is crucial during reproductive age of 15-49 years. Hence, awareness on maternity benefit among females is required for availing their rights during pre and post maternity period.

### Objective

The present paper is emphasizing on the various provisions of Maternity Benefit Act 1961 with Salient features of the Maternity Benefit (Amendment) Act 2017.

### Method and material

The present paper is descriptive research based on secondary data collected from several published source and for creating awareness on the benefits of the Act, but not for legal practice.



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### History of the Maternity Benefit Act

It was the Government of the State of Bombay that enacted the first maternity benefits legislation in the year 1929. This legislation was regarded as very progressive. Soon some other states followed similar laws with some minor variations e.g., eligibility, rate of wages, etc. The central legislations were passed with the provisions of maternity benefit like The Mines Maternity Benefit Act, 1941 the Plantation Labour Act, 1951, etc. However, the scope of the Acts varied in terms of qualifying conditions for payment, the period and the rate of maternity benefits, etc. With a view to reduce the disparities relating to maternity protection under the various Acts, the government of India enacted in 1961, a new Act called the Maternity Benefit Act 1961.

### Maternity Benefit Act 1961-In brief

The Act extends to whole of India (including J&K from 1970). It contains 30 sections. This act is enacted on the basis of article 39(e) & (f) of the Indian constitution: "State shall, in particular, direct its policy towards securing the health & strength of workers, men and women". Also, Article-42 states the provision for just and humane conditions of work and maternity relief. Article-43 provides Living wage, etc., for workers. The Act aims to protect the dignity of Motherhood by providing complete and health care to women and her child when she is unable to perform her duty and to give the assurance that her rights will be looked after while she is at home to take care for her child.

### Maternity Benefit (Sec-5) Payment

Maternity Benefit (Sec-5) is a Payment at average daily wage, absence from work before and after delivery. Average wage = period of 3 calendar months immediately preceding herself she absents herself = fixed as per the Minimum Wages Act, 1948 or Rs. 10, whichever higher.

### For period of her actual absence

i.e., period immediately preceding day of delivery, actual day of delivery and any period immediately following that day.

### Objective of the Act

1. It aims to regulate the employment of women in certain periods before and after childbirth,
2. To provide for maternity benefits including maternity leave, wages, bonus, nursing breaks etc and
3. To protect the dignity of motherhood and the dignity of a new person by providing for full and healthy maintenance of the women and her child at this important time when she is not working.

### Relevant Acts for Maternity Protection

At present provided under the different State Acts on the subject and via three Central Acts

- The Mines Maternity Benefit Act, 1941,
- The Employees' State Insurance Act, 1948
- The Plantations Labor Act, 1951

### Applicability

1. The Act is applicable to all establishments which are factories, mines, plantations, Government establishments, shops and establishments under the relevant applicable legislations, or any other establishment as may be notified by the Central Government.
2. Any establishment wherein persons are employed for exhibition of equestrian, acrobatic and other performances.
3. Any shop or establishment under any other law pertaining to shops or establishment in State where 10 or more people are/were employed, in the preceding 12 months.
4. Except those to which the Employees' State Insurance Act, 1948 (ESI) are applicable for the time being. (Sec-5A & 5B)
5. To women who cannot claim under ESI-Section-50 (because income is above 3000 pm) then they can claim under MBA. (Sec-5A & 5B)
6. The Central Industrial Relations Machinery (CIRM) in the Ministry of Labour is responsible for enforcing this Act.

### Legal Obligation under this Act (Sec-4)

No employer shall knowingly employ a woman in establishment during 6 weeks following date of her delivery or miscarriage. No women shall work in any establishment during the 6 weeks immediately the day following her delivery.

### Duties of Employee for Maternity Benefits (Sec-5)

Under Section-5(2) of the Maternity Benefit Act, 1961: She must work not less than 80 Days in the 12 months immediately preceding the date of her expected delivery (Sec-2). Ten (10) weeks before the date of her expected delivery, she may ask the



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employer to give her light work for a month (Sec-5). At that time, she should produce a certificate that she is pregnant. She should give written notice to the employer about Seven (07) weeks before the date of her delivery that she will be absent for 8 weeks before and 18 weeks after her delivery. She should also name the person to whom payment will be made in case she cannot take it herself (Sec-6). She should take payment for the first weeks before she goes on leave (Sec-5).

