

MATERNITY RIGHTS FOR WORKING WOMEN AND LAW IN INDIA: A CRITICAL ANALYSIS

¹Dr. Lalit Dadwal, ²Dr. Kusum Chauhan

¹Associate Professor, Department of Laws, H. P. University, Shimla (H.P.)

²Assistant Professor, University Institute of Legal Studies, Ava-Lodge, Shimla (H.P.)

ABSTRACT

Over the last few decades, the role and the image of women in society have undergone profound changes. There has been a steady increase in the participation of women in the workforce, as well as a significant change in women's attitudes toward work itself. These changes have made equality of men and women in the workforce and in society at large an attainable goal. The traditional pattern of segregated roles of men and women in work and family life has been challenged. But women workers across the world are at a disadvantage because of certain biological reasons. They have to put up with pregnancy, child birth, lactation, child rearing and various complications arising out of these problems. Suitable measures for protection of health and wages of women workers during maternity period are of significance not only for women workers but also to the society. The primary reason for providing maternity benefits is to preserve and protect the self-respect of motherhood and to ensure the health and safety of the mother as well as the child. Maternity benefits are also necessary to ensure the continued financial independence and self-reliance of women. Legislating maternity rights is important because it transposes universally accepted principles into national laws and sets minimum national and sub national standards. In India majority of laws in relation to the special provisions for working women have been modeled. Though the country is progressively moving towards more flexible environments and more generous policies, there are still concerns over many aspects. This paper discusses the national and international concern for maternity rights of women with special reference to Maternity Benefit (Amendment) Act 2017. It also delves into certain case laws dealing with the subject. This paper also throws light on the loopholes, ambiguities and reasons for the lack of motivation to give effect to a sturdy system of maternity protection.

Keywords: Maternity, ILO, Maternity protection, CEDAW, Socio-economic welfare

A. INTRODUCTION

In the history of human development, women have been as vital in the history making as man have been. In fact higher status for women vis-à-vis employment and work performed by them in society is a significant indicator of a nation's overall progress. Undoubtedly, without the active participation of women in national activities, the social, economical or political progress of a country will deteriorate and become stagnant. But ironically and tragically, women employees in general, are not taken very seriously by their superiors, colleagues or society at large. Traditionally Indian women had been home makers but in the recent decades, proper education and better awareness, in addition to the ever increasing cost of living has made them to go out and choose careers. In a patriarchal society like ours it is still believed that a man is the primary bread winner of his family. Although Indian women have started working outside their homes but still they have a long way to go both culturally, socially and economically, to bring an attitudinal change in the mindset of people.¹

Economic dependence of women is what gives rise to their subordination in society today. Hence to remove such subordination and to lay the foundation of equality women too must be made economically independent and must take an active role in all spheres of business today. To support such initiatives the government must provide some conditions which are suitable for the needs of women. One of the most important needs of the women is maternity benefits. The fundamental purpose of providing maternity benefits is to preserve the self respect for motherliness, protect the health of women, complete safety of the child etc.

Women workers across the world are at a disadvantage because of certain biological reasons. They have to put up with menstruation, pregnancy, child birth, lactation child rearing, menopause and various complications arising out of these problems. Suitable measures for protection of health and wages of women workers during maternity period are of significance not only for women workers but also to the society. Maternity benefits are essential to bring about a reduction in infant mortality rates in the country. The management also benefits from these maternity benefits since it reduces absenteeism of female labour and allows women to give their undivided attention to their jobs. It was the Government of the State of Bombay that enacted the first maternity benefits legislation in the year 1929. This legislation was regarded as very progressive. Soon some other States followed similar laws with some minor variations e.g. eligibility, rate of wages, etc. The central legislations were passed with the provisions of maternity benefit like The Mines Maternity Benefit Act, 1941 the Plantation Labour Act, 1951, etc. However the scope of the Acts varied in terms of qualifying conditions for payment, the

¹ Varsha Kumari, *Problems and Challenges faced by Urban Working Women in India*, 2014
ethesis.nitrkl.ac.in/6094/1/E-208.pdf (accessed on 4-12-2018)

period and the rate of maternity benefits, etc. With a view to reduce the disparities relating to maternity protection under the various Acts, the government of India enacted in 1961, a new Act called the Maternity Benefit Act 1961. It was amended quite extensively in 1970, 1972, 1973, 1975, 1976, 1988, 1995 and 2017.²

Globally, 53 per cent of countries (98 countries out of 185) provide a Maternity leave period of at least 14 weeks, the standard established by ILO Maternity Protection Convention, 2000 (No. 183). 20 percent of countries meet or exceed the standard of 18 weeks of leave suggested in Recommendation No. 191. About one-third (35 per cent) of countries provide 12 to 13 weeks of leave – less than the duration specified by Convention No. 183, but consistent with the level set by Conventions No. 3 and 103 of at least 12 weeks of leave. Only 14 per cent of countries provide less than 12 weeks of Maternity leave³. In India, Article 42 of Indian Constitution contains the directive that the State shall make provision for securing just and humane conditions of work and maternity benefits. In order to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for Maternity benefits and certain other benefits, the Indian Parliament enacted the Maternity Benefit Act, 1961. The Maternity Benefit Act, 1961 was enacted keeping in view not only all those legislations related to maternity that existed from the pre-Constitution days, but also ILO's mandate regarding maternity protection (ILO Maternity Protection Convention 103, 1952). In India, the Maternity Benefit Act of 1961 is not the only piece of legislation that provides for maternity protection or benefit. The Employees' State Insurance Act, 1948 and the Central Civil Services Rules, 1972 are other legislations that cover maternity protection.

B. JUSTIFICATION FOR MATERNITY BENEFITS

Economic dependence of women is what gives rise to their subordination in society today. Hence to remove such subordination and to lay the foundation of equality ,women too must be made economically independent and must take an active role in all sectors of business today. To support such initiative the Government must provide some conditions which are suitable for the needs of women. Among the problems faced by women in the economic sphere of life discrimination resulting from their biological role in nature of childbearing is one. Majority of

² Shashi Bala, "Implementation of Maternity Benefit Act", *NLI Research Studies Series 099/2012* , Published by V. V. Giri National Labour Institute,2012.

