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# **MATERNITY BENEFITS :-** **A BODILY RIGHTS OF WOMEN**

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## **ABSTRACT-**

The Maternity Is Basically A Stage Of Womens Life Which Gives A Change Into Her Daily Environment As The State Of Being A Mother And Need A Comfortable Place To Process Herself Maternity Benefits Are The Full Paid Employment For The Duration Of That Stage Without Working. As Each And Every Women Is Eligible To Get The Benefits Who Is In The Condition Of Pregnancy Or The Maternity Stage. There Are Various Laws, Convention And Various Governing Body Who Regulate And Make The Laws Implemented To The Needy Womens When Required. The Wholesole Law Which Governs The Following Stage I.E Maternity Benefits Act, 1961 And Contains Rights, Duties, Authorities Etc. Even Though Our Supreme Law “The Constitution Of India “Also Provided The Protection Of The Maternity Reliefs Under Article 42. And Also, There Are Various Cases Which Shows The Violation Of The Certain Act And Infringement Of The Womens Constitutional And Fundamental Rights Both.

## **INTRODUCTION**

Maternity is state of being a mother, motherhood or said to be the quality of state of being a mother. it is basically the benefit of getting full paid absence from work. the one the best steps taken by the government to protect women employment while they are under the stage of maternity. the only reason to provide the benefit is to help her in taking care of her child. Maternity benefit is aimed to protect the dignity of motherhood by providing them full and healthy maintenance of women and her child when she not at a stage to work.

Recently our Honorable Prime Minister Shri Narendra Modi has given approval to some amendments to the Maternity Benefit Act, 1961. Yes, in Parliament he has introduced the Maternity Benefit (Amendment) Bill, 2016. The amendment introduced in the Parliament will help more than 2 million women currently working in the organizations.

## **ELIGIBILITY CRITERIA**

Maternity benefit is those relief which been provided to the women during that stage of pregnancy when she unable to work as she was working earlier.

A woman is said to be eligible to claim the maternity benefits under the following condition:-

1. Must have been working as an employee in the organization for at least 80 days in the past 12 month.
2. Each and every company which has more than 10 employees comes under the rules and are supposed to provide maternity benefits to the pregnant working women.
3. The benefits are available for the first two children and if it is the third child then 12 weeks paid maternity leave is applicable thereof.

## **LAWS GOVERNING MATERNITY BENEFITS AND VARIOUS CONVENTIONS**

Convention No.3 in 1919 and Convention No.183 in 2000

### **C003 - Maternity Protection Convention, 1919 (No. 3)**

The General Conference of the International Labor Organization, Having been convened at Washington by the Government of the United States of America on the 29th day of October 1919, and Having decided upon the adoption of certain proposals with regard to "women's employment, before and after childbirth, including the question of maternity benefit", which is part of the third item in the agenda for the Washington meeting of the Conference, and Having determined that these proposals shall take the form of an international Convention, adopts the following Convention, which may be cited as the Maternity Protection Convention, 1919, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organization.<sup>1</sup>

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<sup>1</sup> Maternity Protection Convention, 1919 , Convention C003 (No. 3)

## **C183 - Maternity Protection Convention, 2000 (No. 183)**

The General Conference of the International Labour Organization, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 88th Session on 30 May 2000, and Noting the need to revise the Maternity Protection Convention (Revised), 1952, and the Maternity Protection Recommendation, 1952, in order to further promote equality of all women in the workforce and the health and safety of the mother and child, and in order to recognize the diversity in economic and social development of Members, as well as the diversity of enterprises, and the development of the protection of maternity in national law and practice, and Noting the provisions of the Universal Declaration of Human Rights (1948), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979), the United Nations Convention on the Rights of the Child (1989), the Beijing Declaration and Platform for Action (1995), the International Labour Organization's Declaration on Equality of Opportunity and Treatment for Women Workers (1975), the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), as well as the international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, in particular the Convention concerning Workers with Family Responsibilities, 1981 ;adopts this fifteenth day of June of the year two thousand the following Convention, which may be cited as the Maternity Protection Convention, 2000.<sup>2</sup>