### Eligibility (Sec-5)

As per the Act, every woman shall be entitled to Maternity Benefits by her Employer and the Payment at the Rate of the Average Daily Wages for the period of her Actual Absence. A woman must have been working as an employee in an establishment for a period of at least 80 days in the past 12 months. Working period = days the woman was laid-off paid holidays. Not to woman who has immigrated into Assam or was pregnant at that time. If the woman dies during delivery or in the period immediately following the delivery and the child survives, then the employer is liable to pay the full maternity benefit of that period to the child (Sec-7). But if the child dies, then the benefit is calculated upto and including the date of death of child. Women engaged in casual or muster roll basis on daily wages also entitled. Payment during the leave period is based on the average daily wage for the period of actual absence. Woman earning less than 15,000 may be offered ESI Scheme by her Employer and will not be entitled for Maternity Benefit. Woman falling under section-5A are Exceptions and by under section-5(2) they are entitled for Maternity Benefits if she has worked for the period of Seventy days in Twelve Months immediately preceding the date of her expected delivery.

### Employee Notice for Maternity Benefit (Sec-6)

Notice in writing (in the prescribed form) to her employer. Maternity amount paid to her or to her nominee (to be specified in the notice). Will not works in any establishment during the period. She has to inform about her absence from work from the date which shall not be earlier than 6 weeks before the date of her expected delivery. The notice may be given during the pregnancy or as soon as possible, after the delivery. Advance amount paid before leave and due amount paid on proof that child is delivered. If notice not given before deliver, can be given as soon as possible after delivery. The failure to give notice, however, does not disentitle the woman to the benefit of the Act.

### Payment of medical benefits in case of death of a woman (Sec-7)

If a women entitled to maternity benefit or any other amount under this Act, dies before receiving such maternity benefit amount, or where the employer is liable for maternity benefit, the employer shall pay such benefits or amount to the person nominated by the women in the notice given under section-6 and in case there is no such nominee, to her legal representative.

### Medical Bonus (Sec-8)

If free medical care not provided to the woman, Amount of Rs. 3500 (w.e.f. 19-12-2011) would be paid.

### Leave for miscarriage (sec-9)

In case of miscarriage, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her miscarriage.

### Leave for Tubectomy operation (Sec-9A)

In case of Tubectomy operation, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her Tubectomy operation.

### Leave for illness (Sec-10)

A woman suffering illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall, on production of such proof as may be prescribed, be entitled in addition to the period of absence allowed to her under section 6, or, as the case may be, under section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.

### Nursing breaks (Sec-11)

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.



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### Creche Facility (Sec-11A)

Every establishment having 50 (fifty) or more employees are required to have a mandatory creche facility (within the prescribed distance from the establishment), either separately or along with other common facilities. The woman is also to be allowed 4 (four) visits a day to the creche, which will include the interval for rest allowed to her.

### Dismissal during absence or pregnancy (Sec-12)

Where a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her on account of such misconduct. Any discharge or dismissal of a woman during pregnancy for absence is entitled to maternity benefit/medical bonus. In case of gross misconduct, the employer in written can communicate about depriving such benefit. Within 60 days from date of deprivation of maternity benefit, any women can appeal to the authority prescribed by law.

### No deduction of wages in certain cases (Sec-13)

No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Act shall be made by reason only of –

- (a) the nature of work assigned to her by virtue of the provisions contained in subsection (3) of section-4: or
- (b) breaks for nursing the child allowed to her under the provisions of section-11.

### Forfeiture of maternity benefit (Sec-18)

If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorized absence, he shall forfeit her claim to the maternity benefit for such period.

### Abstracts of Act and rules thereunder to be exhibited (Sec-19)

An abstract of the provisions of this Act and the rules made there under in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

### Registers, etc. (Sec-20)

Every employer shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed under the Maternity Act.