³ Maternity and Paternity at work :Law and Practice across the world,
http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_242617.pdf
(accessed on 5-12-2018)

women need change in nature of work during pregnancy/delivery due to health reasons, working conditions, transport related problems and customs and traditions.⁴

To curb such problem and protect the economic rights of women there is need for maternity benefits for a female employee. Women are entitled to these benefits as the child bearing process is intensely painful and can cause bodily damage. This may severely affect the future work of the woman as an employee and decrease her productivity so there is a need for maternity benefits for the women worker.⁵

To safeguard working women and their rights to remain self-reliant and economically independent, maternity benefits are required.⁶ A just social order can be achieved only when inequalities are obliterated and everyone is provided what, is legally due. When who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth.⁷

Historically, maternity has been treated as a state of disability in women workers from undertaking any work during the few weeks immediately preceding and following child birth. With the emergence of the system of wage labour in the industrial undertakings, many employers tended to terminate the services of the women workers when they found that maternity interfered with the performance of normal duties by women workers. Many women workers, therefore, had to go on leave without pay during this period in order to retain their employment. Many others had to bear a heavy strain to keep their efficiency during the periods of pregnancy, which was injurious to the health of both, the mother and the child. To remove this hardship of the women workers, the concept of maternity benefit is needed in order to enable the women workers to carry on the social function of child; bearing and rearing without undue strain on their health and

⁴ <https://www.lawctopus.com/academike/the-need-for-maternity-benefits-for-women-employee/> (accessed on 1.12.2018)

⁵ *Women and Industrial Law: Maternity Benefit Act 1961*,
http://www.lawyersclubindia.com/articles/print_this_page.asp?article_id=580,09/08/201

⁶ *Maternity Benefits: What are your Legal Rights?*
<http://www.lawisgreek.com/maternity-benefits-what-are-your-legal-rights,09/08/2014>.

⁷ *Vandana Kandari v. University of Delhi*, (2010) 170 DLT 755

loss of wages.⁸ The vast majority of women want to have children at some time in their lives. The economic arrangements which were there earlier required them to compromise their career and family goals.⁹ Hence, although women have taken enormous strides toward gender equity at work, as long as traditional gender ideologies and assumptions (i.e., sex-typed stereotypes, roles, and status beliefs) linger¹⁰, they won't have been able to continue in the business unless there is maternity benefits provision.

C. GLOBAL FRAMEWORK ON MATERNITY PROTECTION

The **International Labour Organisation** is the United Nation specialised agency which was founded in 1919 that seeks the promotion of social justice and internationally recognised human and labour rights. Maternity protection for women workers has been a core issue for the ILO since its foundation in 1919. The ILO brings together governments, employers and workers of its member states in common action to promote decent work throughout the world (ILO, 2008). A principal focus of the International Labour Organisation over the course of the last decade has been on maternity protection, in fact one of the first instruments adopted by the International Labour Organisation was the Maternity Protection Convention 1919. The adopted convention decided upon certain proposals with regard to women's employment, before and after childbirth, including the maternity benefit (ILO, 2004), while the Convention has undergone various revisions from 1952 to 2000 since its inception, even from the outset the Convention sought for sufficient benefit to be paid for the full and healthy maintenance of mother and child" (ILO, 2004).¹¹ According to the ILO Maternity Protection Convention, 2000(183), maternity protection provisions cover the following main aspects; maternity leave and leave in case of illness or complication; cash and medical benefits, health protection at work, employment protection and non discrimination; and breastfeeding arrangement. In addition, the ILO works with Family Responsibilities Convention, 1981(No.156) also provides for family friendly working conditions, labour force, reintegration measures, child care and other family services and facilities, among others.¹²

The fact that motherhood requires special care and attention is reflected in Article 25(2) of the **Universal Declaration of Human Rights, 1948** which says: "Motherhood and childhood are entitled to special care and assistance. All children whether born in, or out of, wedlock, shall

⁸ Shashi Bala, *Implementation of Maternity Benefit Act*,

http://www.vvgnli.org/sites/default/files/publication_files/099-2012_Shashi_Bala.pdf, 09/08/2014.

⁹ Stockard, Jean and Miriam M. Johnson, *Sex and Gender in Society*, New Jersey: Englewood Cliffs (1992).

¹⁰ Rudman, Lauria A., *The Social Psychology of Gender*, New York: The Guilford Press (2008).

¹¹ Shashi Bala "Implementation of Maternity Benefit Act" P.2. *NLIR Studies Series No. 099/2012*.

¹² Article 42 of Constitution, direct the State to make provision for securing just human condition of work and for maternity relief.

enjoy the same social protection." Similarly **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** also says that In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

Article 9 of the **International Covenant on Economic, Social and Cultural Rights, 1966**¹³ recognizes "the right of everyone to social security, including social insurance". It requires parties to provide some form of social insurance scheme to protect people against the risks of sickness, disability, maternity, employment injury, unemployment or old age; to provide for survivors, orphans, and those who cannot afford health care; and to ensure that families are adequately supported. Benefits from such a scheme must be adequate, accessible to all, and provided without discrimination.¹⁴

Nevertheless, despite the diversity of the policies there are some general trends across countries. Entitlements to paid leave after the birth of children are granted in most of the countries, for different lengths of time, paid at different rates depending on the hours of work, and the period for which they work before the entitlement of maternity leave with different objectives, including health and safety, enhancing infant and maternal health and children's well being, promoting labour supply, and furthering gender equality in labour market outcomes, as well as budget constraints. There is also a trend in some advanced economies to support, to varying degrees, the right for mothers and fathers to share parental leave entitlement after child birth. Many developing nations have attempted to align their laws and policies on maternity protection to ILO requirements where maternity leave is paid it may be funded by the state, by employers or by a combination of the two.

Keeping in view the Convention of the International Labour Organisation and the fact that there was a need for providing maternity benefits, Article 42 of the Constitution directs the State to

¹³ International Covenant on Economic, Social and Cultural Rights, U.N. Doc. A/6316 (1966).