## **MATERNITY BENEFIT ACT, 1961 (No. 53 of 1961)<sup>3</sup> [12th. December, 1961]**

An overview of the Maternity Benefit Act, 1961

The Maternity Benefits Act of 1961 was passed by the Union of India on December 12, 1961, following the country's independence. The statute included conditional benefits for pregnancy, childbirth, and complications related to those, in conformity with the then-current international standards. The Act covered a lot of areas with meticulous precision and care was paid to many dimensions of considerations influencing maternity benefits, despite the fact that India was still a developing nation and in its 14th year of independence. The Maternity Benefit Act, 1961 governs maternity benefits in India. Every organization with ten (10) or more employees is subject to the Act. According to the Act, maternity benefits are

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<sup>2</sup> Convention C183 - Maternity Protection Convention, 2000 (No. 183)

<sup>3</sup> Maternity Benefit Act, 1961 no. 53 (Dec 12, 1961 )

available to any woman who has worked for an organization for at least eighty (80) days. 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 honorably, peacefully, undeterred by the fear of being victimized for forced absence during the pre or postnatal period”, as was observed by the Supreme Court in the case of Municipal Corporation of Delhi v. Female Workers (Muster Roll) (2000).

## Features of the Maternity Benefit Act, 1961

- Duration of leave:** A woman is entitled to twelve weeks of maternity leave under the terms of the Act, not more than six weeks of which may come before the due date. The ILO guideline at the time took this into account.
- Job protection:** According to the guidelines of the 1961 Act, it has been ruled unlawful for an employer to fire or let go of a woman at any time during or because of her absence. However, the employer may notify the employee in writing if the dismissal or discharge is the result of serious wrongdoing.
- Remuneration during leave:** Women who meet the requirements for maternity leave outlined in the legislation are entitled to maternity benefits at the rate of the average daily salary for the time that they are really absent from work.
- Financial benefits:** According to this law, every woman is entitled to maternity benefits and the option of receiving a medical bonus from her employer in the event that neither prenatal nor postpartum care is provided by the latter at no cost to the employee. The employer is responsible for paying all debts, including maternity benefits, to the woman’s nominee or legal representative in the event of her death.

## MATERNITY BENEFIT ACT, 1961

### SECTION :-

#### **4. Employment of, or work by, women prohibited during certain period. –**

No employee and women will be employed during the six weeks immediately following her delivery and even during the time of pregnancy would not be allowed to do heavy work and long hour standing which may interfere here pregnancy stage. <sup>4</sup>

### SECTION :-

#### **5. Right to payment of maternity benefit.**

Every women is entitled to the payment of benefit including the day of pregnancy and 6 consecutive weeks before the pregnancy. the Employees' State Insurance Act, 1948 (34 of 1948), to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under Sec. 50 of that Act.] <sup>10</sup>

#### **5-B Payment of maternity benefit in certain cases.**

Every woman – (a) who is employed in a factory or other establishment  
(b) whose wages (excluding remuneration for overtime work) for a month exceed the amount specified.<sup>5</sup>

### SECTION:-

#### **13. Writing 60 days from the day of deprivation Of maternity benefit , any women can appeal to the authority prescribed by law.**

In case of misconduct the employee can in writing inform the authority and no employer can knowingly employ a women during 6 weeks following her delivery or miscarriage.<sup>6</sup>

### SECTION:-

**14. Rights, Duty & fine** which shall not be less than Rs: 2000/-, which may extend to Rs: 5000/- imprisonment which shall not be less than (03) three months but which may extend to (01) one year and

<sup>4</sup> Maternity Benefit Act, 1961, 4 , no 53, (Dec. 12, 1961)

<sup>5</sup> Maternity Benefit Act, 1961, 5 ,No. 53,(Dec. 12, 1961)

<sup>6</sup> Maternity Benefit Act, 1961, 13,No. 53 (dec. 12, 1961)

## **Maternity Benefit (Amendment) Act, 2017**

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

- Increase Maternity Benefit from 12 weeks to 26 weeks for two surviving children and 12 weeks for more than two children.
- 12 weeks Maternity Benefit to a ‘Commissioning mother’ and ‘Adopting mother’.
- Facilitate Work from home’. • Mandatory provision of Crèche in respect of establishment having 50 or more employees.<sup>7</sup>

## **The M.P. Maternity Benefit Rules, 1965**

**SECTION:-**

### **8. Duties and powers of the Competent Authority and Inspectors. –**

Every inspector shall discharge his duties within the area prescribed in a state government and entitled to due action on every notice how far the irregularities pointed out at previous inspections have been remedied and how far orders previously issued have been complied with.

