

Critical study of sustainability of Maternity Benefit (Amendment) Act, 2017 in India

Ila Rai¹ & S. Niyogi²

Abstract

With the current increase in the number of participation of women in work sector, with special reference to young women from urban area, it is essential to focus on the development and care taking of the rights of working women. The need to produce a conducive work environment in order to create a gender friendly labour market has arisen, now more than ever. The government role in providing such environment which facilitate social justice in both organized and unorganized sector has increased. A step toward this form of social justice is maternity benefit act introduced by the Indian government in 1961 and later amended in 2017. This paper studies the scope of maternity benefit act and focuses on the sustainability of the amendments in the long run and changing dynamics of the industries. In the end, the paper presents the recommendation to improve the maternity benefit act in order for it to become more inclusive.

Keywords: *Maternity Benefit Act, Maternity, Government, Social Justice*

1. Introduction

One of the fundamental parts of legislation is social justice without which the legislation itself can not be implemented properly. If legislation is an overall umbrella, social justice becomes one of the key parts of the law under this umbrella. For a law to be social just, it has to continually evolving and meet the need of the society for which it has been developed. Social justice is based on the fact that there is continuous need of upliftment and social reformation of underprivileged. Social justice is achieved when there exists a substantial equality amongst social, economic and political scenario keeping in mind the constitution and legal aspects (Mayuri, May 2009). Internationally, the labour force participation of women between the age 25-54 is 63 percent as compared to 94 percent for men. In the assessment done by UN Women, amongst the 189 countries analysed, 104 countries have laws that prevent women from working in any special field, 59 countries have no provision or law which aims to prevent sexual harassment at workplace and in 19 countries, the husband can legally stop their wives from

¹ Ila Rai, Research Scholar, Amity University, Noida, ilar0102@gmail.com.

² Prof (Dr) S. Niyogi, Professor, Amity University, Noida, sniyogi@amity.edu.

working (UN Women, 2018). In India, there is fall in women employed in workforce as compared to 1990 by 23 percent (World Bank, 2019).

One step towards bringing equality among the population and providing equal conditions and opportunities to all, is Maternity benefit Act. The importance of maternity benefit has been recognised internationally as well as nationally. In ILO first international labour conference 1919, the first convention on maternity protection was adopted. It was further followed by adoption of two other convention in 1952 and 2000 which extended the scope and entitlement of women under maternity benefit (International Labour Organization, 2014). In 1919, it was suggested by ILO that the countries represented should carry out the maternity benefit in their legislation. This recommendation was also extended to India which after due consideration adopted the maternity benefit act in its full form in 1976.

In India, the discrimination between the sexes of the organization is mostly because of the cultural fragmentation rather than the traditional practices. While studying the ancient scripture, one gets a fair knowledge that women is nowhere considered inferior in any scenario. A woman is considered mother of whole universe who governs and regulates the working of those living in the society. With change in time, these ideas took backseat and the role of women was limited to taking care of the family and if in any case the women moved outside the house to take professional role in society, they were shunned and discriminated. Because of this scenario, after independence the need to bring forward the social justice and equality among the gender was felt. This led to framing of various acts such as Factories Act 1948, Mines Act 1952, Equal remuneration act 1976. The Bombay state enacted the first maternity benefit act in 1929, which was further followed in central act with variations under eligibility, payment, scope etc. laws such as Mines maternity benefit act 1941, Plantation labour act 1951, tried to provide the benefit of maternity to women employee under its coverage. However, because of the great variations among the laws, Government of India introduced maternity benefit act in 1961 and then further amended extensively in 1970, 1972, 1973, 1975, 1976, 1988, 1995 and 2017. In India where 48.5% of the population is female, amongst which 14.7% percent of urban female population and 24.8% of rural female population is working (Minitry of statistics and programme implementation, 2019) the requirement of such law increases multi-fold. Women have always had a disadvantage in the working environment against the men. Working women tend to feel discriminated against the men in the same environment and professional women tend to feel isolated and burdened while keeping the balance between their

professional demands and traditional requirements from a women (Sambhunath, September 2017).