¹⁴ The Committee on Economic, Social and Cultural Rights adopted General Comment No. 19, The Right to Social Security, UN Doc E/C.12/GC/19, art. 9 (2008).

makes provision for maternity relief. In pre-Independent India, in 1941 the **Mines Maternity Benefit Act** was passed. This Act was applicable to only those women who were working in mines. In 1948 the provision for maternity benefit was made under the **Employees State Insurance Act** and in 1951 under the **Plantations Labour Act**. Some State legislation also provided for maternity benefit. The scope of qualifying conditions for payment, the rate and period of benefit was not uniform under these Acts, therefore in 1961 the Maternity Benefit Act was enacted to remove these disparities and to have uniform rules.

In order to reduce the disparities relating to maternity provisions under the various State and Central Acts referred to above, the Central Government enacted a new Act, called the **Maternity Benefit Act in 1961**. By the end of the year 1972, the Act was extended to the whole of the Indian Union. It applies to every establishment belonging to the Government except those factories or establishments to which provisions of the Employees' State Insurance Act, 1948 are applicable. It applies to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. It repealed the Mines Maternity Benefit Act, 1941, and the Bombay Maternity Benefit Act, 1929. The State Governments have been empowered to extend all or any of the provisions of this Act to any other establishment or class of establishments, industries, commercial, agricultural or otherwise, with the approval of the Central Government by giving not less than two months notice of its intention of so doing.

D. INDIAN CONSTITUTION AND MATERNITY BENEFITS

The rights and privileges for the betterment of women under the Constitution of India are: right to equality in law¹⁵, right against discrimination¹⁶, right to equality in public employment¹⁷, right to adequate means of livelihood¹⁸, right to equal pay for equal work¹⁹, right that the health and strength of workers both men and women are not abused²⁰, right to just and humane conditions of work and maternity relief²¹, and right to improvement in employment opportunities and conditions of the working women²².

Article 15(3) of the Indian Constitution says “nothing shall prevent the State from making special provisions for women and children”. The main object of Article 15 (3) is based on

¹⁵ Article 14 of the Constitution of India

¹⁶ *Id.*, Article 15

¹⁷ *Id.*, Article 16

¹⁸ *Id.*, Article 39-a

¹⁹ *Id.*, Article 39-d

²⁰ *Id.*, Article 39-e

²¹ *Id.*, Article 42

²² *Id.*, Article 46

“protective discrimination” keeping in view the weak physical position of women. The reason is that “women’s physical structure and the performance of maternal functions places her at a disadvantaged position in the struggle for subsistence, and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigor of the race.”²³ This provision has enabled the State to make special statutory provisions exclusively for the welfare of women.²⁴

Right to Life and Personal Liberty under Article 21 of the Constitution of India is not merely a right to protect one’s body but the guarantee under this provision contemplates a larger scope. Right to Life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning. It is something more than surviving or animal existence. The meaning of the word life cannot be narrowed down and it will be available not only to every citizen of the country. Therefore, the State must guarantee to a pregnant working woman all the facilities and assistance that she requires while protecting her employment as well as her own and her child’s health.

The Directive Principles of State Policy contained in Part IV of the Constitution of India, Article 41 requires the State to make effective provision for securing the right to work and to education and Article 42 requires that the State shall make provision for securing just and humane conditions of work and for maternity relief. “Since Article 42 specifically speaks of “just and humane conditions of work” and “maternity relief”, the validity of any service rule and of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the service rule and of the action complained of.”²⁵

E. MATERNITY RIGHTS UNDER DIFFERENT INDIAN STATUTES

As already stated that in India, the Maternity Benefit Act of 1961 is not the only piece of legislation that provides for maternity protection or benefit. The Employees’ State Insurance Act, 1948 and the Central Civil Services Rules, 1972 are other legislations that cover maternity

²³ Muller v. Oregon, 52 L.Ed. 551.

²⁴ Alok Chantia, *Gender Justice: The Constitutional Perspectives And The Judicial Approach*, https://www.academia.edu/4362417/Gender_Justice_The_Constitutional_Perspectives_And_The_Judicial_Approach, 09/08/2014.

²⁵ *Judicial View on Shortage of Attendance*, <http://legalperspectives.blogspot.in/2010/09/judicial-view-on-shortage-of-attendance.html>, 09/08/2014.

protection. Apart from these Statutes there are certain conditional cash transfer schemes to provide maternity benefits to women. These are:

(a) The Employee's State Insurance Act, 1948

The object of the Employees' State Insurance Act, 1948 is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters like funeral expenses, dependants' benefit, medical benefit and disablement benefit. The main object of the Act is to evolve a scheme of socio-economic welfare, making elaborate provisions in respect of it. This Act extends to the whole of India. The provisions of this Act apply, in the first instance, to all factories including factories belonging to the Government other than seasonal factories. The Central Government in consultation with the Employees' State Insurance Corporation or the State Government with the approval of the Central Government may extend different provisions of the Act or any of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. But for any such extension of the provisions the appropriate Government has to give six months' notice.

(i) Benefits given under the Act

The Employees' State Insurance Act, 1948, one of the most important social legislations in India, has been enacted to provide for various benefits in different contingencies. As per this Act, insured women workers get sickness benefit, disablement benefit, dependants' benefit, medical benefit and funeral expenses along with insured men workers. In addition to the above benefits insured women workers also get maternity benefit. Section 46 (b) of the Act says that "Periodical payments to an insured woman in care of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such women being certified to be eligible for such payments by an authority specified in this behalf by the regulations, is hereinafter referred to as Maternity Benefits."

(ii) Maternity Benefits When Payable

The maternity benefit is payable for:

1. Confinement

'Confinement' has been defined under Section 2(3) of this Act. According to this section, confinement means labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of a child whether alive or dead.

2. Miscarriage

According to Section 2(14-B) of the Act, Miscarriage means the expulsion of the contents of a pregnant uterus at any period prior to or during the 26th week of pregnancy but does not include any miscarriage the causing of which is punishable under the Indian Penal Code.

3. Sickness Arising out of Pregnancy, Confinement, Premature birth of child or Miscarriage

The ESI Scheme provides special protection to working women in industrial establishments to which the provisions of this Act apply for maintenance of their health and that of their newly-born child. Sickness arising out of pregnancy, confinement, premature birth of child or miscarriage entitles an insured woman, in addition to maternity benefit payable to her under any provisions of this Act, for all days on which she does not work for remuneration, to maternity benefit at the rates specified.