An Inspector may issue orders in writing to the employer asking for the correction of all irregularities against the Act or these rules noticed by him.

The Inspector shall keep a file of the records of his inspection and shall indicate in a diary the work done by him.<sup>8</sup>

### **Article 42 Provision for just and humane conditions of work and maternity relief – Constitution of India**

The State shall make provision for securing just and humane conditions of work and for maternity relief.<sup>9</sup> The nature of this Article was such that when it was put up for discussion, it was passed without any debate and was adopted on 23rd November 1948. Directive Principles of State Policy.

<sup>7</sup> Amendments to the Maternity Benefit Act, 1961 ( aug 10, 2016)

<sup>8</sup> M.P. Maternity Benefit Rules, 1965 , 8, The gazette of india, part 4 (may 20, 1966)

<sup>9</sup> Constitution of india Article 42.

## More than 120 Nations Provide Paid Maternity Leave

GENEVA (ILO News) – More than 120 countries around the world provide paid maternity leave and health benefits by law, including most industrialized nations except Australia, New Zealand and the United States, says a new report (Note 1) by the International Labour Office (ILO).

## VARIOUS REGULATING AUTHORITIES

### CHIEF LABOUR COMMISSIONER:-

The organization of the Chief Labour Commissioner (Central) also known as Central Industrial Relations Machinery is an apex organization in the country responsible for maintaining harmonious industrial relations mainly in the sphere of central Government. In pursuance of the recommendation of the Royal Commission on Labour in India, the organization was set up in April, 1945 by combining the former organizations of the conciliation Officer (Railways), Supervisor of Railway Labour and the Labour Welfare Advisor. It was then charged mainly with duties of prevention and settlement of industrial disputes, enforcement of labour laws and to promote welfare of workers in the industrial establishments falling within the sphere of the Central Government. It started with a small complement of staff comprising Chief Labour Commissioner(C) at New Delhi, 3 Regional Labour Commissioners at Bombay, Kolkata & Lahore, 8 Conciliation Officers and 18 Labour Inspectors. The Conciliation Officers and Labour Inspector were re-designated as Assistant Labour Commissioner (C) and Labour Enforcement Officer (C).<sup>10</sup>

### VARIOUS CASES :-

#### 1. Municipal Corporation Of Delhi VS. Female Workers (Muster Rolls) And Anr AIR 2000 SC 1274: (2000) 3 SCC 224

- JUSTICE S. SAGHIR AHMAD AND D.P. WADHWA: Article 14 of the constitution states that no person will be denied equality before the law or equal protection of the law. So, the labor belonging to any sector is equal before the law.
- The bench also states about Article 42 and Article 43 of the constitution; article 42 talks about just and humane conditions of work and maternity relief and that the validity of executive action on denying it will be examined on the basis of article 42 of the

<sup>10</sup> Chief Labour Commissioner | Government of India (clc.gov.in)

constitution. Article 43 speaks about living wage etc for workers to ensure a decent standard of living.<sup>11</sup>

- The conclusion drawn from this case is that all the workers are equal in the eyes of law and also the female workers, whether they are engaged on muster rolls or are regular employees.
- It entitled female workers to maternity benefits under the maternity benefits act, 1961. The fundamental rights of female employees are protected by enacting maternity laws and denying will be considered a violation.