This form of gender discrimination is not limited to just isolation of women in the workplace or application of extra pressure on women to balance both professional and personal demands. Many organizations have made it a practice to not hire women in general or hiring these women for certain roles only such as secretary, receptionist, or human resource employee. Women find it difficult to enter field such as engineering, robotics, IoT, Aerospace as the employers usually tend to move towards hiring male employees. Discrimination against women is not limited to hiring only. Certain traits which when displayed by male employees are appreciated whereas same traits when displayed by female employees are considered aggressive or dominating. The women employees are judged and evaluated on a harsh scale as compared to their male counterparts. Many pregnant women faces discrimination that they are given fewer assignments or are placed on bench during their time of pregnancy as it is common misconception that the women at the time of pregnancy is less functional.

However, it is to be noted that not all forms of discrimination against women at workplace can be considered illegal. For the discrimination to be considered illegal, such treatment should be opposite of what is stated in “terms and conditions” as decided between the employer and employee at the time of hiring. These terms and conditions dictate the work nature, type, duration, condition etc. therefore, it becomes essential to educate women workforce to pay attention to these conditions. It is more crucial for those women who work in unorganized sector and have no work agreement dictating their conduct.

In a study done by OECD (Organization of Economic Co-operation and Development), women are in general entitled to 18 weeks of maternity leave which is paid in nature. This is in line with the recommendation of ILO which suggests 14 week of paid maternity leave. Majority of the countries surveyed paid at least 50 percent of previous earning in the form of payment (OECD, 2019).

2. Research Methodology

2.1. Objective of the research

The objective of the paper is to bring forward the implementation and effectiveness of the amendments done in the Maternity benefit act 1971. The paper analyses the history of maternity benefit act and how it came in to being as we know it. The paper further attempts to analyse

the sustainability of the aforementioned act and provides suggestions for further improvement which can make the act more global.

2.2. Methodology

The method of study is descriptive and analytical in nature. The data is collected from secondary sources including journal, research articles, government documents, magazines and well documented website.

3. Review of literature

3.1. Various schemes of government for maternity benefit

Employee State Insurance Act: one of the benefits provided by ESI is maternity benefit which prohibits the employers to from dismissing, discharging or punishing women employee during their pregnancy term. It also directs the employer to provide the insured women employee with periodical payment in case of pregnancy, confinement or miscarriage.

Indira Gandhi Matritva Sahyog Yojana: under this ability, the pregnant women is provided Rs. 6000/- in three instalments. The aim here is to cover the income loss which happens for the women at the time of pregnancy. It is currently known as Pradhan Mantri Matri Vandana Yojna. In a country, where maternal mortality rate is 130 per 1,00,000 live birth and infant mortality rate is 43 per 1000 live births, it is crucial that due importance is paid to the factors causing such cases, namely poor nutrition, hygiene, and timely medical assistance to both mother and the child.

Janani Suraksha Yojana: commonly known as “safe motherhood intervention”, the program has been developed to promote government health care institutes. In order to do so, Rs. 1400/- is given to women in rural area and Rs. 1000/- is given to women in urban area if they deliver the baby in government health centre. The aim is to reduce mortality amongst both mother and child by focusing on giving birth in government health care institute. This scheme is applicable to those states of India, where delivery through government institution is less. Examples of such state can be: Assam, Uttar Pradesh, Jharkhand etc.

National maternity benefit scheme: introduced in 2001, the focus of the scheme is to cover nutritional requirements of pregnant women living below poverty line. The pregnant woman is given one-time payment of 800/-. This payment is given between the bracket of 8 to 12 weeks before the pregnant woman’s expected date of delivery. This scheme has now become part of Janani Suraksha Yojana. To avail the benefit of this scheme, government has laid down

condition stating that the age of pregnant women should be above 19 years; women should belong to “Below Poverty Line” (B.P.L.) family and the assistance provided is limited to first two live born child only.