4. Death

Sometimes it so happens that an insured woman dies during her confinement or during the period of 6 weeks immediately following her confinement for which she is entitled to maternity benefit. It may happen that she may expire leaving behind the surviving child and sometimes it may happen that both child and mother expire. In all such contingencies an insured woman is entitled to maternity benefit.

Maternity benefits under Section 50 of the ESI Act, 1948, the qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be or such 'as may be prescribed by the Central Government. The Central Government made the Employees' State Insurance (General) Regulations, 1950 in exercise of powers conferred by Section 97 of the ESI Act, 1948. Some important regulations are related to the maternity benefit provided to the insured working woman.

(iii) Notice of Pregnancy²⁶

Under this regulation, an insured woman, who decides to give notice of pregnancy before confinement, shall give such notice in Form 19 to the appropriate Local Office by post or otherwise and shall submit, together with such notice, a certificate of pregnancy in Form 20 given in accordance with these regulations on a date not earlier than seven days before the date on which such notice is given.

(iv) Claim for Maternity Benefit commencing before Confinement²⁷

²⁶ Regulation 87, Employees' State Insurance (General) Regulations, 1950

According to Regulation 88 of the ESI (General) Regulations, 1950, every insured woman claiming maternity benefit before confinement shall submit to the appropriate Local Office by post or otherwise:

1. a certificate of expected confinement in Form 21 given in accordance with these regulations, not earlier than fifteen days before the expected date of confinement;
2. a claim for maternity benefit in Form 22 stating therein the date on which she ceased or will cease to work for remuneration; and
3. Within thirty days of the date on which her confinement takes place, A certificate of confinement in Form 23 given in accordance with these regulations.

(v) Claim for Maternity Benefit only after Confinement or for Miscarriage²⁸

Under this regulation, every insured woman claiming maternity benefit for miscarriage shall within 30 days of the date of the miscarriage, and every insured woman claiming maternity benefit after confinement, shall submit to the appropriate office by post or otherwise a claim for maternity benefit in Form 22 together with a certificate of confinement or miscarriage in Form 23 given in accordance with these regulations.

(vi) Claim for Maternity Benefit after the Death of an Insured Woman leaving behind the Child²⁹

As per Regulation 89-A, for the purposes of the proviso to sub-section (2) of Section 50 of the Act, the person nominated by the deceased insured woman in Form 1 or in such other Form as may be specified by the Director-General in this behalf or, if there is no such nominee, her legal representative shall submit to the appropriate office by post or otherwise a claim for maternity benefit, as may be due, in Form 24-A within 30 days of the death of the insured woman together with a death certificate in Form 24-B given in accordance with these Regulations.

(vii) Claim for Maternity Benefit in case of Sickness arising out of Pregnancy, Confinement, Premature Birth of Child or Miscarriage³⁰

Under this regulation

1. Every insured woman claiming maternity benefit in case of sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, shall submit to the appropriate office by post or otherwise a claim for benefit in one of the Forms 12-A, 13 and

²⁷ *Id.*, Regulation 88

²⁸ *Id.*, Regulation 89

²⁹ *Id.*, Regulation 89-A

³⁰ *Id.*, Regulation 89-B

13-A appropriate to the circumstances of the case together with the appropriate medical certificate in Form 8, 9, 10 or 11, as the case may be, given in accordance with these regulations.

2. The provisions of Regulations 55 to 61 and 64 shall, so far as may be, apply in relation to a claim submitted and a certificate given in accordance with this Regulation as they apply to certification and claims under those Regulations.

(viii) Other evidence, in lieu of a Certificate³¹

Under this Regulation, the Corporation may accept any other evidence in lieu of a certificate of pregnancy, expected confinement, confinement, death during maternity, miscarriage or sickness arising out of pregnancy, if, in its opinion, the circumstances of any particular case so justify.

(ix) Notice of work for Remuneration³²

According to Regulation 91, except as provided in Regulation 89-B, every insured woman who has claimed maternity benefit shall give notice in Form 24 if she does work for remuneration on any day during the period for which maternity benefit would be payable to her but for her working for remuneration.

(x) Date of payment of Maternity Benefit³³

Regulation 92 states that maternity benefit shall be payable from the date it is claimed, provided that such date does not precede the expected date of confinement by more than forty-two days and that no work is undertaken by an insured woman for remuneration during her leave period.

(xi) Disqualification for Maternity Benefit³⁴

According to this Regulation, an insured woman might be disqualified for receiving maternity benefit if she fails, without good cause, to attend, or to submit herself to, medical examination when so required; and such disqualification shall be for such numbers of days as may be decided by the Authority authorised by the Corporation in this behalf. However, a woman may refuse to be examined by a person other than a female doctor or midwife.

(xii) Authority which may issue Certificate³⁵

³¹ *Id.*, Regulation 90

³² *Id.*, Regulation 91

³³ *Id.*, Regulation 92

³⁴ *Id.*, Regulation 93

³⁵ *Id.*, Regulation 94

Under Regulation 94, no certificate required under any of the Regulations 87 to 89-B shall be issued except by the Insurance Medical Officer to whom the insured woman has or had been allotted or by an Insurance Medical Officer attached to a dispensary, hospital, clinic or other institution to which the insured woman is or was allotted; and such Insurance Medical Officer shall examine her, and, if, in his opinion the condition of the woman so justifies, or in the case of death of the insured woman or the death of the child is satisfied about such death, issue to such insured woman or, in case of her death, to her nominee or legal representative, as the case may be, free of charge any such certificate when reasonably required by such insured woman or her nominee or legal representative, as the case may be, under or for the purposes of the Act or any other enactment or these Regulations.

(b) Women Safeguards under Maternity Benefit Act, 1961

Part IV of the Indian Constitution contains Directive Principles of State Policy, Article 42 contains the directives that the State shall make effective provision for securing just and humane conditions of work and maternity benefits. Keeping in view the directives Parliament enacted Maternity Benefit Act, 1961. Under the Act, women employment for certain period regulated before and after child birth. The provision of 1961 Act shall apply to any factory or other establishment to which the provision of Employees Insurance Act, 1948 applied. Women, who are ineligible to claim maternity benefit under the E.S.I. Scheme, shall be entitled to claim under the Maternity Benefit Act, 1961.³⁶ The Maternity Benefit Act, 1961 extend to whole of India including the State of Jammu and Kashmir at the end of the year 1972, This Act was brought into force in mines with effect from 1-11-1973 after repealing the Mines Maternity Benefit Act, 1941.

