

Maternity Benefit Act

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Abstract—The intersection of womanhood and labour markets has historically been fraught with tension, balancing biological imperatives of procreation against the relentless demands of industrial productivity. In India, the Maternity Benefit Act, 1947 (hereafter "the Act") represents the legislative conscience of a nation attempting to reconcile these opposing forces. Enacted even before the dawn of the Republic, this welfare legislation was designed to protect the dignity of motherhood by ensuring the continuity of income and employment security for women in the organised sector. However, nearly eight decades later, the Act stands at a critical crossroads. While the 2017 Amendment dramatically expanded the scope of entitlements introducing 26 weeks of paid leave and mandatory crèche facilities the implementation gap remains a chasm. This paper undertakes a doctrinal and social legal reassessment of the Act. It traces the historical trajectory of maternity protection from the colonial Factory Acts to the post-liberalisation economy, scrutinises the constitutional validity of the burden placed on "establishments," and critically evaluates the exclusion of the vast informal labour market. The paper argues that while the Maternity Benefit Act is a progressive masterpiece on paper, its efficacy is diluted by fiscal federalism issues, a lack of universal coverage, and a judicial interpretation that has often prioritized textual rigidity over social context. Ultimately, this article advocates for a shift from an "employment based" model to a "citizenship based" social security framework to truly honour the constitutional promise of equality under Article 14 and 15.

I. INTRODUCTION

THE PARADOX OF PROTECTION:

In the economic lexicon, motherhood is often treated as an externality a private choice with public consequences. For the Indian female workforce, the decision to bear a child has historically been synonymous with financial precarity. Before 1947, women working in the textile mills of Bombay or the

tea gardens of Assam faced a brutal binary: keep their job or keep their baby. The Maternity Benefit Act was the legislative answer to this coercion, mandating that no woman should be forced to choose between the survival of her child and the sustenance of her family. The Act is rooted in the philosophy of distributive justice. It acknowledges that pregnancy is not a disability, nor is it an act of negligence against an employer. Rather, it is a biological reality essential for the survival of the human race. Therefore, the cost of this societal necessity should not be borne solely by the woman or her immediate family but must be socialised. In theory, the employer acts as the conduit for this socialisation.

However, the Indian labour landscape of 2025 bears little resemblance to the industrial landscape of 1947. The rise of the gig economy, the plat for misation of work, and the persistent feminisation of the informal sector have rendered large swathes of the Act obsolete. Today, the Act protects a minority of working women while leaving the majority domestic workers, construction labourers, and aggregator drivers to fend for themselves in a statutory vacuum. This paper explores this dichotomy: how a law that is so right in principle can be so limited in practice.¹

II. HISTORICAL LINEAGE: FROM THE FACTORY COMMISSION TO THE AMENDMENT

THE COLONIAL PRECEDENT

The concern for the health of the female worker is not a post-independence phenomenon. The British administration, driven more by a need for a healthy labour force than by altruism, introduced the first safeguards. The Factories Act of 1881 prohibited employment of women immediately after childbirth, albeit without any provision for wage replacement. It

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was the Royal Commission on Labour (1931) that specifically recommended statutory maternity benefits to protect the "efficiency of the industrial population." These recommendations crystallized into the Maternity Benefit Act, passed in 1947 a year of monumental political transition. Initially, its coverage was narrow, applying primarily to mines and factories. It was a product of its time: a welfare state model where the male breadwinner norm was presumed, and female work was viewed as supplementary.

III. POST- INDEPENDENCE EVOLUTION:

Post-1950, the Act underwent several amendments, but the tectonic shift occurred in 2017. The Maternity Benefit (Amendment) Act, 2017, was heralded as a game changer. By increasing paid maternity leave from 12 weeks to 26 weeks, India jumped to the third highest in the world (behind Canada and Norway) regarding statutory leave duration. Furthermore, the 2017 Amendment introduced Section 11A, mandating every establishment with 50 or more employees to provide crèche facilities. This was a radical departure from the "cash-only" benefits of the past. It recognized that lactation and childcare are not abstract concepts but logistical hurdles that force women out of the workforce. The amendment also introduced a provision for "work from home" (Section 5(5)), a prescient move that proved incredibly relevant during the COVID-19 pandemic, allowing women in specific roles to transition back to work via technological mediation.

IV. SCOPE AND APPLICABILITY: THE ORGANISED SECTOR FORTRESS

WHO IS COVERED?