Central Civil service (Rules) 1972: according to this rule, maternity leave in paid form for 180 days, is given to all the women including apprentice for their first two surviving children, and total of 45 days paid maternity break is given to women from surviving third child and after. It also grants two year of leave to the mother to take care of their child during her entire period of service.

3.2. Maternity benefit (Amendment) Act, 2017

Participation of Women labor force in India has considerably fallen and is among the lowest in the world. Keeping this in mind The Maternity Benefit Act, 1961 was amended with aim to increase the women labor participation (Chakraborty & Sabharwal, 2018). This Amended act of parliament received assent of the President on the 27th March 2017 and Provision of act came into force on 1st April, 2017. The provision related to creche facilities came into force from 1st July 2017 (Ministry of Law and Justice, 2017).

Major changes made by this act are: -

- a. Awareness – As per section 11(a) (2), it has been made compulsory for every employer to make females working in their vicinity, informed about benefits pertaining to maternity at the time of their joining. The mode of passing on this information has to be both written as well as electronically.
- b. Duration –the amendment has ensured that the paid maternity leave has been increased 26 weeks which was earlier 12 weeks. This amendment is applicable to those women who are giving birth to their first and second child. For the women who are giving birth to their third child or above, the old duration will be applicable ie. 6 weeks before the delivery and 6 weeks after the delivery. Because of the amendment in duration of 26 weeks, India is now among the top sixteen nations providing the longest maternity leave and is also third single largest after Norway and Canada (D'Cunha, 2018).
- c. Crèches Facility- Section 11(a)(1) of the act has now established that all the establishments where 50 women or more are employed, the organization has to provide in - house creche facilities. The nursing women are to be allowed to visit the creche 4 times during

the day. However, the act fails to mention the age of the children who can avail the creche facility.

d. Adoptive mothers and commissioning mothers- the act has established that women who are adopting a child will get 12 weeks of maternity leave which will start from the date of adoption.

e. Work from Home for mothers – the act now clearly mentions that after the expiry of the 26 weeks of leave period which is granted through the act, the mother can work from home as well. This will depend on the terms and conditions established by their workplace.

3.3. Applicability of the Maternity Act

This act is applicable on the following: -

- a. On every mine, factory or plantation which includes the one belonging to Government as well,
- b. On every establishment which is engaged in the exhibition of acrobatic, equestrian and other performance, irrespective of the number of employees and
- c. On every shop or establishment wherein 10 or more persons are working on any day of the preceding 12 months.

4. Cases of Maternity Benefit (Amendment) Act, 2017

4.1. Anshu Rani VS State of U.P.

Under this case, the petitioner asked the respondent District Basic education officer to grant maternity leave in honorarium. But instead of granting the maternity leave of 180 days, the petitioner was granted maternity leave for 90 days. The petitioner filed a writ petition saying that she is liable for 180 days of maternity leave. The court ruled that since maternity leave is a social insurance given to women for child and maternal health, state has to follow same policy which is ensured by central government (Anshu Rani Vs. State of U.P., 2019³).

4.2. R. Mary Vimala Vs the Commissioner

In this case, the petitioner worked with the first respondent and had applied for maternity leave. Initially her maternity leave was sanctioned for 60 days only. However, the dispute aroused with regard to the period of petitioner's unauthorized absence of 9 months because of her post-

³ Anshu Rani Vs. State of U.P. India, 2019

delivery medical condition. The petitioner submitted her application stating the reason for absence but since the first respondent was not satisfied with the response, she was dismissed. This led to petitioner filling a case in the court. It was ordered by the court that the pregnant women are allowed maternity leave post-delivery. As per the Maternity Benefit (Amendment) Act, 2017, the women employees are entitled to get 9 months leave period and it is granted as maternity leave (R. Mary Vimla vs the commissioner,2018⁴).

