Implementation of Maternity Benefit Act

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V.V. Giri National Labour Institute

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Preface

Globally, 51 per cent of countries 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 leave.

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.

Within above stated background, the present research examines Maternity Benefit provisions in selected private firms. Post Maternity, women work participation rate is negatively affected in labour market. Implementation of Maternity Act in private sector would help in more meaningful participation of female labour force in the labour market which would be a stepping stone towards adopting ILO convention No. 156 — Workers with Family Responsibilities Convention, 1981.

The study throws light on the loopholes, ambiguities and reasons for the lack of motivation to give effect to a sturdy system of maternity protection. Certain suggestions can be useful keeping in mind not only the results that this study threw up as well as the international experience regarding maternity.

Most importantly, the duration of leave must be extended in order to allow a mother to fully recover and recuperate as well as efficiently nurse her new born child. Within this, the duration of post natal period must be extended keeping in mind factors like rise in number of late marriages, cesarean births, nuclear families and increasing urbanization. In the 44th Indian Labour Conference, held in February, 2012, it has been recommended that Maternity Leave under the Maternity Benefit Act be increased from the present level of 12 Weeks to 24 Weeks.

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 study clearly shows that the provision of nursing breaks has been rendered 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.

We hope present study will benefit researchers and policy makers working in this area.

V.P. Yajurvedi
Director General

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1. BACKGROUND

Conventionally, women are primarily associated with the home and man with the outside world. This conventional parameter has for a very long time fostered the thought of men having the onus for economic production. Thus it is conventionally and rather fallaciously believed that only men work. Even the Indian Factories Act, 1948, reflects this convention with the defining term "work" "man".

It is often overlooked that women support a large part of the world economy by 'free services' in the home and the community. Women have always been at work; only the definitions of "work" and "workplace" in history have not been realistic enough to include their contribution to the economy and society (Patel, 1995).

By and large, manual work for one's own house is to be done by women. Women work as the cooks, tailors and domestic help for the household but the economic worth of their contribution is over-looked as they are not paid. Hence they are reduced to unpaid family workers who may not be returned in the census under the category of workers.

In modern day society, economic pressures have increased the need for families to have dual incomes. Though these should ideally have combined with egalitarian norms to radically alter attitudes toward working women (Rudman, 2008) this has not been the case.

This is because women's participation in economic activity is contingent upon various factors, via, biological, economic, social or cultural, which result in gender inequality in the family as well as in the economic and political system (Abha and Shrivastava, 2001).

Women's ties with pregnancy and child rearing and the failure of employers and policymakers to deal consistently with this issue exacerbate the difficulties women face in the economy. Women continue to have the primary responsibility for housework and childcare, even when they have extremely demanding jobs. Few employers provide help with childcare, flexible work hours to accommodate children's needs, or paid maternity leaves. Women in blue-collar work as well as clerical jobs face rigid time schedules, low pay, and virtually no recognition or help from employers for

their family responsibilities (Ferree, 1987). Professional women, although better paid, also face these problems.

Career paths that lead to top-echelon positions generally require long work hours and uninterrupted work histories. Mothers cannot fulfill these requirements, unless they have partners who choose to forgo careers and take care of family responsibilities or unless they hire others (almost always women, at low pay) to care for their children and households.

A number of studies of high-level executives have found that virtually all of the men have children, whereas one-half to one-third of the women are childless, (Hewlett, 1986). The vast majority of women want to have children at some time in their lives. Our present economic arrangements require them to compromise their career and family goals, (Stockard and Johnson, 1992).

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) linger (Rudman, 2008), they will continue to face many problems as long as the root cause is not addressed.

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 came about 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 loss of wages.

The cornerstone of women's right and gender equality is the enabling provision of maternity protection. This essential pre requisite has been recognized in various international human rights instruments such as the

international covenant on Economic, Social and Cultural rights, 1996 and various international labour conventions (nos. 3,102,103 & 183). In 1975, the ILO adopted the Declaration on Equality of opportunity for women workers. During the 92nd International Labour Conference in 2004, ILO member states adopted resolutions relevant to extending maternity protection access and promoting work- life balance. On both occasions i.e., in 1975 and 2004, it was accepted that maternity is a cause for discrimination and such continuing discrimination is inimical to equality of opportunity and equal treatment of women.

The ongoing trends in labour market suggest that participation of women is going to increase which require more and more woman friendly environment at the workplace taking due care of their general needs. It would be important to understand the gender dimension of the labour force, as Generation of productive and gainful employment with decent working conditions is viewed as a crucial strategy for inclusive growth. This would require a proper understanding of the nature and characteristics of the existing and emerging labour market situation in INDIA so that along with overall employment growth, issues relating to women workers are adequately addressed in all relevant policies. Within this frame work it is extremely important to understand the gender dimension of the labour force. Although Labour force participation rate of women is low but has increased during last few years. Variety of social and family related constraints compel women to confine themselves to household activities at their prime working age & early exit of women(Probably post marital age) from labour market particularly reflected in urban areas where women face inadequate social and family support system.

The situation is very difficult to remedy without the continued intervention of legislative policy and measures. This has been recognized in the Constitution of India and various legislations that have been passed in India in favor of women to balance the deep inequalities that exist in our society. The focus of the present study is one such very **important legislation passed for the welfare and benefit of working women in India – the Maternity Benefit Act, 1961.**

It is important to recognize that women participation in labour market has significantly increased in recent years, particularly in urban areas. Further, most of the increase in women participation in labour market is contributed by young women in urban areas. Since India is committed to creating a gender friendly labour market environment, there is increasing realization to provide a conducive working environment.

Looking at the large number of women employment in broad occupational categories, it was but natural the protective laws to safeguard their health in relation to Maternity and the children be enacted by the Central and State governments. Before the Independence women workers used to work in all the three shifts including the night shifts. Women workers were employed underground in mines. There was no bar for Women to lift have weight which could affect their health.