The State, be it Union or State government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigor of the workman during the period of employment. Various states including the State of Jammu and Kashmir have adopted the Central Act after repealing the State Acts. The Maternity Benefit Act provides certain benefits in the event of child birth,³⁷ Miscarriage,³⁸ illness arising out of pregnancy, delivery, premature birth of child or miscarriage.³⁹ The Act, was amended many times but very recently **Maternity Benefit (Amendment) Act, 2017** came into force wherein some new clauses were added.⁴⁰

Right to health, medical aid with maternity benefit are fundamental human rights to make the life of working woman safe, secure and protect them against any kind of humiliation. It depends on

³⁶ Section 2(2), The Maternity Benefit Act, 1961

³⁷ *Id.*, Section 5

³⁸ *Id.*, Section 9

³⁹ *Id.*, Section 10

⁴⁰ *Id.*, Section 5 (3)(4)(5), Section 11-A(1) and (2)

the State Governments to extend the benefits of the Act upon any establishment or undertaking. The Act prohibited the employer to employ women under certain circumstances when it comes to his knowledge that women working in the establishment is pregnant⁴¹, that pregnant women was paid Maternity Benefit at the rate of the average daily wage for the period of her actual absence. A duty imposed upon the employer to pay women workers medical bonus⁴², leave for miscarriage⁴³, leave with wages for tubectomy operation⁴⁴, leave for illness arising out of pregnancy, pre mature birth of child, medical termination of pregnancy are given a leave with wages at the rate of maternity benefit for a maximum period of one month. The Act secure the sanctity attached to the motherhood, as it was realized that maternity benefit is not sufficient enough for proper care of the child, the provision of the Act, were extended further to child care during working hour in the form of nursing break for children. Some of the important amendments may be discussed under the following heads:

⁴¹ Section 4 of The Maternity Benefit Act, prohibit employment or work by the women under certain circumstances. It provides that:-

- (i) no employer shall knowingly employ a women in any establishment during six weeks immediately following the day of her delivery or her miscarriage or medical termination of pregnancy;
- (ii) no woman shall work in any establishment during six weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy;
- (iii) no pregnant woman shall, on a request being made by her in h this behalf, be required by her employer to do during the period as specified in Section 4(4) any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus or likely to cause her miscarriage or otherwise to adversely affect her health;
- (iv) the period referred to above shall be:
 - (a) the period one month immediately preceding the period of six weeks, before the date of her expected delivery.
 - (b) any period during the said period of six weeks for which the pregnant women does not avail of leave of absence under Section 6 of this Act.

⁴² Section 8; of the Maternity Benefit Act, 1961 every woman entitled to maternity benefit or other amount under this Act, shall also be entitled to receive from her employer a medical bonus of two hundred and fifty rupees, if no pre- natal confinement and postnatal care is provided for by the employer free of charge

⁴³ Section 9; subs by the Maternity Benefit(Amendment) Act, 1995 (w.e.f.1.2.1996).as per section 9 of this Act in case of miscarriage or medical termination of pregnancy, a woman shall, on the production of such proof as may be prescribed , be entitled to leave with wages at the rate of six weeks immediately following the day of her miscarriage or, as the case may be her medical termination of pregnancy.

⁴⁴ Section 9 (A); also laid the same benefit should be given to the women worker for tubectomy operation

(a) What this Amendment Act is about

The Maternity Benefit (Amendment) Act 2017 is a landmark Act which has placed India amongst the league of progressive, developed countries with respect to maternity benefits. With the extended Maternity Leave Benefit period, India now qualifies among the 16 countries having the longest paid leave for new mothers. Maternity leave provided under Maternity Benefit Act, 1961 aims to provide paid leave to female employees so that they can take care of their child at his/her early age soon after delivery which is very critical and important for well-being of the child and not to forget to provide women opportunity to exclusively breastfeed their child.

(b) Duration of Maternity Leaves

The period of maternity leave for which a woman employee is entitled to be actually paid is twenty- six weeks now (upgraded from 12 weeks earlier). This would be profitable to about 1.8 billion women work force in India. Only drawback - this is applicable to the establishments employing ten or more people.

(c) Time to Start Maternity Leaves

A pregnant woman employee can utilize Maternity Benefit eight weeks prior to the date of expected delivery. This is helpful as starting eight month of pregnancy most of the women start feeling difficulty in travelling and thus needs greater rest and precaution. So it can be availed 8 weeks prior to due date of delivery.

(d) Provisions for Biological mother

A biological mother is mother who uses her egg to create an embryo implanted in any other woman. If latest modern technology is used, through surrogacy, biological mother can avail this escalated benefit of maternity leave of twelve weeks from the date child is handed over to biological mother.

(e) Provisions for Commissioning or Adopting mother

A Commissioning woman who legally and going through appropriate procedures along with the completion of various formalities, adopts a child below the age of 3 months, can avail maternity benefit for a period of twelve weeks from the date the child is handed over to her. The same right is available to commissioning women.

(f) Nursing Breaks

Section 11 of the Maternity Benefit Act, 1961 provides that every woman delivered of the child who returns to duty after such delivery shall in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months

(g) Creche Facility

The Amendment has introduced a crèche clause wherein establishment consisting of fifty or more employees is mandatorily required to provide creche facility to female employees which is a real game changer to promote gender diversity. The woman is also to be allowed four visits a day to the creche, including the regular rest interval.

(h) Provision for working from home

There is an enabling provision in the new Act relating to “work from home” for women, which may be exercised after the expiry of the 26 weeks’ leave period. It is based on the nature of work and mutually agreed by the woman employee & the manager. This is advantageous for working parents who want flexible work timings and enables baby care at home as well.