4.3. Dr. Artiben R. Thakkar Vs. Delhi Pharmaceutical Sciences and research university

In this case the amendment in the Maternity Benefit Act, 1961 came into force during the period of petitioner's employment. It was argued by the first respondent that the benefit of full maternity leave of twenty-six weeks could not be extended to petitioner because her contractual period had come to an end and as a special case, her contractual period was extended till the end of academic session. It was ruled by the court that the elementary rule of service is that the benefit attached with the services comes to an end once the service tenure is completed. Therefore, it was neither prudent nor justifiable for the first respondent to pay the petitioner maternity benefit of twenty-six week after the end of her contractual service (Dr. Artiben R. Thakkar Vs. Delhi Pharmaceutical Sciences and research university,2019⁵).

5. Analysis of Sustainability of the Maternity Benefit (Amendment) Act, 2017

It has been clearly established that the need to provide maternity benefit is not just a checklist to be ticked off to be good employer but is also a social need of the employee in the organization and their right. However. The amendment in the act was also done with the motive to make the law more universal and to keep up with the changing times. However, when we see the ground reality of the implementation of the act it falls short of the set standards. In a study done on construction workers, it was found out that 86 percent of the respondents were not aware of the act and the benefit which was provided to them and shockingly none of the worker were aware of the term creche and what it stands for (Gopalkrishnan & Brindha, October, 2017).

⁴ R. Mary Vimla Vs. The commissioner, India, 2018

⁵ Dr. Artiben R. Thakkar Vs. Delhi Pharmaceutical Sciences and research university,2019

In another study done on married working women in Odisha, it was found out that only 28.09 percent of the sample were fully aware of the act and almost 68 percent were partially aware about the act. Among the sample covered, only 5 percent believed that their company provided them with accurate information about the maternity benefit act and only 15 to 20 percent were fully satisfied with the maternity benefit in terms of leave and cash provided by the organization (Satpathy, Patnaik, & Agarwal, September 2014).

Study done by V.V. Giri National Labour institution highlighted that even though the act has entitled women for 12 weeks of maternity leave with pay, most of the women did not receive the benefit they are entitled to. Amongst all the women interviewed, only 4 percent agreed that they were provided with designated nursing breaks. The study suggested that the leave duration should be increased in order for the women to recover and effectively nurse the child. It also highlighted that since the entire responsibility of the benefit extended by the act was given to employer, it also gave them right to not provide the benefit at all. The need for paternity leave with the increasing role of father in the upbringing and parenting of a child has also been found out (Bala, 2012).

In India, where 70 percent of the women population does not work and among the given population who work, 84 percent work in unorganized sector with less than 10 employees. Since the applicability of the law is on the establishment which employs 10 or more people, the law is not applicable to above mentioned workforce. Also, among the 16 percent who work in organized sector, large portion of work is informal and hence the law does not cover them. The assumption that almost 20 percent of the workers in organized, formal sector are female, the law then only applies to 1.3 percent of labour force or less than 1 percent of women of India (Rajgopalan & Tabarrok, 2019).

In a study done by Team lease across 10 key sectors showed that there could be job loss among women based on the act in short to medium term. Not only in term of job, the bill will also affect the behaviour of industry in a negative way. Among the employers surveyed, 26 percent of the employers expressly admitted to hiring male candidates and alarmingly 66 percent or two third of the population indicated that the maternity benefit act adversely impacts the hiring of the female candidate. Among the employer surveyed, 35 percent agreed that the act will negatively affect the cost and profitability (TeamLease Report, 2018).

After extensive study of various researches done in the field of implementation of maternity benefit act, it has been felt that the act will not be sustainable in long term without bringing

some major changes. Keeping in mind the fact that the burden of maternity leave and payment is born by the employer and the awareness about the act in the working women is very less, the act needs some serious changes in the coming time in order to sustain the changing dynamics. Also, the fact that more than 84 percent of women work in unorganized sector with less than 10 employees making the law inapplicable to these organization, the need for serious changes is now.