It is interesting to know that the first Maternity Benefits Act was passed in 1929 by the Bombay Government and as result of the recommendation of the Royal Commission on Labour in INDIA (1931) the Maternity Benefit Act were passed in other states like Madras (1934), Uttar Pradesh (1938), West Bengal (1939), Assam (1944). **That shows the growing awareness of the administration due to the active role of the Trade Union movement at that times which compelled the authorities to make some protective laws for women workers which went on improving in their substance in favour of women workers as the years passed.**

The present Maternity Benefit Act 1961 is made a Central Act to be applied to all states. Even then there are different rules in the states of their, own showing many disparities in the Central States Acts. An Amendment to the Maternity Benefit Act, 1961 passed in 1973, tried to remove some of the anomalies in the present Act. The Employees State Insurance Act under which women are entitled to get benefit is also in existence. A number of women workers who do not come under any of those two protective laws, miss the welfare benefit all together. The mines Maternity Act 1911 and plantation Maternity Benefit Act 1951 also extend the some protection to women workers in those industries.

The different unions representing works also states before these committees the short comings of the Act and total neglect of the provision of crèches for the children conservancy arrangements etc. There is evidence that the management serve notices of retrenchment on the women workers before they apply for the Maternity leaves particularly in private establishment. There is evidence that management tries and maneuvers and manipulates the around to avoid the cash benefits to be given to the women.

1.1 CONTEXT OF THE STUDY

Article 42 of our Constitution contains the directive that the State shall make provision for securing just and humane conditions of work

and maternity benefits. Additionally 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 question now arises whether the main purpose for which these protective laws were made is observed or not? Whether women workers are benefited (by these various protective laws meant for her)? Seeing their actual implementation one has to come to the conclusion that the women worker entitled are not receiving the proper benefits even according to the rules. The reports of the study groups appointed by the Central Government and the various investigation committees on labour problem, talks about the inadequacies in the actual implementation of these protective laws (Sharma, 2006).

Within above stated background the present research puts further picture of Maternity Benefit provision in selected private firm. Post Maternity women work participation is negatively affected in labour market. Enactment of Maternity Act in private sectors would help in more meaningful participation of female labour force in the labour market which would be stepping stone towards adopting ILO convention No. 156 — Workers with Family Responsibilities Convention, 1981.

Within this context the present research attempts to examine / explore the implementation of Maternity benefit Act, the major law regarding maternity protection in India.

1.2 STUDY AREA

NOIDA is one of the largest planned industrial townships of Asia, and it symbolizes harmony between human habitat and industrial enterprise in India. It is part of the National Capital Region (NCR) and is spread over 20,316 hectares, with most sectors fully developed and located at the east/ south eastern border of Delhi, in the state of Uttar Pradesh. It is located close to the metropolitan city of Delhi.

The principle objective of **NOIDA** was to create a new planned industrial town, which would attract industry from non-conforming areas in Delhi (Decentralization of economy) and also incorporate small-scale industries to reduce immigration into Delhi.

Besides Noida, based on Literature Review subject to available resources other areas were identified and surveyed as case Studies. These are **Gurgaon** in the State of Haryana, **Greater Noida and Ghaziabad** in the State of Uttar Pradesh and the Union Territory of **Delhi**.

1.3 OBJECTIVES

With in the background mentioned above the present study is being projected. The main purpose is to examine the prospects of Maternity benefit Act 1961 in terms of implementation and adaptation by the employer in the selected study area.

The objective of the present study is to analyze the key aspects of Maternity leave provisions: the duration, the benefits and the source of the funding; to see the implication/ significance of the Indian legal provisions with reference to ILO standards on Maternity; to examine the Employer & beneficiaries' perspective on Maternity Benefits Act; to examine the issues raised before the Courts in relation to Maternity Benefits Act ; within the organization others existing measures for maternity protection; to examine the issue of non regular work among the workers due to maternity related issues.

1.4 SAMPLE SIZE AND METHODOLOGY

Sample Size (Employee)

	IT	ITES	HEALTH	EDUCATION
DELHI	67	67	67	67
NOIDA/GN/GZB	67	67	67	67
GURGAON	67	67	67	67
TOTAL	200	200	200	200

Grand Total-800

Sample Size (Employer)

	IT	ITES	HEALTH	EDUCATION
DELHI	17	17	17	17
NOIDA/GN/GZB	17	17	17	17
GURGAON	17	17	17	17
TOTAL	17	17	17	17

Grand Total -200

In the first phase, available secondary sources on Maternity Benefit Act were reviewed. Based on the analysis of secondary sources study area were identified and Comparative study was attempted in private sectors (IT, ITES Education & Health); Stratified sampling technique were used to select only private units (IT, ITES Education & Health) employing more than 10 workers; Purposive sampling was attempted to select only those women who were beneficiaries and entitled to benefit from Maternity Benefit Act; Open ended questionnaire were prepared for pilot testing; Required information in the questionnaire was collected via conducting in-depth interviews on the beneficiaries, intended beneficiaries and employers.

Chapter 2

International Labour Organisation Standards on Maternity Protection

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It's Impact in Formulation of the Indian Labour Legislation

The origin of the scheme of maternity benefit can be traced towards the end of nineteenth century in Germany when maternity allowance itself became a part of the insurance scheme. Other developed countries, including the United Kingdom and Australia, also adopted similar schemes. In Great Britain, maternity allowance was included in the health insurance scheme in 1912 and in Australia; Maternity Allowance Act came into force in 1912. However, international recognition for maternity benefit was only achieved by the efforts of the International Labour Organization ("**ILO**").

The core concerns of ILO have been to ensure that women's work does not pose risk to the health of the women and her children and to ensure that women's reproductive roles do not come in the way of their economic and employment security.