## 2. **Air India v. Nargesh Meerza , AIR 1981 SC 1829**

A regulation provided that an air hostess would retire from the service attaining the age of 35 years or on marriage within 4 years of service or on first pregnancy, whichever occurred earlier. The regulation authorized the Managing Director to extend the age of retirement to 45 years at his option if an air hostess was found medically fit.<sup>12</sup>

### **FACTS OF THE CASE: –**

So, starting from the very beginning there were two Corporations known as Indian Airlines and Air India International. Accordingly, we can say that there formed two corporations which are A.I. i.e., Air India Cabin Crew and IAC i.e., Indian Airlines Corporation Cabin Crew. The two corporations were part of the same organization setup by the 1953 Act. Also, the dispute with respect to A.I. was referred to Justice Khosla in Khosla Tribunal and simultaneously, the dispute between the I.A.C. and its employees was referred to Justice Mahesh Chandra in Mahesh Tribunal.

Now, according to the facts, the appellant challenged the service regulation which required the air hostesses were required to retire on their marriage, first pregnancy, or the age of 35, whichever happens earlier. The Airlines authorities' submissions emphasized on the importance of physical appearance, youth, glamour, etc. as the essential qualities for in-flight service. In the early stages, the corporation decided that the airhostesses were to be retiring at the age of 50 with a choice of ground duties. This was later on challenged as being violative of the Articles 14, 15, and 16 of the Constitution of India and certain provisions of the Equal

<sup>11</sup> MUNICIPAL CORPORATION OF DELHI VS . FEMALE WORKERS (MUSTER ROLLS) AND ANR. AIR 2000 SC 1274: (2000) 3 SCC 224 (India) or,

<sup>12</sup> Air India v. Nargesh Meerza 1981 AIR 1829, (India)

Remuneration and Air Corporation Acts, in comparison to male employees who were to retire at the age of 58. On the basis of proposals filed, an order was passed by the Bombay High Court which lays special considerations which are not gender biased and that both the male and female cadres will be given an option to choose retirement at the age of 50 or 58. However, different associations representing employees including airhostesses challenged the judgment of The High Court marking that this will adversely affect their seniority and promotional possibility which are only governed by agreements. Hence, a writ petition was filed in the honorable Supreme Court which challenged the regulations 46 and 47 of the Air India Employees Service Regulation, to decide for these regulations which created an essential degree of disparity between male and female on various grounds such as promotional approach, difference in retirement ages, termination in cases of pregnancy or marriage.

#### **CASE JUDGMENT :-**

Supreme Court sets aside the ruling and order passed by the High Court by criticizing it for adopting a strange procedure and method unknown to law. Supreme Court views that High Court has eluded the binding ration of this case and overlooked the settlements in operation. Furthermore, the court on the aspect of termination of services on the stage of first pregnancy ardently rejects the respondent's contention that women after the child's birth seem to leave job or their husband do not allow them to work and therefore making the it essential to have a lower age limit for their retirement, also for instance these can take place in the absence of children, thus these assertions are prima facie baseless.

**Regulation 46 Air India Employees Service Regulations** In this regulation, the provision of retirement is given. It says that an employee shall retire from the service of the corporation after completion of age of 58 years. It also describes an exception that an Air Hostess shall retire earlier if she has attained the age of 35 years or on marriage if it takes place within four years of service or on pregnancy, whichever occurs earlier.

**Regulation 47 Of Air India Employees Service Regulations.** This regulation talks about the extension of service of the employees and that the service of the employee can be extended by one year at the option of the Managing Director but should not exceed two years.

The Supreme court hence held that the clauses regarding the retirement and pregnancy were immoral and unconstitutional and thus therefore ordered them to be struck down. Also, the powers granted by the Regulation 47 to the Managing Director are excessive and it could lead to possible cases of discriminatory practice. Thus, it says that the ambit of powers of Managing Director is so wide that it is violative of Article 14 by suffering from excessive delegation.

#### **CASE ANALYSIS: –**

Gender discrimination hampers the overall development of a women. There are already plenty of patriarchal banality on women desires for a stress free life at home. Now, if we see the facts of this case it says the retirement age of airhostesses was kept as 35 years, because women till that age look youthful and glamorous. This was indeed a wrong assumption. And if we talk about pregnancy or marriage, the retirement for this is unjustified and violates the fundamental rights of a women which are Article 14, 5 and 16.

Now, the issues raised in this are whether the Regulation are violative of Articles 14, 15 and 16 of Indian Constitution? Or can we say on that part that it is ultra vires? And the second issue was whether the discretionary powers given under Regulation 47 be deemed as excessive delegation?