Under Section 2 of the Act, it applies to:

1. Every "establishment" being a factory, mine, or plantation.
2. Shops or establishments with 10 or more employees (as notified by state governments).
3. Every shop or establishment in the IT/ITES sector, regardless of employee count, in many states.

The Act covers any woman who has worked in such an establishment for at least 80 days in the 12 months preceding her expected date of delivery. This clause is crucial; it prevents "job hopping" for benefits but sets

a reasonably low threshold (80 days is roughly 4 months) to include seasonal workers.

THE CONSTITUTIONAL BASIS: ARTICLE 42 AND 15:

The Act derives its constitutional sustenance from the Directive Principles of State Policy, specifically Article 42, which directs the State to make provision for securing just and humane conditions of work and for maternity relief. While Directive Principles are non-justiciable in themselves, they serve as the philosophical bedrock for legislation.

Furthermore, the Act operationalizes Article 15(3), which permits the State to make special provisions for women and children. Courts have consistently upheld that providing maternity benefits does not violate Article 14 (Right to Equality) because it falls under the permissible classification of "positive discrimination" based on biological differences. The Supreme Court, in several rulings, has reiterated that treating pregnant women differently from other workers is not discrimination; it is the removal of discrimination.

V. THE SUBSTANTIVE PROVISIONS: A CHARTER OF RIGHTS

SECTION 5: THE 26 – WEEK MANDATE

The heart of the Act lies in Section 5, which governs payment of maternity benefits. A woman is entitled to a wage at the rate of her average daily wage for the period of her actual absence. For the first 26 weeks (for the first two surviving children), she receives full pay. For the third child onward, the benefit reduces to 12 weeks.

A notable feature is the inclusion of the "commissioning mother" (using a surrogate) and the "adopting mother." An adopting mother, commissioning mother, or mother of a child born via surrogacy is entitled to 12 weeks of maternity benefit from the date the child is handed over to her. This inclusion recognizes diverse pathways to motherhood, moving the Act away from a purely biological paradigm toward a social and care-giving paradigm.

SECTION 4: PROHIBITION OF DISMISSAL

No employer can discharge or dismiss a woman during her pregnancy leave or on account of her pregnancy. If a woman is dismissed, the Act implies a legal fiction that the dismissal is void, and she remains entitled to

all benefits. This is a powerful penal clause, designed to counteract the common employer tactic of firing women just before their leave to avoid payouts.

SECTION 11A: THE CRECHE REVOLUTION

Perhaps the most transformative, yet most under-implemented, provision is the crèche mandate. For establishments with 50+ employees, employers must provide a crèche room. More importantly, the Act allows the woman to visit the crèche four times a day. This facility is not merely a storage room for infants; the rules stipulate requirements for safety, sanitation, and trained staff.

However, the phrase "provided by the employer" has led to litigation. Does this mean the employer must build a room on the factory floor? Or can they tie up with a nearby daycare centre? The current legal interpretation leans toward the former, imposing a heavy physical infrastructure cost on small scale industrial units.²

VI. THE 2017 AMENDMENT

The increase to 26 weeks was celebrated in boardrooms and feminist circles alike. Yet, the economic reality post 2017 ³has revealed an unintended consequence: The Shrinking of the Female Labour Force.

Economists have noted a phenomenon termed the "Maternity Benefit Backlash." When the Act increased leave to 26 weeks, the cost of hiring a woman of reproductive age (roughly 20-40 years) effectively tripled for the employer. For an employer comparing two candidates a man who will not take 6 months of paid leave and a woman who might the rational economic choice, in an unregulated hiring environment, is the man.

Data suggests that while the Act protects existing employees, it has disincentivized the hiring of new young women in the formal manufacturing sector. Employers have responded by outsourcing core functions to contract labour or hiring women only on a "consultancy" basis, thereby bypassing the definition of "employee" under the Act.

Furthermore, the 26-week leave, while generous, is unfunded. In most developed nations (e.g., Canada, Germany, Japan), maternity benefits are drawn from a

social security fund (a pool of taxes/insurance). In India, the burden falls squarely on the individual employer. This "employer liability" model is the Achilles' heel of the Indian maternity regime. It pits the worker's right against the employer's profit margin, creating an adversarial relationship rather than a collaborative one.

Judicial Interpretation: The Swing of the Pendulum

Indian courts have generally adopted a purposive interpretation of the Act, leaning in favor of the woman to uphold the spirit of the law.