The conclusions of the 98th International Labour Conference in June2009 have also acknowledged that strengthened Maternity protection is key to gender equality at work and therefore called on the ILO to promote the ratification and application of Convention No.183 and to "[…] compile and disseminate good practices on parental leave and paternity and Maternity leave and benefits, and provide technical support to governments to develop effective laws and policies" (ILO, 2010).

2.1 CONVENTIONS ON MATERNITY

It was during the first International Labour Conference (ILC) in 1919 that the first Convention on Maternity protection (**Convention No. 3**) was adopted. This Convention was followed by two other conventions: **Convention No. 103** in 1952 and **Convention No.183** in 2000, which

progressively expanded the scope and entitlements of Maternity protection at work.

As regards, ratification of conventions pertaining to maternity protection, Convention No. 3 has been ratified by 30 member States and Convention No. 103 also by 30 member States. Convention No. 183 come into force on 7 February 2002 and, as of February 2012, has been ratified by 23 member states namely : Albania, Austria, Azerbaijan, Benin, Bosnia and Herzegovina Belarus, Belize, Bulgaria, Cuba, Cyprus, Hungary, Italy, Latvia, Lithuania, Luxembourg, Mali, Republic of Moldova, Morocco, Netherlands, Romania, Serbia, Slovakia and Slovenia. In all, 63 countries are now party to at least one Maternity protection Convention. The influence of the Maternity protection Conventions extends well beyond ratifications; virtually every country around the world has adopted some type of Maternity protection legislation.

Convention No. 3

The 1919 Convention provided that no woman should be permitted to work in any industrial or commercial undertaking for a period of six weeks after in any confinement, and that she should be entitled to leave work during the six weeks before her confinement, on production of a suitable medical certificate. During any such period of absence the employee: (Creighton, 1979) was to be paid benefits sufficient for the full and healthy maintenance of herself and her child, and is, in addition, to receive free attendance by a doctor or certified midwife. The income security is also provided during this period. It also guaranteed nursing facilities and reinstatement in employment after leave. (Agarwala, 1947). The amount of benefit is to be determined by the competent authority in each country, and the cost of the scheme is to be defrayed out of public funds unless otherwise provided under a scheme of insurance. (Creightan, 1979)

All the member countries of ILO were directed to pass suitable legislation to extend certain benefits to women during pregnancy and after childbirth.

India being one of the founder members of ILO was expected to pass such legislation without delay. The British Government after the consultations with various authorities and individuals informed the ILO that India had not advanced enough socially to pass such legislation. There were two main arguments. (Agarwal, 2002)

In the first place, it was stated, it is a practice amongst women to go to their parents' home for delivery. They leave their jobs and go to some other town or village. Hence they would not be in a position to avail of the benefits provided to them. Secondly, it was pointed out that there are hardly any women doctors in towns, and almost none in small villages. A pregnant woman will not be prepared to go to a male doctor to get the necessary certificate of pregnancy. It will therefore be difficult to provide her the necessary leave and other facilities. Hence the required legislation much be postponed for some more years. (Agarwal, 2002)

Convention No. 103

The ILO Maternity Protection Convention, 1919 was revised in 1952. According to the revised convention every woman irrespective of age, nationality and status in public or private, industrial or commercial undertaking was required to be absent for a period of six weeks after the child birth and allowed to be absent for a period of six weeks prior to child birth. For such absence she was to be paid full benefits sufficient for the full and healthy maintenance of herself and her child. These benefits were to be paid either out of public funds or be means of a system of insurance but the exact amount was to be determined by the competent authority in each country. Additional benefits like free attendance by doctors and midwives, and two nursing breaks of half an hour's per day were provided, and no employer could dismiss a woman for such absence.

There are several references to the right to work in UN Covenants and several ILO Standards, which implicitly or explicitly recognize women's right to work. For example, in the operative part of the Universal Declaration of Human Rights, 1948, it is stated, "everyone has the right to work, to free choice of employment." Everyone here is deemed to include both men and women. There are other International Standards, which explicitly embody the principle of non-discrimination on the grounds of sex, for example, article 2 of ILO Convention on Discrimination on Employment and Occupation, No. 111 of 1958. Considering the uncertainties of interpretation, there was an explicit recognition of women's right to work at the 60th session of the International Labour Conference in 1975. The conference adopted a Declaration and two Resolutions on Equality of Opportunity and Equality of Treatment for Women Workers in the International Women's Year. The most recent exponent of this principle is the UN Convention on the Elimination of All Forms of Discrimination Against Women **(CEDAW**),

adopted in 1979 which came into force in 1981, and is now ratified by over 120 Countries. (Patel, 1995)

Convention No. 183

Convention No. 183 is divided into a number of different aspects of Maternity protection mentioned below:

Scope;

Health protection;

Maternity leave;

Leave in case of illness or complications;

Cash and medical benefits;

Employment protection and non-discrimination; and

Breast feeding mothers.

This Convention should normally be implemented through laws or regulations, although different means are used in the national practice of the member states, by following protection, such as collective agreements and arbitration awards, etc.

Globally, 51 per cent, of countries provide a Maternity leave period of at least 14 weeks, the standard established by Convention 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 leave.

Article 1

This Convention applies to women employed in industrial undertaking and in non-industrial and agriculture occupations, including women wage earners working at home.

Article 2

For the purpose of this Convention, the term "women" means any female person, respective of age, nationality, race of creed, whether married or unmarried, and the term "child" means any child whether born of marriage or not.

Article 3

A woman to whom this Convention applies shall, on the production of a medical certificate stating the presumed date of her confinement, be entitled to a period of maternity leave.

The period of maternity leave shall be at least twelve weeks, and shall include a period compulsory leave after confinement.

Article 4

While absent from work on maternity leave in accordance with the pro-visions of Article 3, the woman shall be entitled to receive cash and medical benefits.