6. Outcomes from the study

Even though India provides a generous maternity leave as compared to USA (12 weeks), Canada (17 weeks), China (14 weeks) and Brazil (17 weeks), there are need for some serious alterations in the act to make it wholesome. Some of the proposed changes are:

- a. The act covers the adoptive mother but only if the adopted child is below 3 months of age. the adoptive mother only gets 12 weeks of leave as compared to 26 weeks provided to biological mother. It is well known fact that adoptive child needs more care and time to adjust in new environment given the fact of their difficult childhood before the adoption. Also, the older the child is, more time they need to adjust in their new environment. This becomes difficult if the mother is not able to devote their time to the child. It also will create discrimination against adopting of older child because of no benefit available on their adoption. Hence it is suggested to increase their leave duration and make it at par with the biological women, that of 26 weeks.
- b. The amendment in the act now covers the commissioning mother. Commissioned mothers are also biological mother who “carries the egg to create an embryo for other women”, by providing them 12 weeks of leave. However, given the medical procedure involved and the toll it takes on the physical and mental health of the woman, the leave duration is not enough and should be enhanced.
- c. According to the act, paid maternity leave can be availed 8 weeks before the expected delivery date and 18 weeks are to be availed post childbirth. This clause provides a rigid frame to the leaves which can be availed by the pregnant women. However, every pregnancy is different and hence the need of time to rest and recover is also different for each pregnant woman. And hence providing a stringent frame without any flexibility as to when can the women avail leave makes the act unfruitful for women going through difficult or relatively easy pregnancy. The recommendation for same is to provide women with flexible frame to avail the leaves based on their need in phases.

d. The act also allows work from home for women after their 26 days of leave based on the mutual agreement between them and the employer. However, it is not mentioned as right of women to ask for work from home. Hence, it gives the employer right to refuse the women working irrespective of their need and hence makes this provision waste. It is required that the act strictly lay down the duration for which work for home can be availed and the situations under which work for home can be taken so that there exists clarity among the parties involved.

e. The creche facility is now available in any establishment which employs more than 50 workers or 30 women, whichever number is less. This provision however, does not consider the unorganized sector which mostly comprises of less than the required number. It is therefore, essential for the required change because creche time will provide the working women the time to bond with their child and keep check on their environment and needs. In terms of creche facility, the law also does not clearly state as to who will bear the cost of the facility provided which again provides the employer an opportunity to forward the bills to the women employee. Therefore, it is required that the law clearly state on such clauses.

f. This act does not provide any clarity on the women working in unorganized sector. It states in the act that the act is applicable to both organized and unorganized sector, where number of employees is more than 10 on any day of preceding year. However, as per Unorganized workers' social security Act 2000 defines "unorganized sector worker as those who work from home, are self employed or work for wages in entity which has less than 10 employees." This creates a confusion as more than 90 percent of women workforce is currently employed in unorganized sector. They can avail maternity benefit under Janani Suraksha Yojana and other program of government but these benefits are only limited to financial aspect in nature and cash assistance and hence lack institutional benefit.

g. The act remains silent on paternity benefit. This is essential in today's environment where both father and mother of child are actively engaged in the upbringing of the child. It also creates an environment of discrimination in the organization and fuels the stereotype which already exists in the country. Given the fact that ILO has recognised the right to parenthood and want to promote men as active co-parent, it is very essential that the act actively tackle the paternity benefit by providing a form of leave sharing between father and mother.

h. In most of the countries, the cost of maternity benefit is shared between government and the employer. However, in India the cost is solely covered by the employer making them hesitant towards employing the women in their task force. The government can reimburse the employer on the basis of the payment slip provided as proof or can provide them with some tax rebates so as to make them more active and less bias towards female employees.