### Penalty for contravention of Act (Sec-21)

For non-payment of benefit or dismissing or discharging, imprisonment which shall not be less than (03) three months but which may extend to (01) one year and fine which shall not be less than Rs: 2000/-, which may extend to Rs: 5000/-

### Key Aspects: Principal Maternity Benefit Act, 1961<sup>1</sup>

#### 12 weeks max of maternity benefit leave

6 weeks before the expected delivery date and extending up to 6 weeks after the child birth. Additional maternity leaves of 4 weeks in case of “illness”, supported by a doctor’s opinion.

#### Current provision of maternity bonus

Rs. 3,500 per maternity

#### Leave for Miscarriage or medical termination of pregnancy

A woman shall, on production of such proof as be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage.

#### 2 Nursing breaks till child is 15 months old

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of prescribed duration for nursing the child until the child attains the age of fifteen months.

#### Penalties: Imprisonment, Monetary Fine

Penalties for contravention of the act by Employers; Imprisonment which shall not be less than three month, which may extend up to one year and with fine not less than two thousand rupees, which may extend up to five thousand rupees.



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## Amendments

The Maternity Benefit Act, 1961 was amended quite extensively in 1970, 1972, 1973, 1975, 1976, 1988, 1995 and last amendment was made on 2017. The Maternity Benefit (Amendment) Bill 2016 (the “Amendment Bill”), an amendment to the Maternity Benefit Act, 1961 (“Act”), was passed in Lok Sabha on March 09, 2017, in Rajya Sabha on August 11, 2016 and received an assent from President of India on March 27,2017. The provisions of The Maternity Benefit (Amendment) Act, 2017 (MB Amendment Act) is effective from April 01, 2017. However, provision on crèche facility (Section-11A) shall be effective from July 01, 2017.

### Key highlights of The Maternity Benefit (Amendment) Act, 2017<sup>2</sup> are

This amendment has increased the duration of maternity leave available for women employees from the existing **12 weeks to 26 weeks**. India is in third on the list of countries with most number of days given as maternity leave, after Canada and Norway.

### Increase in Maternity Benefit (Sec-5.3)

The period of paid maternity leave (“Maternity Benefit”) that a woman employee is entitled to has been increased to 26 (twenty-six) weeks. Further, the Act previously allowed pregnant women to avail Maternity Benefit for only 6 (six) weeks prior to the date of expected delivery. Now, this period is increased to 8 (eight) weeks. Maternity benefit of 26 weeks can be extended to women who are already under maternity leave at the time of enforcement of this Amendment. **New Inclusions**

### New Provision to (Sec-5.3): Extended Benefit limited only up to two children

The extended benefit of 26 weeks i.e., 8 weeks pre and 18 weeks post expected date of delivery, is limited to a woman up to 2 children. They shall continue to be entitled for 12 weeks of paid maternity leave (as per earlier rule) i.e., 6 weeks pre and 6 weeks post expected date of delivery for the third child onwards.

### No increased benefit for third child

The increased Maternity Benefit is only available for the first two children. The Amendment provides that a woman having two or more surviving children shall only be entitled to 12 (twelve) weeks of Maternity Benefit of which not more than 6 (six) shall be taken prior to the date of the expected delivery.

### Significance given to “Commissioning Mother” (Sec-5.4)

“Commissioning mother: A biological mother who uses her egg to create an embryo implanted in any other woman”. This means even if modern medical technology is used via Surrogacy, the biological mother shall get the benefit of maternity leave. However, the entitlement of maternity leave in this case shall be for a period of 12 weeks from the date the child is handed over to her.

### Significance given to “Adopting Mother” (Sec-5.4)

A woman, who legally adopts a child below the age of 3 months, shall be entitled to maternity benefit for a period of 12 weeks from the date the child is handed over to her.

### Creche facility (Sec-11A.1)

Mandatory for every establishment employing 50 or more employees, within such distance as may be prescribed, either separately or along with common facilities. Woman employee should be permitted to visit the crèche 4 times during the day, which includes the regular rest interval.

### Provision for working from home (Sec-5.5)

Depending upon the nature of work and if such work can be executed from home, on terms and conditions mutually agreed between the employer and the employee. This is effective from July 01st 2017 onwards.