The Case of the Beedi Roller (B. Shah v. Presiding Officer, 1977)

One of the landmark cases involved the interpretation of "wages." The Supreme Court held that maternity benefit must be calculated on the basis of the actual wages earned, including the dearness allowance and cash value of concessions. The court famously observed that the Act is a "social security measure" and must be interpreted in light of Article 42 of the Constitution, which remains an "irreducible minimum of social justice."

Case law:

The "Substantial Question of Law" (North East Karnataka Road Transport Corp. v. Smt. S. Sujatha)

The Karnataka High Court extended the benefit even in cases where the woman had not completed the mandatory 80 days of service but was prevented from doing so due to the employer's own actions (e.g., locking out workers). The court held that a woman cannot be penalized for the employer's illegal conduct.

Case law:

The Exclusion of the Informal Worker (ALA v. State of Bihar, 2019)

In a significant PIL regarding construction workers, the Patna High Court highlighted the failure of the state to extend the benefits of the Act to the unorganized sector. While the court directed the state to register workers, it lamented that the construction industry operates on a casual basis, making it impossible to prove the 80-day continuous service requirement. This judgment highlighted the de facto exclusion of the vast majority.

The Informal Sector: The Silent Majority

Herein lies the most devastating critique of the Maternity Benefit Act, 1947: It protects only 7-8% of the female labour force.

According to periodic labour force surveys, over 90% of working women in India are employed in the unorganised sector as agricultural labourers, domestic help, street vendors, or home-based workers (e.g., embroidery, papad rolling). The Act, as it stands, simply does not apply to their employers because their "employer" is often a household, a contractor, or the woman herself (self-employed).

For these women, pregnancy is an economic catastrophe. Without paid leave, they must return to work within days of delivery to feed their other children. The government attempted to bridge this gap through the Pradhan Mantri Matru Vandana Yojana (PMMVY), a conditional cash transfer scheme. Under PMMVY, a pregnant woman receives approximately ₹5,000-6,000 (roughly \$60-70) in installments.

To put this in perspective: The Maternity Benefit Act provides a formal sector worker with 26 weeks of full salary (potentially lakhs of rupees). PMMVY provides less than the minimum wage for one month. This disparity creates a two-tier system of motherhood: Dignified motherhood for the salaried class; survival-based motherhood for the labouring class.

Domestic Workers: The Invisible Workforce

A domestic worker in Mumbai or Delhi works under conditions similar to a medieval serf. If she becomes pregnant, she is often "let go" immediately by the employer, with no notice and no benefits. Attempts to bring domestic work under the ambit of the Act have failed because the employer is a "private household," which does not constitute an "establishment" under the Act. The judiciary has repeatedly stated that extending the Act to households is a legislative, not a judicial, function a legislative function that Parliament has consistently shied away from.

The Duty of the State: Beyond Legislation

The Constitution of India mandates the State to secure "just and humane conditions of work" (Art. 42) and to strive for "equal pay for equal work" (Art. 39(d)). However, the State has acted merely as a regulator of the private sector rather than a provider of benefits.

In most Western welfare states, the government acts as the insurer. Employers contribute to a national

insurance scheme, and the government pays the maternity leave salary out of that pool. This removes the employer's incentive to discriminate, as the cost is socialised across the entire tax base.

In India, the State has chosen the path of least resistance: mandate the benefit, but force the private sector to pay for it. The government itself, however, is a model employer under the Act. Central and State government employees already enjoy maternity benefits, often more generous than the Act requires (including child care leaves beyond the 26 weeks).

The 2017 Amendment missed a golden opportunity to create a Maternity Benefit Fund. If even 1% of the GST collection were earmarked for a universal maternity benefit, India could provide a basic income floor for all pregnant women, regardless of sector. Instead, we have a fragmented system: the Maternity Benefit Act for the rich, PMMVY for the poor.

VII. CRITICAL ANALYSIS: LOOPHOLES AND SHORTCOMINGS

1. The 50-Employee Crèche Loophole

Employers have strategically kept their workforce at 49 employees to avoid the crèche requirement. The gig economy has exacerbated this, treating delivery partners as "independent contractors" rather than employees, thus keeping the count artificially low.

2. The "Nature of Work" Exclusion

The Act applies only to women who are "employed." It excludes women who are partners in a Limited Liability Partnership (LLP) or directors of a private company if they don't draw a regular "wage" as per the definition. High earning women professionals are often surprised to find they are not "employees" but "self-employed," and thus not covered by the Act's penal provisions.