7. Conclusion

Since the passage of time, women have been subject to exploitation and unequal treatment and hence it was essential for the government and society to protect their social status and raise them by providing leverage in the society. Social legislation is a step towards this case. Even though, legislations such as maternity benefit act 1961 or various schemes of government catering to women and their development have been in place for long time but still the condition of working women is not improving. The recent amendment done in the act is a step toward betterment of women in the society but still there is a long way to go for this act to become universally benefiting to all the population of the country, female and male including. The worsening condition of women in unorganized sector is just a snapshot of bigger picture of failing Indian society. The need for benefit to be equally distributed amongst the women irrespective of the number of children they have or the need to extend these benefits to father of the child is well realised in the society. For this act to become whole and sustainable, it still has a long way to go.

8. Limitations

The paper has been written keeping in mind the facts, cases and law. However, the paper being subjective in nature, can show personal bias of the author. Also it should be brought forward that the paper is descriptive in nature i.e. exploring in depth the sustainability of the act. The paper does not bring forward on ground reality of the success of the act.

9. Future scope

The paper can serve as a base for future researchers for literature review as well as to conduct primary study to monitor the success of the amendment. Future researchers can use this paper to check the amendments and correlate it with the suggestions provided by the author.

References

- Bala, S. (2012). Implementation of maternity benefit act. NLI Research Studies Series No. 099/2012.
- Chakraborty, R., & Sabharwal, M. (2018, July 01). Maternity Benefit Act: The new amendments might cause some pangs in the short run. Retrieved from Economic Times:

<https://economictimes.indiatimes.com/news/politics-and-nation/maternity-benefit-act-the-new-amendments-might-cause-some-pangs-in-the-short-run/articleshow/64809703.cms>

D'Cunha, J. (2018). India's Bold Maternity Benefit Act Can Become a Game Changer if it Addresses Current Limitations. *Economic and Political Weekly*, Vol 53, Issue 31.

Gopalkrishnan, G., & Brindha, D. G. (October, 2017). A study on maternity benefit and its effectiveness in construction industry. *International Journal of Civil Engineering and Technology*, Vol. 8, Issue 10, 130-136.

International Labour Organization. (2014). *Maternity and Paternity at Work: Law and practices across the world*. Geneva: International Labour office.

Mayuri, D. P. (May 2009). *Social Justice: A dream or reality*. AIR: 79 Journal .

Ministry of Law and Justice. (2017, March 28). *Maternity Benefit (Amendment) Act*. Retrieved from Government Labour: <https://labour.gov.in/sites/default/files/Maternity%20Benefit%20Amendment%20Act%2C2017%20.pdf>

Ministry of statistics and programme implementation. (2019). *Women and Men in India: A statistical compilation of gender related indicators in India*. New Delhi: Government of India.

OECD. (2019, August). *OECD Family database*. Retrieved from https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

Rajgopalan, S., & Tabarrok, A. (2019). Premature imitation and India's flailing state. *The Independent review*, Vol. 24, issue 2, 165-186.

Sambhunath, D. (September 2017). Problems and challenges faced by Urban Working Women in India. *International Journal of Creative research thoughts*, Vol.5, Issue 3, 623-630.

Satpathy, D. I., Patnaik, D. B., & Agarwal, M. M. (September 2014). An introspection into awareness of maternity benefit act 1961 in semi-urban area. *International Journal of Management*, Vol. 5, Issue 9, 13-17.

TeamLease Report. (2018, June 26). *Maternity (Amendment) Bill to have mixed impact on women workforce participation*. Retrieved from TeamLease: https://www.teamleasegroup.com/sites/default/files/Press%20Release_Maternity%20Benefit%20Bill_TeamLease.pdf

UN Women. (2018, July). Facts and figures: Economic Empowerment . Retrieved from unwomen.org: <https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures#notes>

World Bank. (2019, September). Labour force participation rate, female, (percent of female population ages 15+). Retrieved from World Bank data: https://data.worldbank.org/indicator/%20SL.TLF.CACT.FE.ZS?year_%20high_desc=false