THE MATERNITY BENEFIT (AMENDMENT) BILL, 2016

Abhilasha Kumari¹ & Jasleen Kaur Bindra²

Currently, women employed in certain sectors, like factories, mines, shops and establishments with 10 or more employees, and other establishments notified by the state government are eligible for paid maternity leave up to 12 weeks under the Maternity Benefits Act, 1961. Various other labour laws provide for maternity benefits. The Employees’ State Insurance Act, 1948 provides for payment of wages to an insured woman, during her 12-week maternity leave.³

Women employed in newspapers or working as journalists are entitled to similar maternity leave under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955.⁴

Further, women employed in the central government are provided about 24 weeks of paid maternity leave and additional child care leave up to a period of two years.⁵ The unorganized Sector Workers Act, 2008 defines unorganized sector workers as those who are home based, self employed or wage workers in an enterprise with less than 10 employees.⁶ The 2008 Act mandates the central government to formulate health and maternity benefit schemes for women workers in the unorganized sector. The Janani Suraksha Yojana, which promotes child birth in an institution by providing financial assistance to women below poverty line, is being implemented under the 2008 Act.⁷

The Indira Gandhi Matritva Sahyog Yojana (IGMSY) was launched to compensate women for loss of wages and to ensure that a mother can afford rest after a delivery and take care of health requirements of the new born child.⁸ The IGMSY is a cash transfer scheme that provides Rs 6,000 to pregnant and lactating women above the age of 19 years with less than two children. In 2015, the Law Commission of India recommended increasing the

¹ 5th Year B.B.A LL.B Student, UPES Dehradun
² 5th Year B.B.A LL.B Student, UPES Dehradun
³ Rule 56 (2), Employees State Insurance (Central) Rules, 1950.
⁴ Rule 29, Working Journalists and Other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Rules 1957.
⁵ Rule 18, The All India Services (Leave) Rules, 1955; Rule 43(1), Central Civil Services (Leave) Rules, 1972.
⁶ Section 2 (1), The Unorganized Workers Social Security Act, 2008.
period of maternity leave under the 1961 Act to 24 weeks, and bringing the unorganized work force within its ambit.\(^9\) Over the years, including in 2016, the Indian Labour Conference also recommended that the period of maternity leave be increased from 12 to 24 weeks. \(^{10}\)

The Lok Sabha passed the Maternity benefit bill, 2016 on 9\(^{th}\) march, 2016. The bill had already been passed by the Rajya Sabha during the winter session. With this, the bill stranded passed in the parliament. This bill recently received the assent of president on 27\(^{th}\) March, 2017. \(^{11}\)

The preceding Act provides for maternity leave up to 12 weeks for all women. The bill proposes to extend this period from 12 weeks to 26 weeks. But there is a limitation on the applicability. This can be availed only for the first two children. A woman with two or more children will be entitled to 12 weeks of maternity leave.

The bill also introduces maternity leave up to 12 weeks for a woman who adopts a child below the age of three months, and for commissioning mothers. In order to calculate the period of maternity, it will be calculated from the date the child is handled over to the adoptive or commissioning mother.

Applicability- the bill requires that every establishment with 50 or more employees working to provide the facility of crèches within a prescribed distance. There is also a time interval i.e. four visits to the crèche in a day. To provide more ease to the woman, the employer may at its own discretion and if the situation demands permit a woman to work from home, if the nature of work assigned permits her to do so. This is totally on the discretion of the employer. This may be mutually agreed and consented upon by the employer and the woman.

The Bill requires an establishment to inform a woman of all benefits that would be available under the bill, at the point of her appointment. Such information must be given in writing and electronically.

---

\(^9\) Report no. 259: Early Childhood Development and Legal Entitlements, August 2015, Law Commission of India


Table 1: Key changes proposed in the 2016 Bill compared with provisions of the 1961 Act:

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DURATION OF MATERNITY LEAVE:</strong></td>
<td></td>
</tr>
<tr>
<td>• 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.</td>
<td>• Duration of maternity leave is now increased to 26 weeks.</td>
</tr>
<tr>
<td>• The maternity leave should not be availed before six weeks from the date of expected delivery.</td>
<td>• Changes to eight weeks.</td>
</tr>
<tr>
<td>• Maternity leave applicable irrespective of number of children.</td>
<td>• There has been a change in this respect, a woman is entitled to 26 weeks leave for the first two children and 12 weeks afterwards i.e. for the third child onwards.</td>
</tr>
<tr>
<td><strong>MATERNITY LEAVE FOR ADOPTIVE AND COMMISSIONING MOTHERS.</strong></td>
<td></td>
</tr>
<tr>
<td>• No provision as such.</td>
<td>• 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.</td>
</tr>
<tr>
<td></td>
<td>• The 12-week period of maternity leave will be calculated from the date the child is handed over to the adoptive or</td>
</tr>
</tbody>
</table>
## CRECHE FACILITIES
- No provision.
- 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.

## OPTION TO WORK FROM HOME
- No provision
- An employer may permit a woman to work from home, if the nature of work assigned permits her to do so.
- 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.