The rates of cash benefit shall be fixed by national laws or regulations so as to ensure benefits sufficient for full a healthy maintenance of herself and her child on accordance with a suitable standard of living.

Article 5

If a woman is nursing her child she shall be entitled to interrupt her work for this purpose at a time or times to be prescribed by national laws or regulations.

Interruptions of work for the purpose of nursing are to be counted as working hours and remunerated accordingly in cases in which the matter is governed by or in accordance with laws and regulations; in cases in which the matter is governed by collective agreement, the position shall be as determined by the relevant agreement.

Article 6

While a woman is absent from work on maternity leave in accordance with the provisions of Article 3 of this Convention, it shall not be lawful for her employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such a time that the notice would expire during such absence.

2.2 ORIGIN AND DEVELOPMENT OF MATERNITY BENEFIT SCHEMES IN INDIA

At the time when the Maternity Protection Convention was adopted by the ILO in 1919, it was suggested that the countries represented should

carry out inquiries into the question of maternity benefits for women workers. The conference, therefore, adopted a special resolution requesting the Indian Government to make a study of the question of maternity benefits and to submit a report to the text conference.

Upon this the Government of India consulted the provincial Governments and employers etc. and submitted a report to the International Labour conference held in 1921. The report prescribed that "legislation upon the subject would be premature, but an attempt would be made to induce the principal organized industries to start voluntary benefit scheme by assisting them financially". (International Labour Code. Vol.II, 1952, P.743). Therefore, the Government of India expressed its inability to adopt the Convention.

The reasons given were (a) the impossibility of enforcing the compulsory periods of absence from work in case of the pregnant women workers (b) the shortage of medical women who would be necessary for issuing medical certificates, (c) the impossibility of compulsory contribution schemes to provide benefits and (d) the absence of need for provision regarding nursing periods and for the protection of women from loss of employment during pregnancy (ILO. Labour Legislation in India, 1952, p.98.).

However, the provincial Governments continued to persuade the employers to take unilateral decision for the adoption of the ILO Conventions. In the meanwhile, a private member Mr. N.M. Joshi (Mr. N. M. Joshi was a Trade Union Leader and general secretary to the All India Trade Union Congress. He Was instrumental in getting the Trade Unions Act, 1926 passed.), who had attended as worker's delegate the International Labour Conference at which the Maternity Protection Convention was adopted, introduced a Maternity Bill in the Central Legislature. The Bill seeks to make statutory provisions for maternity benefit for women employed in factories and mines, and paying them cash benefits during confinement. The Bill could not be passed because of lack of public support, impossibility of supervising the scheme, low availability of women doctors and because of migratory character of women workers (Srivastava, S.C. social Security and Labour Laws. Lucknow, Eastern Book Co., 1985, p.262.). There was also a feeling that the passing of the legislation would harm the employment prospects of women.

Despite the negative attitude of the Central Government, the state Governments considered the feasibility of maternity benefit legislations

in India. And as such, the maternity benefit legislations took their roots with the passing of the Bombay Maternity Benefit Act, 1929. Under the Act, every woman worker who has worked for nine months in a factory is entitled to maternity benefit on the production of a medical certificate. She is entitled to leave of absence for four weeks. Maternity benefit was to be paid to her at the rate of 8 annas per day(8 annas are equal to 50 paisa according to today's currency). This was the first maternity benefit legislation in India. This was followed by enactment of a similar law by the Central Provinces and Berar in 1930.

Another milestone in the field of maternity benefit was reached with the appointment of the Royal Commission on Labour in 1929. The Commission, interalia, recommended that maternity benefit legislation on the lines of Bombay Maternity Benefit Act, 1929 should be enacted in other provinces. The commission also recommended that the maternity benefit should be non-contributory and in line with the recommendations a number of provinces passed their own maternity benefit legislations. Madras and Ajmer passed this legislation in 1934, Delhi in 1937, U.P. in 1938, Bengal and Sind in 1939, Hyderabad in 1942, Punjab in 1943, Assam in 1944 and Bihar in 1945. In Bihar the Maternity Benefit Act, was re-enacted in 1947 with certain changes. Many other states passed these legislations a bit later, during the Post-Constitution Period. This application of these Acts has been reviewed from time to time and necessary modifications have been introduced.

However, the Central Government did not lag behind. It took the clue from the provincial governments and passed the maternity benefit legislations. The first central enactment in the sphere was the Mines Maternity Benefit Act, 1941. This Act was of a very limited application as it was applicable only in mines.

However, despite such steps the commitment to providing maternity protection remained low. The Report by the Bhore Committee (Report of the Health Survey and Development Committee (1946): Vol. I - Survey, New Delhi: Government of India Press) pointed out to the inadequate availability of crèche facilities in several industries and poor implementation of Maternity Benefit provisions by various Union Provinces of pre-independent India.

After India attained Independence, the constitution was formulated and adopted in 1950. The constitution, which is the foundation and the

guiding principle of all future legislations, contains specific provision, providing rights and privilege to the women. These right and privileges are contained in the Fundamental rights and Directive principles of the state policy.

2.3 MATERNITY BENEFIT AND THE INDIAN CONSTITUTION

These rights and privileges are: right to equality in law (Article 14 of the Constitution of India), right to social equality (Id., Article 15.), right to social equality in employment (Id., Article 16.), right to protective discriminations (Id., Article 15 (3).) ,right against exploitations of women (Id., Article 23.), right to adequate means of livelihood (Id., Article 39 (a).), right to equal pay for equal work (Id., Article 39 (d).), right that the health and strength of workers both men and women are not abused(Id., Article 39 (e).), right to just and humane conditions of work and maternity relief (Id., Article 42.), and right to improvement in employment opportunities and conditions of the working women (Id., Article 46.).