## Maternity Benefits

### Cash Benefits (Sec-10)

Leave of 26 weeks (8 weeks before expected date of delivery & 18 weeks after expected date of delivery) with average pay. A medical bonus of Rs.3500 (Minimum amount) shall be paid. In case of miscarriage: Leave of 8 weeks, immediately after the date of miscarriage. An additional leave with pay up to one month shall be given for illness (if women shows proof) due to pregnancy, delivery, miscarriage and premature birth. For tubectomy operation leave will be given with wages for a period of 2 weeks.



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**Non-Cash Benefits**

No discharge or dismissal when on maternity leave. Light work for 10 weeks before delivery. No Charge to be made on her in any of the conditions to her Job while on Maternal Leave. Two Nursing Breaks until the child will become the (15) fifteen months old. No deduction from the Normal and Usual daily wages of a woman entitled to Maternity Benefit under the provisions of this Act. Note: In case the Woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death.

**Prior Intimation**

Every establishment will be required to provide woman at the time of her initial appointment, information about every benefit available under the Act.

**Changes brought in by the Amendment**

Section	Old note (1961)	New note (2017)
Sec-5 (3)	Maximum period of maternity benefit Leave entitlement - 12 weeks i.e., 6 weeks before the expected delivery date and extending up to 6 weeks after the child birth	Maximum period of maternity benefit Leave entitlement- shall be 26 weeks i.e., 8 weeks before the expected delivery date and extending up to 18 weeks after the child birth.
Sec-8	Provide for Maternity Bonus which is currently Rs.3500 per maternity	No Change
Sec-9 & 9A	Leave for Miscarriage or medical termination of pregnancy, a woman shall, on production of such proof - entitlement for a period of 6 weeks immediately following the day of her miscarriage; Similarly, a woman undergoing tubectomy operation is eligible for 2 weeks of leave from the date of such operation	No Change
Sec-10	Additional maternity leaves of 4 weeks Post Maternity Leave of 12 weeks, in case of "illness arising out of pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy or tubectomy operation, supported by a Medical Certificate	No Change
Sec-11	Every woman delivered of a child and who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of prescribed duration for nursing the child until the child attains the age of fifteen months.	Insertion of new Sec-11A (1): Women employee should be permitted to visit the crèche 4 times during the day, which includes the regular rest interval.
Sec 21	Penalties for contravention of the act by Employers; Imprisonment which shall not be less than three months, which may extend up to one year and with fine not less than two thousand rupees, which may extend up to five thousand rupees.	No Change

**Case laws**

**Municipal Corporation of Delhi vs. Female workers Association (2000) SCC224**

Provisions of the Act entitle maternity leave to women engaged on casual basis or on muster roll basis on daily wage and not only those in regular employment, are wholly in consonance with the Directive Principles of State Policy contained in Article-19, 42 and 43 of the constitution of India.

**Indrani Chakraverty vs. Idiom Consulting Ltd.**

When she was carrying her first child, she was told over phone that she was sacked. The lady sues company. She won Rs 7.5 lakhs as settlement money from the company on the orders from Deli High Court.



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## P. Geetha vs The Kerala Livestock Development

The Kerala Livestock Development Board declared that her employee became a mother through surrogacy and not entitled to leave since “only normal delivery cases qualify for the facility”. The respondent’s argument that the Mrs. P. Geetha had “neither undergone pregnancy nor given birth, and is, therefore, not entitled to maternity benefits”. It was totally dismissed by the court and ruled that “motherhood does not end with delivery of a baby; child rearing is also important. Denying her maternity leave to look after the new born baby amounts to denying her fundamental rights as a woman, because when surrogacy is legal in India, the court pointed out.

## Conclusion

Based on the provisions of the Maternity Benefit Act, it can be concluded that MB Act is a welcome move towards protection for women to exercise her right to carry profession guaranteed under Indian Constitution. This act regulates the employment of women and provides maternity besides other benefits to them. However, the amendments have few shortfalls like the women working in an unorganized sector are not included; the concept of “Paternity Leave” not considered; Rules has to provide a better clarity on prescribed distance for crèche facility; paid leave for 26 weeks shall be an additional cost for employers so, this may impact the hiring of women employees.

## References

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2. Maternity Benefit (Amendment) Act, 1917, Department of Ministry of Law & Employment, GOI, New Delhi. <https://labour.gov.in>