## RIGHT TO INFORMATION ABOUT MATERNITY BENEFITS
- No provision
- 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.

### ADVANTAGES

As it has already been discussed, that the maternity leave has been increased from 12 weeks to 26 weeks, such a step has been taken for the good. Several expert bodies including the Law Commission of India and the Indian Labour Conference have highlighted the need to provide maternity leave up to a period of 24 weeks. The WHO recommends that children must be exclusively breastfed by the mother for the first 24 weeks to improve their survival rates and also
for the well being and healthy development of both mother and child. It has also being argued from time to time that the absence of adequate maternity leave and income security leads to woman dropping out of the labor force.12

KEY ISSUES AND ANALYSIS

- Highlighting on the stands taken by several expert bodies like World Health Organization (WHO), have recommended that 24 weeks of maternity leave is required to protect maternal and child health. The costs of any negative impact on the company during such an absence has to be borne by the employer. However, since the costs of this leave are to be borne by the employer, it may have an adverse impact on job opportunities for women.
- The process of implementation varies around the globe dynamically. Various countries have implemented different funding models in relation to maternity benefits. In some countries like................. the employer bears the cost, other countries bear the cost by the funding of the government.
- There is an arbitrary and injustice for the third child. While there is a provision for maternity leave of 26 weeks for the first two children, the period of leave for a third child will be 12 weeks. This could affect the growth and development of the third born children. This is a case of sheer discrimination among the born children on no rationale basis. Every child born has a right to a standard of growth and living. Every child requires adequate time of his/her mother which should not be prejudice at any cost.
- The Act and bill covers women workers employed in establishments with 10 or more employees and other notified establishments. This constitutes about 18 Lakh women workforce. Note that about 90% of working women are in the unorganized sector and are therefore not covered by the 1961 Act. However, 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.13 This clearly uncovers the women workforce who are in the unorganized sectors. The unorganized sector has the majority of the

13 Report no. 259: Early Childhood Development and Legal Entitlements, August 2015, Law Commission of India.
woman workforce. This is also a case of discrimination between the woman workers in the organized sector and the unorganized sector. This is a violation of “Right to equality” enshrined under Article 14 of Indian Constitution. Woman workforce should be kept at pat in every sector, as there is no practical reason that woman of organized sector needs the leave and others don’t deserve the leave. There are several labour laws that provide maternity benefits to women in different sectors. These laws differ in their coverage, benefits and financing of such benefits.

- 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.

- Various countries have implemented different funding models in relation to maternity benefits. A 2014 ILO study on maternity leave provisions in 185 countries observed:

  - In 25% of the countries, maternity benefits are paid solely by the employer (e.g. Kenya, Puerto Rico, Nigeria, and Pakistan).
  - In 16% of the countries, maternity benefits are financed by combinations of funds from the employer and the government (e.g. United Kingdom, Germany).
  - In 58% of the countries, cash benefits are provided to pregnant women through national social security benefits (e.g. Norway, Australia).
  - In the remaining 1% of the countries, there was no provision for maternity benefits (namely, US and Papua New Guinea).

It has recommended that the benefits should be provided through compulsory social insurance or public funds. Various countries have implemented different funding models in relation to maternity benefits. A 2014 ILO study on maternity leave provisions in 185 countries observed:

In 25% of the countries, maternity benefits are paid solely by the employer (e.g. Kenya, Puerto Rico, Nigeria, and Pakistan).

In 16% of the countries, maternity benefits are financed by combinations of funds from the employer and the government (e.g. United Kingdom, Germany).

In 58% of the countries, cash benefits are provided to pregnant women through national social security benefits (e.g. Norway, Australia).

In the remaining 1% of the countries, there was no provision for maternity benefits (namely, US and Papua New Guinea).

---

Rico, Nigeria, and Pakistan). In 16% of the countries, maternity benefits are financed by combination of funds from the employer and the government (e.g. United Kingdom, Germany).

In 58% of the countries, cash benefits are provided to pregnant women through national social security benefits (e.g. Norway, Australia). In the remaining 1% of the countries, there was no provision for maternity benefits (namely, US and Papua New Guinea). Woman with two or more children entitled to only 12 weeks of leave The Bill 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 Bill 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. 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.

JUSTIFICATION

• Maternal care to the Child during early childhood – crucial for growth and development of the child.
• The 44th, 45th and 46th 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.

CONCLUSION

Different perspective of the Maternity Benefit Amendment Act need more transparency and clarity, for example, “period up to which the crèche facility could be extended to the concerned
woman as well as the aspect of availability, frequency and extent of nursing breaks”. It is also ambiguous whether increased maternity benefits due to amendment will apply to women who are presently undergoing maternity leave. Women Employers may have to wait for the amendment implementation until the rules are issued clarifying the position on the arrangements and facility provided and used, which could be made with third party service providers for crèche facilities, hospitals, pediatric doctors with specific requirements in terms of distance from workplace, dimensions and other related aspects.

Moreover, the rationale and the reasoning for having separate effective date and implementation date for implementing "work from home" option is also not clear, given the fact that work from home is an enabling provision in the legislation and to encourage the employers to offer such an option to a woman depending upon nature of work being handled by her and not a statutory or a legislative requirement under the Maternity Benefit Amendment Act. We expect the Ministry of Labour to shortly come out with rules and implementation clarifying these aspects which are ambiguous.

The Maternity Benefit Amendment Act has come into force from the date 1 April 2017. All establishments under the scope of Maternity Benefit Amendment Act would be obligatory to amend their existing maternity benefit policies in accordance with the Maternity Benefit Amendment Act with effect from 1 April 2017. There should be strict fine imposed on the organizations which don’t amend the Maternity Policies, after a specific time period. The legislature has taken a big step and the implementation will make a change in the current scenario for betterment. In due course of the policy implementation will show the change in the current position.