Article 42, a directive principle of State Policy, states that "The State shall make provision for securing just and humane conditions of work and for maternity relief." Art. 21, Right to Life and Personal Liberty 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 measures and provisions which are made in the Post-Constitution Period for women workers are mostly based on these constitutional provisions.

2.4 THE SECOND FIVE-YEAR PLAN AND THE ENACTMENT OF THE MATERNITY BENEFIT ACT

The enactment of a central legislation on maternity benefit was the result of the Second Five-Year Plan (1956-61). The plan persisted in welfare approach so far as women issues are concerned. It recognized the need

for organization of women as workers, that women should be protected against injurious work, should receive maternity benefit and crèches should be established for children in work places. It also recommended speedy implementation of the principle of equal pay for equal work and provision of training to enable women to compete for higher jobs.

By far the most important development that took place was that a new Central legislation on maternity benefit, the Maternity Benefit Act, 1961 was enacted. The Maternity Benefit Act, 1961 was enacted keeping in view all the pre-constitution legislations and the revised ILO Maternity Protection Convention, 1952.

The next chapter throws a detailed light on the key aspects and provisions of the maternity benefit schemes existing in India, in particular the Maternity Benefit Act, 1961.

Chapter 3

Key Aspects of Maternity Benefit Act, 1961

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Comparison with Other Schemes

As said earlier in the preceding chapter, The Maternity Benefit Act, 1961 was enacted keeping in mind not only all those legislations related to maternity that existed from the pre-Constitution days, but also ILOs mandate regarding maternity protection (ILO Maternity Protection Convention, 1952).

But 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 instances of legislations that cover maternity protection among other things. A comparative study of the three would be helpful in understanding their scope and impact.

It would be pertinent to first examine the key provisions of the Maternity Benefit Act at this juncture.

3.1 THE MATERNITY BENEFIT ACT, 1961

The Act was passed with a view to reduce disparities under the existing Maternity Benefit Acts and to bring uniformity with regard to rates, qualifying conditions and duration of maternity benefits. The Act repealed the Mines Maternity Benefit Act, 1941, the Bombay Maternity Benefit Act, 1929, the provisions of maternity protection under the Plantations Labour Act, 1951 and all other provincial enactments covering the same field. However, the Act does not apply to factory or establishment to which the provision of Employee's State Insurance Act 1948 applies, except as otherwise provided in Sections 5A and 5B of the Act.

Object and Scope

The Act seeks to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide maternity benefit and certain other benefits to women workers.

The Act extends to the whole of India. It applies, in the first instance: to every establishment being a factory, a mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; to every shop or establishment within the meaning of any law for the time being in force in relation to shop and establishments in a state, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

The State Government is empowered to extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise with the approval of the Central Government by giving not less than two month's notice of its intention of so doing.

However, as stated above, the Act excludes the applicability of the provisions of the Act to any factory or other establishment to which the provisions of the Employee's State Insurance Act, 1948 applies except as otherwise provided in Sections 5A and 5B of the Act.

The Act has been amended from time to time. The Amendment of 1972 provides that in the event of the application of the Employee's State Insurance Act, 1948 to any factory or establishment, maternity benefit under the Maternity Benefit Act would continue to be available to women workers, until they become qualified to claim similar benefit under Employee's State Insurance Act.

Again, in 1973 the Act was amended so as to bring within its ambit establishments in the circus industry. A 1976 amendment further extends the scope of the Act to the women employed in factories or establishments covered by the ESI Act, 1948 and in receipt of wages exceeding entitlement specified in that Act.

The Act was again amended in 1988 to incorporate the recommendations of a working group of Economic Administration Reforms Commission. The Act was extended to shops or establishments employing 10 or more persons.

The rate of maternity benefits was enhanced and some other changes were introduced. The Amendment of 1995 further expanded the coverage of the Act and recognized the medical termination of pregnancy and provided incentives for family planning. Maternity Benefit (Amendment) Act, 1995 provides that there shall be a six weeks leave with wages in case of medical termination of pregnancy, two weeks leave with wages to women employees who undergo tubectomy operation and one month leave with wages in cases of illness arising out these two. By an amendment in 2008 the existing ceiling of maternity benefit was increased from Rs. 250 to Rs. 1000. The Central Government is empowered to increase the medical bonus from time to time subject to a maximum of Rs. 20, 000/-.

Salient Features of the Act

According to Section 4 of this Act, no employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, or miscarriage, nor shall any woman work during this period. Besides, no pregnant woman shall, on a request made by her in this behalf, be required by her employer to do any work of arduous nature, or that 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 is likely to cause her miscarriage or otherwise to adversely affect her health, during the one month immediately preceding the six weeks before the date of her expected delivery.

Every woman shall be entitled to, and her employer shall be liable for, the payment of Maternity benefits at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day, says the provision under **Section 5.**

However no woman shall be entitled to these benefits unless she has actually worked in an establishment of the employer from whom she claims them, for a period of not less than 80 days in the twelve months immediately preceding the date of her expected delivery. The maximum period for which any woman shall be entitled to Maternity benefits shall be 84 days.

In case a woman dies during this period, then the Maternity benefit shall be payable only for the days up to, and including, the day of her death. Similarly, if a woman dies during her delivery, or during the period

of six weeks immediately following the date of delivery, leaving behind in either case the child, the employer shall be liable for the Maternity benefits for the entire period of six weeks immediately following the day of her delivery. But if the child also dies during the said period then for the days up to, and including, the day of the death of the child. In the event of a women's death, the employer shall pay such benefits or amount to the person nominated by the deceased in the notice given under **Section 6** and if no notice has been given, then to her legal representatives. Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after delivery.

The provision under **Section 6(5)** says that the amount of maternally benefits for a period preceding the date of her expected delivery shall be paid in advance by the employer.