The Maternity Benefit (Amendment) Act, 2017 has a significant effect on the status of working women because the Act prohibits the employer from dismissal of the women workers during pregnancy, it restricts the employers from deducting women’s salary on the ground of pregnancy or the leave taken by women on any of the grounds mentioned in the Act. The provision of the Act makes it clear that the employer cannot play any mischief by allowing her light work during pregnancy and breaks for nursing the child when she returns to duty after delivery and making deduction from her wages in lieu of such statutory concessions.⁴⁵

Not only these provisions, the Act also lays down that any agreement between the employer and woman at the time of appointment, if it is less beneficial to the women workers or it confers on the woman less favorable benefits, such agreement is rejected, if under the agreement woman is entitled to more favorable benefits than those provided under this Act, that agreement is valid⁴⁶. Thus the employers are prohibited from discharging or dismissing a woman worker on account of her absence due to pregnancy, delivery, miscarriage or tubectomy operation. The Maternity Benefit Act aims to provide facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimized for forced absence during the pre or post-natal period. Women’s reproductive role is strengthened by the legislators, the basic intentions behind such legislative enactment is

⁴⁵ Section 13 Maternity Benefit Act, 1961

⁴⁶ Section 27, the Maternity Benefit Act, 1961.

to remove the new evil practice that prevailed in independent India where women were denied job due to their biological functions . It also remove the practice adopted by employers treating married women less beneficial as compared to unmarried women, and removing the attitude prevailed amongst the employers not to employ the married women because they were bound to pay maternity leaves to the married women as it impose burden upon them.

(i) Penalties under the Maternity Benefit Act, 1961

The Act stipulates appointment of inspectors. The inspector can be appointed by the appropriate government which will define the local limits of jurisdiction of each inspector,⁴⁷ for the proper enforcement of laws an inspector can be appointed by the appropriate Government which will define the limits of his jurisdiction. As a public servant inspector is authorized to enter at all reasonable times with such assistants, if any, as he think fit, any premises or place where women are working or work is given to them in establishment, for the purposes of examining any registers, records and notices required to be kept or exhibited by or under this Act and require their production for inspector.⁴⁸ On a complaint being made before the inspector by any women employee that her maternity benefit has been improperly withheld or her employer has discharged or dismissed her due to her absence from work in accordance with the provision of this act, An inspector may of his own motion or on receipt of complaint make an inquiry or cause an inquiry to be made is authorized to direct payment to be made to the women workers⁴⁹.

Order passed by inspector is final if not appealed within thirty day from the date on which decision is communicated to such person. Further the Act imposed penalties on the employer for contravention of Act. Any employer who dismiss any women from his establishment shall be punishable with imprisonment which shall not be less than three months and with fine which shall not be less than two thousand rupees but both the penalties may extended. The amount so recovered by the court shall, in addition, to the maternity benefit or include as fine, to be paid to the women workers in addition to amount of maternity benefit. Within the Act, penalties are imposed for obstructing inspector from performing his duty, who was appointed for the purpose of carrying out the provision of the Act.

(c) Conditional Cash Transfer Schemes in India

Conditional Cash Transfer (CCT) schemes generally have the aim to reduce poverty by transferring money to persons who meet certain criteria and/or take certain actions. In India,

⁴⁷ Section 14 of the Maternity Benefit Act, 1961.

⁴⁸ Section 15(a); Maternity Benefit Act, 1961

⁴⁹ Section 17 (1) (2) of Maternity Benefit Act, 1961, subs by the Act 61 of 1988

there are several CCT schemes that provide maternity benefits. Three key national CCT schemes that provide maternity benefits in India are discussed below. In contrast to the MBA and the ESI, maternity benefits in these schemes are not based on the employment status of women.⁵⁰

(a) National Maternity Benefit Scheme

The National Maternity Benefit Scheme provides cash assistance to pregnant women. It is linked to the provision of better diet for pregnant women from families who live below the poverty line. The amount of benefit is 500 rupees. To be eligible a woman should:

- be a permanent resident of a village
- belong to a below the poverty line (BPL) category
- be pregnant 8-9 months
- be pregnant for the first or second time

(b) Janani Suraksha Yojna

Janani Suraksha Yojana is a conditional cash transfer scheme that integrates financial assistance with antenatal care during pregnancy and institutional care during and immediately after delivery. The goals of the scheme are to decrease maternal and infant mortality, and to increase institutional deliveries in below the poverty line families. The amount of benefit is 500 rupees for home delivery and additional 200 rupees (total of 700 rupees for rural areas) or 100 rupees (total of 600 rupees for urban areas) for institutional delivery.⁵¹ The benefits are available both for deliveries in government hospitals and deliveries in recognized private institutions. In cases where Government health specialists are not available to manage complications or for Caesarean Section in the Government's health institution, 1500 rupees can be utilized by the health institution for hiring specialists from the private sector. To be eligible for the benefits under the JSY, a woman should:

- be of the age of 19 or above
- belong to BPL category or be a SC/ST woman

⁵⁰ Ranjana Kumari, *Analysis on Effectiveness of the Implementation of the Maternity Benefit Act, 1961*, Centre for Social Research, New Delhi, 2014, p.8

⁵¹ In low performing States the total amount of benefit for institutional delivery is 1400 in rural areas and 1000 rupees in urban areas.

- be pregnant for the first or second time⁵²

(c) Indira Gandhi Matritava Sahayog Yojana

The Indira Gandhi Matritva Sahyog Yojana is a Central Government Scheme that is operational on pilot basis in 52 districts among all States/UTs in India. It aims to provide partial compensation for wage loss for pregnant women, so that they are not under compulsion to work in the last stage of pregnancy or shortly after delivery. The logic behind this compensation is that women who rest before delivery will to a larger extent be able to avoid giving birth to low birth weight babies, and women who rest after delivery will be able to recover as well as breastfeed their babies. The basic objective of the scheme is to improve the health and nutrition status of pregnant and lactating women and their children. This shall be done by supporting women with nutrition and enhancing early infant nutrition and survival through protection and promotion of early and exclusive breastfeeding during the first six months of a child's life. The amount of benefit is 4000 rupees, and shall be provided in three instalments between the second trimester of pregnancy till the infant completes six month of age. Women enrolled under IGSMY will be encouraged to avail JSY package and vice versa. To be eligible for the benefits under the IGMSY, a woman should:

- be of the age of 19 or above
- be pregnant for the first or second time

In addition, Anganwadi workers and Anganwadi helpers at Anganwadi Centres (focal points of implementation of the Scheme), will receive cash benefits if they encourage women to participate in the scheme and service the women efficiently. The amount of benefit is 200 rupees for Anganwadi workers and 100 rupees for Anganwadi helpers per pregnant and lactating woman⁵³.