3. Enforcement Mechanism

The Inspector under the Act has limited powers. While Section 21 provides penalties (imprisonment up to 1 year and fine up to ₹5,000), the conviction rate is abysmally low. The burden of proof lies on the woman to prove she was dismissed because of pregnancy a difficult standard to meet when employers can cite "performance issues" or "restructuring."

4. The Reality of Crèches

Where crèches exist, they are often tokenistic. A locked room with a mat is not a crèche. The Act lacks strict specifications on the quality of care, the ratio of caretakers to children, or the training required for staff. Consequently, many working mothers refuse to use the crèche for fear of their child's safety, rendering the provision a dead letter.

VIII. COMPARATIVE GLANCES: WHAT THE WORLD TEACHES US

The Nordic Model (Sweden/Finland)

These countries offer 12-18 months of parental leave (not just maternity), which can be split between parents. The benefit is paid by the state from social security. This removes hiring discrimination because the cost is not on the employer, and it encourages fathers to take leave, normalising caregiving.

The United States (The Anomaly)

The US has no federal statutory paid maternity leave (though some states do). They rely on the Family and Medical Leave Act (FMLA), which offers 12 weeks unpaid leave. This highlights that even developed economies struggle with the cost of maternity benefits. However, the US market adjusts by offering "short-term disability" insurance, which is a private market solution.

Japan (The High Leave, Low Usage Paradox)

Japan offers 1 year of paid leave, but cultural pressure forces women to return earlier. This teaches us that legislation alone does not change social norms. India faces a similar problem: even when women have the right to 26 weeks, many fear that taking the full leave will derail their promotions.

The Future: Recommendations for Reform

To transform the Maternity Benefit Act, 1947 from a symbolic gesture into a lived reality, the following reforms are imperative:

1. Universal Social Security Fund⁴

India must move away from the employer liability model. A Maternity and Parental Benefit Fund should be established, financed by contributions from the

central government, state governments, and a small cess on all employers (e.g., 1% of wage bill). This fund would reimburse employers for 100% of the wages paid during maternity leave, eliminating the incentive to discriminate.

2. Extending Coverage to the Informal Sector

The Code on Social Security, 2020 (yet to be fully implemented) proposes a social security fund for gig workers and platform workers. This must be operationalised immediately to include maternity benefits. Furthermore, the PMMVY cash transfer must be increased to at least the minimum wage level (approx. ₹15,000 per month) for 26 weeks to match the spirit of the Act.

3. Redefining "Establishment"

The definition of "employer" under the Act must be expanded to include "principal employers" in the gig economy. If Zomato or Uber controls the algorithm that dictates a worker's pay, they cannot hide behind the "independent contractor" shield. The "control test" must be applied to treat platform workers as employees for the specific purpose of maternity benefits.

4. Strict Crèche Standards and Shared Crèches

For small establishments (10-50 employees), a "cluster crèche" model should be mandated, where a group of 5-6 shops in a complex share the cost of a crèche. For large establishments, the law must specify a caretaker-to-child ratio (e.g., 1:5) and mandate CCTV surveillance.

5. Paternity Leave

While not technically part of the Maternity Benefit Act, the absence of paternity leave in Indian law perpetuates the stereotype that childcare is solely a woman's problem. Introducing 15-20 days of compulsory paternity leave (or "partner leave") would reduce the stigma of asking for leave and encourage shared domestic responsibility, thereby reducing employer bias against women.

IX. CONCLUSION

From Statute to Substance:s

The Maternity Benefit Act, 1947, is a relic that has been repeatedly renovated. Like an old haveli with modern plumbing, the structure holds, but the foundations are cracking under the weight of a changing economy. On paper, India offers one of the most generous maternity leave regimes in the world. On the ground, it is a benefit enjoyed by an elite sliver of the female population.

The Act has successfully protected the jobs of permanent, formal sector women a victory for trade unions and the judiciary. However, it has failed in its broader social objective: to ensure that every mother, regardless of whether she stitches zari in a slum or writes code in a high rise, can feed her child without sacrificing her health.

The solution is not to repeal the Act but to supplement it. We need a parallel universal scheme. The moral foundation of the Act remains unassailable: the nation owes a debt to the mother who births its future citizens. Until the State is willing to pay that debt directly via taxation and universal funds rather than delegating it to a reluctant private sector, the Maternity Benefit Act will remain a beautiful illusion. It is time for India to mature from a "welfare state" that mandates to a "developmental state" that provides.

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