Miscarriage has also been given same importance. **Section 9** provides that in case of miscarriage, a woman shall be entitled to leave with wages at the rate of maternally benefit for a period of six weeks immediately following the day of her miscarriage. Besides a woman suffering from illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall be entitled to an additional leave with wages at the rate of Maternity benefit for a maximum period of one month under **Section 10,** (Gupta and Gupta 2008).

Regarding nursing breaks **Section 11** provides for two additional breaks of the prescribed duration for nursing the child until the child attains the age of 15 months. Moreover, deduction of wages in certain cases has been made unlawful. A woman cannot be discharged or dismissed by the employer when she absents herself from work in accordance with the provisions of this Act.

3.2 THE EMPLOYEES' STATE INSURANCE ACT, 1948

The Act provides for periodical payment to an insured woman at the prescribed rate and for a prescribed period in case of confinement, miscarriage, sickness arising out of pregnancy or premature birth of a child.

The term confinement means "Labour resulting in the issue of living child or labour after 26 weeks of pregnancy resulting in the issue of a child whether alive or dead" and the expression miscarriage as defined in the

Act means "expulsion of the contents of a pregnant uterus at any period prior to or during twenty six weeks of pregnancy, but does not include any miscarriage the causing of which is punishable under the Indian Penal Code".

Eligibility

An insured women shall be qualified to claim maternity benefit for a confinement occurring or expected to occur in a benefit period, if the contributions in respect of her were payable for not less than half the number of corresponding contribution period. The insured woman becomes eligible for the benefit after being certified to be eligible for such payment by the medical officer to whom she has been allotted or by an insurance medical officer attached to a dispensary, hospital, clinic or other institution to which the insured women is or was allotted if in the opinion of such insurance medical officer the condition of the women so justifies. Any other evidence in lieu of a certificate of pregnancy, expected confinement or confinement from an insurance medical officer may be accepted by the corporation, if in its opinion, the circumstances of any particular case so justify.

The Duration and Quantum of Benefit

The duration of maternity benefit available to an insured woman in case of confinement is 12 weeks of which not more than 6 shall precede the expected date of confinement. In case of miscarriage, insured women are entitled to maternity benefit for a period of 6 weeks only provided she gives a notice and submits a certificate of miscarriage from the concerned medical officer. For illness arising out of pregnancy, delivery, pre-mature birth of a child or miscarriage she is, on production of a certificate from the prescribed medical officer in the prescribed form, entitled to maternity benefit for an additional period of one month.

The rate of maternity benefit is equal to twice the standard benefit rate corresponding to the average daily wages in respect of insured woman during the corresponding contribution period.

The maternity benefit is paid subject to the condition that the insured woman does not work for remuneration on the days in respect of which the benefit is paid. In the event of the death of an insured woman, the maternity benefit is payable to her nominee or legal representative for the

whole period if the child survives, and if child also dies until the death of the child.

An insured woman shall not be entitled to receive for the same period (a) both sickness benefit and maternity benefit or (b) both maternity and disablement benefit for temporary disablement. Where a woman worker is entitled to more than one of the benefits mentioned above she shall have to choose between the two.

The Act prohibits dismissal, discharge, reduction in rank or any other punishment of an insured women employee during the period she is in receipt of maternity benefit. An insured woman may be disqualified from receiving maternity benefit if she fails without good cause to attend for or to submit herself to medical examination when so required and such disqualification shall be for such number of days as may be decided by the authority authorized by the corporation. A woman worker may, however, refuse to be examined by any person other than a female doctor or midwife.

3.3 CENTRAL CIVIL SERVICES RULES OF 1972

The Central Civil Services Rules of 1972 also provide maternity protection. The scope of application and quantum of relief differ vastly from the other two legislations: Maternity Benefit Act, 1961 and Employee's State Insurance Act, 1948.

3.4 MINES ACT, 1952

- **Explanation to S. 52 (Annual Leaves)** provides that "in the case of female employees, maternity leave for any number of days not exceeding 12 weeks."

- **S.58**- Power of Central Government to make rules. The Central Government may, by notification in the Official Gazette, make rules 1.consistent with this Act for all or any of the following purposes, namely:-

  (d) for requiring the maintenance in mines wherein any women are employed or were employed on any day of the preceding twelve months of suitable rooms to be reserved for the use of children under the age of six years belonging to such women, and for prescribing either generally or with particular reference to the number of women

employed in the mine, the number and standards of such rooms, and the nature and extent of the amenities to be provided and the supervision to be exercised therein;

3.5 FACTORIES ACT, 1948

- **Section 79. Annual leave with wages.-**

  Explanation 1. - For the purposes of this sub-section-

  (b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and

- **Section 48- Creches –**

(1) In every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

(3) The State Government may make rules-

  (a) prescribing the location and the standards in respect of construction, accommodation; furniture and other equipment of rooms to be provided, under this section;

  (b) requiring the provision in factories to which the section applies, of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;

  (c) requiring the provision in any factory of free milk or refreshment or both for such children;

  (d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

3.6 PLANTATIONS_LABOUR ACT, 1951

- **Sec.32. Sickness and Maternity Benefits. –**

(1) Subject to any rules that may be made in this behalf, every worker shall be entitled to obtain from his employer - in the case of sickness certified by a qualified medical practitioner, sickness allowance, at such rate, for such period and at such intervals as may be prescribed.

(2) The State Government may make rules regulating the payment of sickness allowance and any such rules may specify the circumstances in which such allowance shall not be payable or shall cease to be payable, and in framing any rules under this section the State Government shall have due regard to the medical facilities that may be provided by the employer in any plantation.

- **Sec.12- Creches**

(1) In every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or employed on any day of the preceding twelve months, or where the number of children of women workers (including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women workers.

Explanation : For the purposes of this sub-section (1-A) "children" means persons who are below the age of six years. (1-A) Notwithstanding anything contained in sub-section (1), if in respect of any plantation wherein less than fifty women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where the number of children of such women workers is less than twenty, the State Government, having regard to the number of children of such women workers deems it necessary that suitable rooms for the use of such children should be provided and maintained by the employer, it may by order, direct the employer to provide and maintain such rooms and thereupon the employer shall be bound to comply with such direction.