F. JUDICIAL ENDEAVOUR TOWARDS MATERNITY RIGHTS

The role of judiciary has been quite significant with respect to women. The Indian judiciary to a certain extent has taken lead in securing socio-economic justice to women. There is a new trend in the judiciary to interpret laws so as to provide better protection to women in respect of their rights. A new trend reveals that the issues of equality, discrimination, sexual harassment of women at work place, equal pay for equal work, maternity benefits, prohibition of work in

⁵² 5In low performing states a woman who gives birth after the second time is eligible if she agrees to undergo sterilization immediately after delivery.

⁵³ *Ibid.*

hazardous occupations and several other rights of women workers have been recognized by Supreme Court of India and High Courts in their various judicial decisions. In order to justify the statement with regard to maternity benefit, some of the following cases are picked by the researcher.

In *Air India v. Nargesh Mirza*⁵⁴, the relevant regulation of Air India Corporation, Act and Indian Airlines Corporation, Act, was challenged on the ground that there was a discrimination between the retirement and termination conditions pertaining to air hostesses and those of male pursers forming part of the same cabin crew and performing similar duties. These conditions were that an air hostess will be retired from service:

- (1) On attaining the age of 35 years, or
- (2) On marriage, if it took place within four years of service, or
- (3) On first pregnancy.

So far as condition (3) was concerned the court took strong exception to it and held it to be “grossly unethical” and as smacking of “deep rooted sense of utter selfishness at the cost of all human values”. Having taken the Air Hostesses in service and after utilizing her services for 4 years, to terminate her services if she becomes pregnant would amount to compelling her not to have any children. The ability / capacity to continue to work after having children is an individual matter and whether she would find it difficult to look after the children or not is her personal matter which affects the Air Hostesses concerned and not the airline. Pregnancy is not a disability; it is a “natural consequence of marriage” and any distinction made on the ground of pregnancy is extremely unreasonable and manifestly arbitrary. This condition was held to be unconstitutional as violative of article 14 and was struck down.

In *Municipal Corporation of Delhi v. Female Workers*⁵⁵, the Union of Female Workers who were not on regular rolls, but were treated as temporary workers and employed on Muster roll, claimed that they should also get maternity benefit like regular workers. The court held that the provisions of the Act would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, especially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the fetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery.

⁵⁴ (1981) 4 SCC 335.

⁵⁵ 2000) SCC 224

In *Shah vs. Presiding Officer, Labour Court, Coimbatore and others*⁵⁶, the question before the Supreme Court was whether in calculating the maternity benefit for the period covered by Section 5 Sundays being wage less holiday should be excluded or not. The Apex Court in holding that Sundays must also be included, applied the beneficial rule of construction in favor of the woman worker and observed that the benefit conferred by the Act read in the light of the Article 42 of the Constitution was intended to enable the woman worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output. The court held that during this period she not only cannot work for her living but needs extra income for her medical expenses. In order to enable the woman worker to subsist during this period and to preserve her health, the law makes a provision for maternity benefit so that the woman can play her productive and reproductive roles efficiently. Performance of the biological role of child bearing necessarily involves withdrawal of a woman from the workforce for some period.

Another legal issue regarding maternity leave on the birth of third child was decided by the Punjab and Haryana High court, in the case of *Ruksana vs. State of Haryana & others*⁵⁷. The Division Bench of the Punjab and Haryana High Court has held that Note 4 to Rule 8.127 of the Punjab Civil Services Rules Volume I Part I is not in consonance with the provisions of the Maternity Benefit Act and this cannot be given effect to and the petitioner cannot be deprived of the maternity benefit for the birth of a third child.

Similarly in *Vibha v. State of Haryana and Others*⁵⁸, petitioner, who is working as a lecturer was also allowed maternity leave on account of birth of third child. While delivering judgment Justice **Rajesh Bindal**, relied upon Ruksan's case.

Very recently on 30th July, 2018 in *Smt. Urmla Masih v. State of Uttarakhand & another*,⁵⁹ **Justice Rajiv Sharma** of the High Court of Uttarakhand made a remarkable judgment by holding that denying maternity leave to a female employee on the ground of having third child is unconstitutional. In this recent case, the Petitioner assailed Respondent's order, whereby the Respondent denied maternity leave to the Petitioner on the ground that she had already two living children, as such for third child the maternity leave could not be granted. The High Court to arrive at its decision made reference to Fundamental Rule 153 of the Financial Hand Book of the U.P. Fundamental Rules. The said Rule enumerates that in case, any female Govt. servant has

⁵⁶ (1977) 4 SCC 384

⁵⁷ Civil Writ Petition No.4229 of 2011

⁵⁸ CWP No.22166 of 2014

⁵⁹ W.P. No-1178 of 2015, Decided on 30-7-2018

two or more living children, she is not entitled to get maternity leave, even though, such leave may be otherwise admissible to her.

The High Court held that the aforesaid provision was contrary to Section 27 of the Maternity Benefit Act, 1961. The Court further noted that Section 27 of the Act does not prohibit, in any manner, to grant of maternity leave to a female Govt. servant, who has already two children at the time of submission of application for maternity leave, after giving birth to third child. The High Court also held that the proviso of the Fundamental Rule 153 was also against the letter and spirit of Article 42 of the Constitution of India (Provision for just and humane conditions of work and maternity relief). In view of the aforesaid observations, the High Court held the proviso to Fundamental Rule 153 of the U.P. Fundamental Rules, as ultra vires and unconstitutional.