So, if we analyze the judgement given by the honorable Supreme Court it is clear that of course the regulation clause was violative of the fundamental rights of women as enumerated under Article 14,15 and 16 of the Constitution of India, it thus orders them to be struck down. Also, by similar fate regulation 47 was also found to be under glitches as it provided immense powers to the Managing Director, hence needed to be controlled. Hence, lastly we recognize that there is an urgent need to curb this evil of gender inequality to make all people avail their rights and opportunities equally. Men and women are equal and societies that follow this norm lead a peaceful life. Gender equality is also a human right and everyone should be benefitted from this.

Comparatively we also have paternity leave but there are very less to learn about the paternity leave although India do not have such laws which shows the benefit and no certain laws been drafted regards the leave of the paternal father and compared to mother .

## PATERNITY LEAVE AND ITS APPLICABILITY

Though it's the mother who actually delivers the child, father plays an equally important role. A father is expected to be emotionally and physically available for both, mother and child, before and after the delivery. Infact, legally accepting and providing two months of paternal leave has resulted in a reduced divorce rate in Sweden.

In India, the Central Government in 1999 by notification under Central Civil Services (Leave) Rule 551 (A) made provisions for paternity leave for a male Central Government employee (including an apprentice and probationer) with less than two surviving children for a period of 15 days to take care of his wife and new born child. He can avail this leave 15 days before or within 6 months from the date of delivery of child. If such leave is not availed within the period, it shall be treated as lapsed. For paternity leave he shall be paid leave salary equal to the pay last drawn immediately before proceeding on leave. Also, the same rule applies when a child is adopted. While paternity leave is sanctioned for government employees, there isn't any such law that indoctrinates the private sector to make it obligatory. Hence, paternity leave is open to interpretation by individual companies.

Despite there being no legislation, in the case of **Chander Mohan Jain Vs N.K.Bagrodia (2009)** the New Delhi High Court passed a judgement allowing paternity leave in private schools with Chandra mohan Jain, a private school teacher, getting his deducted salary back as his leaves were recognized as Paternity leaves by the court. an employer must ensure to provide certain basic amenities like a comfortable work place, healthy working hours, giving the employee enough physical and mental rest etc. We must not forget that for a vulnerable new mother and her newly born child father is the most important element to the life of child.

## WILL MATERNITY LEAVE BE GRANTED IN THE SAME MANNER AFTER AMENDMENT IF THE LEAVE IS ALREADY GRANTED?

There was a notification which was put up by the government regarding some queries. The above mentioned question was too answered which said that yes if the employee can enhance maternity benefit as modified by the Maternity Benefit amendment bill, 2016 can be extended to women who are already under maternity leave at the time of enforcement of this amendment. But another query which arises along with this is that whether enhancement of

maternity benefit can be extended to those women who have joined after availing 12 weeks of the maternity leave? It was clarified that those women employee who had already availed 12 weeks of maternity leave before **enforcement of the maternity benefit(Amendment) act, 2017, i.e., 1st April 2017** shall not be entitled to avail the extended benefit of the 26 weeks leave now.<sup>13</sup>

## CONCLUSION

Women in the past and since the very beginning have been an invisible force in the workforce but nowadays it is becoming more conspicuous. But despite joining the workforce, women are still seen as having the primary responsibility of household work and child care. This situation becomes even more stressful during the time of pregnancy or when they have children to look after. In the past, employees would fire women if they saw that the need for maternity leave or the fact that the worker was pregnant interfered with the said worker's ability to perform. Thus, in order to avoid being fired, they would take leave without pay. After analyzing 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 & provide maternity & other benefits to them. For every child, it is important to have proper maternal care and having proper maternal care is very important for the growth and development of a child. The enhancement of Maternity Benefits to 24 weeks has been recommended by the 44th, 45th, and 46th Indian Labour Conference and Ministry of Women & Child Development has also given a proposal to increase the maternity leave up to 08 months.

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<sup>13</sup> <https://www.indialawoffices.com/legal-articles/maternity-benefit-act-1961-with-latest-amendments-of-2017>