(2) The rooms referred to in sub-section (1) or sub-section (1-A) shall :

(a) provide adequate accommodation;

(b) be adequately lighted and ventilated;

(c) be maintained in a clean and sanitary conditions; and

(d) be under the charge of a woman trained in the care of children and infants.

(3) The State Government may make rules prescribing the location and the standards of the rooms referred to in sub-section (1) or sub-section (1-A) in respect of their construction and the equipment and amenities to be provided therein.

3.7 A COMPARATIVE STUDY OF THE 3 PIECES OF LEGISLATION FOLLOWS-

SCOPE OF APPLICATION:

ESI, 1948: Applies to-

- All factories (including Govt. factories)
- Shops employing 20 or more persons.
- Every employee (including casual and temporary employees), whether employed directly or through a contractor, who is in receipt of wages up to Rs.15,000/ month
- Such other establishments as are notified by Govt.

Does not apply to-

- Seasonal factories engaged exclusively in certain mentioned activities viz. cotton ginning, manufacture of coffee, indigo, lac etc, or in such other process as may be specified by the Central Govt.
- Mines
- Railway running sheds
- Govt. factories or establishment, whose employees are in receipt of benefits similar or superior to the benefits provided under the Act
- Defense Services
- Other factories or establishment as notified by appropriate Govt. as exempted.

MBA, 1961: Applies to-

- Mines, factories, circus, industry, plantation
- Shops and establishments employing 10 or more persons.
- State Govt. may by notification include any other establishment or class of establishments.S.2(1)

Does not apply to-

- Any factory or other establishment to which the provisions of the ESI Act, 1948 apply except as otherwise provided in S.5A & 5B of the Act.S.2(2)

CCSR, 1972: Applies to-

- Female Govt. servant with less than 2 surviving children

BENEFITS:

ESI, 1948:

Periodical payment to an insured woman at the prescribed rate and for a prescribed period in case of: (S.46) [i]

- Confinement- 12 weeks (out of which not more than 6 weeks pre-natal)
- Miscarriage or medical termination of pregnancy-6 weeks
- Illness arising out of pregnancy- additional 1 month period
- Death during pregnancy or during the period immediately following the date of her delivery-
  - If child left behind in either case- MB shall be paid for the whole of that period
  - If child also dies-MB payable for the days up to and including the day of death of child.
- Medical Bonus- Rs.2500/- on account of confinement expenses, i.e. where medical facilities under the ESI Scheme are not made available
  - Only for two confinements

MBA, 1961:

- Leave with wages for a maximum period of 84 days
- Absolute prohibition on an employer from knowingly employing or making work any woman in an establishment during the 6 weeks immediately following the day of her delivery, miscarriage, MTP.(S.4(1))
- Pregnant women have further option of taking paid leave of absence up to 6 weeks before their expected date of delivery.
- Women who suffer from illness arising out of pregnancy, delivery, premature birth or miscarriage – right to take additional 1 month's paid leave.(S.10)
- Even on the request of the female employee, she cannot be required by her employer to do any work which is of arduous nature, which is any way likely to cause a miscarriage or otherwise adversely affect her health, during the 1 month before her expected date of delivery.S.4(3)
- Death during pregnancy or during the period immediately following the date of her delivery-
  - If child left behind in either case- MB shall be paid for the entire period
  - If child also dies-MB payable for the days up to and including the day of death of child.
- Miscarriage/MTP –leave with wages @ MB for a period of 6 weeks immediately following the day of miscarriage/MTP(S.9)
- Tubectomy –leave with wages @ of MB for a period of 2 weeks immediately following the day of her tubectomy operation. (S.9A)
- Illness arising out of pregnancy, delivery etc- in addition to the period of absence allowed to her to leave with wages @ MB for a maximum period of 1 month (S.10)
- Medical Bonus- every woman entitled to MB shall also be entitled to receive from her employer medical bonus of Rs 2500 if prenatal confinement and post natal care is provided for by the employer free of charge (S.8)

- Nursing Breaks- when on duty after delivery, in addition to the interval for rest allowed to her, 2 breaks of the prescribed duration, in course of her daily work be allowed, for nursing the child until it attains the age of 15 months.(S.11)

CCSR, 1972:

- Maternity leave for a period of 180 days. Leave salary to be paid equal to the pay drawn immediately before proceeding on leave. (R.43)[1]
- If provisions of ESI 1948 apply, amount of leave salary payable under this rule shall be reduced by the amount of benefit payable under the said act for corresponding period
- In case the period of135 days of ML have not expired on the said date, ML of 180 days shall also be available.
- Miscarriage – ML not exceeding 45 days may be granted, irrespective of the number of surviving children, during the entire service.(R.43(3))
- Adoption- may be granted leave of the kind due and admissible for a period up to 1 year or till such time the child is 1 year old, whichever is earlier.(benefit not available in case she is already having 2 surviving children at the time of adoption)(R.43B)
- Paternity leave is granted to a male Govt. Servant, having less than 2 surviving children, for a period of 15 days before or up to 15 days before or up to six months from the date of delivery of the child. Leave salary will be equal to the pay drawn immediately before proceeding on leave. Paternity leave can be combined with any other kind of leave (except casual leave) and will not be debited to leave account. (R.43A)

<u>LEAVE</u> (COMBINED OR NOT)

ESI, 1948:

- Maternity benefit/leave not to be combined with other benefit or leave. Where entitled to more than one benefits, entitled to choose which she would receive.(S.65)

CCSR, 1972:

- Maternity Leave may be combined with leave of any other kind.