Justice N. Kirubakaran of Kerala High Court in one of its judgement ,stated that maternity leave must be included in the period of service of women employees and that any rule or law that excludes the same shall be deemed to be null and void. The petition before the Court was brought by a young medical student working at a Primary Care Centre during which she had taken a maternity leave. She then qualified to pursue further studies at a medical college. The Deputy Director of Health Services refused to discharge her from the Centre stating that she had not completed the requisite two years at the Centre owing to her absence during the maternity leave. The Court reiterated the need for maternity leaves for working women and stated that it shall be included in the period of service.⁶⁰

The Kerala High Court, in another recent judgement for **Mini K.T. v. Life Insurance Corporation of India**⁶¹ also upheld the right of a woman to take leave for an extended time for looking after her child suffering from autism. The Court held that motherhood is integral to the dignity of the woman and that she can't be asked to choose between motherhood and employment.

G. CONCLUSION AND SUGGESTIONS

It can be seen from multiple special provisions made for the welfare of women both at the national and international levels, there has been a movement towards empowerment of women in labour laws. There has been a clear move towards making equal pay, equal access to opportunity, prevention and redressal of sexual harassment and provisions of maternity benefit a reality in

⁶⁰ <https://www.livelaw.in/maternity-leave-part-service-period-must-woman-real-mother-madras-hc/> (accessed on 5-12-2018)

⁶¹ WP(c) No.22007 of 2012(A) , Decided on 21-12-2017

India. In fact a majority of laws in relation to the special provisions for women have been modeled after ILO Conventions. Though the country is progressively moving towards more flexible environments and more generous policies, there are still concerns over many aspects. After analyzing various provisions of the 1961 Act and related cases 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. But at the same time there are certain shortcomings in the Act which needs to be looked upon. Some of such shortcomings are:

- The Maternity Benefit Act, 1961 does not comply with international standards and there are huge gaps in its implementation as the entire responsibility of the Act rests with the employer. Placing the entire burden of providing maternity benefit on the employer is akin to giving him an incentive to not provide any benefit at all. Thus, the cost of maternity protection should be shared amongst different agencies through some form of social insurance scheme or general taxation.
- The increase in the maternity leave could also have adverse impact on the job opportunities for women. The requirement of full payment of wages during maternity leave could increase costs for employers. It could result in increased preference for hiring male workers. The provision could also impact the competitiveness of industries that predominantly employ women workers.
- Increasing maternity benefit is a welcome step but the government should devise some mechanism to ensure that competitiveness of the private sector is not affected. The government should try to bring about uniformity in labour laws about maternity benefits. The Acts like Employees State Insurance Act, 1948, All India Services (Leave) Rules, 1955, Central Civil Services (Leave) Rules, 1972, Factories Act, 1948, and the Unorganized Workers Social Security Act, 2008 have differences in coverage, benefits and financing. All these laws must be amalgamated to uniformly disseminate the benefits across various sectors in India.
- The provisions regarding the applicability of the Act to the unorganised sector also remain unclear. Though, on one hand, the Act states that it covers all women working in mines, plantations, shops, and establishments as well as factories in both organised and unorganised sectors. But on the other hand, the Unorganised Workers' Social Security Act, 2008 defines unorganised sector workers as those who are home based, self-employed, or wage workers working in an entity having less than 10 employees. So the provisions did not clarify whether the Act is applicable to the women employees in those enterprises having less than 10 employees. This is disturbing as over 90% of the working women are employed in unorganised sector in India. Though the women working in unorganised sector can avail benefits from the schemes such as the Janani Suraksha Yojana and the Indira Gandhi Matritva Sahyog Yojana, they get their benefit only in

terms of cash assistance and lack other institutional support provided in the maternity benefit Act.

- After the amendment in 2017 there is increase of maternity leave to 26 weeks, but the provisions for women who adopt or opt for a child through surrogacy, is limited to 12 weeks. A fundamental question arises whether it is fair to discriminate? The leave available for adoption of child below 3 months is 12 weeks. However, the law is silent in case of a child over 3 months of age, the eligibility and entitlements in this case needs to be clarified.
- There is absolutely no mention of paternity leave in the Act which constitutes a major component of the leave policies in the west. This puts the onus of the newborn's rearing on the mother. This is contradictory to gender equality and equal parenting. At present, paternity benefits are permitted in government jobs as a part of leave rules and in private organizations as a matter of internal policy. In order to reduce these factors, the Act should also make a provision for paternity leave and follow a more egalitarian approach. Also, protection should be available to persons who adopt children.
- The Amendment does not expressly clarify if the crèche facilities must be provided free of cost. Most organizations that have set up crèche's voluntarily, presently pass on the cost to the employee (sometimes at subsidized rates). Since most of these companies operate in densely populated urban areas, the cost of extending such facilities can be significant.
- Statutes such as the Factories Act, 1948, and the Contract Labour (Regulation and Abolition) Act, 1970 already contain provisions around crèche facilities. Although not expressly stated, crèche facilities are usually provided free of cost under these legislations. In the absence of any clarification on this point under the Maternity Benefit Act, organizations (at least the smaller ones) may be unwilling to bear the cost of usage of crèche facilities, especially in urban centres where expenses are higher. Similarly There is no clarity in the Act regarding the time period up to which the crèche facility could be extended to the employee .
- The present amendment has the potential to dissuade employers from employing women as they have to bear the financial burden of maternity benefits. So to stop this, the government should follow the advice of ILO. ILO has stated that the cost of providing maternity benefits must not be exclusively born by the employer. In this regard, the government should come forward in addressing the maternity benefit financing issues. The government should opt for paying benefits through compulsory social insurance or public funds as recommended by the ILO. In this regard, the Pan-India expansion of Maternity Benefit Programme (MBP) of the Ministry of Women & Child Development is

a welcome step. The labour ministry should look at modalities of compensating private firms for at least half the period of the extended maternity benefit span.

- The researcher feels that the provision of nursing breaks is useless in the absence of rest rooms and crèches at the workplace. Establishments must be directed and assisted in setting up crèches in their premises so that nursing breaks can be made use of by breast feeding mothers effectively and easily.
- The Training Institutes may consider conducting the orientation programmes for the Inspectors, Employers, N.G.O's and the Trade Union representatives to play an active role in this direction.

Overall, the amendments are a welcome and positive move by the government. At the same time, the government should address the above shortcomings and should work towards ensuring that the law provides equal opportunities to women at the workplace.