Dismissal/Punishment During Period Of Sickness, Confinement etc

ESI, 1948:

- Employer shall not dismiss, discharge or reduce or otherwise punish an employee during the period employee in receipt of MB, or is absent from work as a result of illness arising out of pregnancy, etc. (S.73(1))
- No notice of dismissal or discharge or reduction given during the said period shall be valid or operative. (S.73(2))

MBA, 1961:

- When absent from work in accordance with the provisions of the Act, unlawful for the employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal, or to vary to her disadvantage any of the conditions of her service. (S12(1))
- If discharged at any time during pregnancy but otherwise eligible for benefits, right to MB and medical bonus survives, discharge for 'gross misconduct' (R.89) being the only exception. (S.12(2)

ELIGIBILITY

ESI, 1948:

- Weekly contributions in respect of the female employee must have been paid for not less than 13 weeks in contributions period.

MBA, 1961:

- Should have worked for not less than 80 days during the 12 months preceding the expected date of her delivery.(S.5(2))

CCSR, 1972:

- Female Central Govt. Employee with less than 2 surviving children.

SOURCE OF FUNDING

ESI, 1948:

- Insurance concept- contribution to be made by both the employer and employee.

MBA, 1961:

- Employer to make the entire contribution towards funding the benefits.

QUALIFICATION

ESI, 1948:

- Name must appear in ESI records.

MBA, 1961:

- Extends to casual workers, ad hoc employees, contractual, temporary workers.

CCSR, 1972:

- Must be a female Govt. Servant.

LEGAL RECOURSE AVAILABLE

ESI, 1948:

- Provision of Employees' insurance Courts having powers of a Civil Court for certain purposes. (S.74)

- An appeal shall lie to the High Court from an order of an Employees' Insurance Court *only* if it involves a substantial

question of law; as such, no appeal shall lie from an order of this court.(S.82)

MBA, 1961:

- Provision of appointment of Inspectors, who shall be deemed to be public servants, with powers of inspection, examination, making enquiries, directing payments to be made, etc.(S.14)
- A prescribed appellate authority shall look into any appeals against the decision of the Inspector.
- Penalty in case of contravention of the Act by the employer- imprisonment up to 1 year and fine up to Rs. 5000.
- No court inferior to that of a Metropolitan magistrate or a Magistrate of the first class shall try any offence under this Act.

DISQUALIFICATION / FORFEITURE OF BENEFIT

ESI, 1948:

- An insured woman may be disqualified from receiving MB if she fails without good cause to attend for or to submit herself to medical examination when so required. (S.93)

MBA, 1961:

- If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of S.6 for any period during such authorized absence, she shall forfeit her claim to the maternity benefit for such period. (S.18)

MERITS

ESI, 1948:

- Efficient source of funding- burden of benefit shared by employer and employee

MBA, 1961:

- Wider scope of coverage- applies to temporary, ad hoc, contract and casual women workers.
- Provision of nursing breaks.
- Provision of prohibiting pregnant employee from undertaking any work of arduous nature during certain period.
- No wage limit for coverage under the Act.

CCSR, 1972:

- Provisions regarding benefits like Adoption leave, Paternity leave and Child Care Leave.
- Maternity leave can be combined with leave of other kind.

DEMERITS

- *None of the 3 legislations extend benefits to small and informal sectors which employ the maximum number of women.*
- *Regarding MBA, 1961 & ESI, 1948- no uniformity of application across various States due to the power of State Governments with respect to implementation.*

ESI, 1948:

- Narrow scope of application- only those who figure in the records of ESI.
- No benefits in case of Adoption.
- Maternity benefit cannot be combined with other benefits.

MBA, 1961:

- Does not cover small time workers, ones working from home, construction workers, etc.
- Entire economic burden of providing the benefit to be borne by the employer, thereby providing stronger motivation for evasion.

- No benefits for Adoption.
- Number of Inspectors inadequate; multiplicity of duties; inadequate infrastructure.
- Penalties not adequately stringent.

CCSR, 1972:

- Only Govt. Servants can avail benefits
- No provision of Medical Bonus or Cash benefits beyond salary.

Chapter 4

Issues Raised before the Courts with Reference to Maternity Benefit Act, 1961 and Judicial Response

A study of the judicial responses in the area of maternity benefit shows that despite four decades of enactment, case laws are few. While this may indicate a less than robust implementation and knowledge of the Maternity Benefit Act and Employees' Social Insurance Act, it should be kept in mind that the route that the litigation process has involved, all the way from a local Labour Court/Industrial Tribunal to the Apex Court of the country, namely, the Supreme Court, has taken upwards of a decade in several cases. It is possible that several cases never reached a point where they were reported as they were withdrawn, abandoned or compromised.

Some of the landmark cases have been briefly referenced:

4.1 SUPREME COURT

1. Municipal Corporation of Delhi vs. Respondent Female Workers (Muster Roll) &Anr. AIR 2000 SC 1274 [SUPREME COURT]

Municipal Corporation of Delhi (for short, the 'Corporation'), granted Maternity Leave only to its regular female workers, and denied it to female workers (muster roll) engaged by it on the ground that their services were not regularized.

Hon'ble Court pronounced its judgment taking into consideration the provisions of A.14, 15, 38, 42, 43 and those laid down in the Maternity Benefit Act and the Industrial Disputes Act.

Explaining the scope of Article.14 in the context of Labour Laws, the Court held that, "labour to whichever sector it may belong in a particular region and in a particular industry will be treated on equal basis." (Hindustan Antibiotics Ltd. v. Workmen (1967) ILLJ114SC)

Article.15 provides against discrimination the State against any citizen

on grounds only of religion, race, caste, sex, and place of birth or any of them. Clause (3) of

Article 15 provides:

Nothing in this article shall prevent the State from making any special provision for women and children.

Article 38 states that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life. Sub-clause (2) of this Article mandates that the State shall strive to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities.

Articles 42 & 43 enjoin the State to make provisions for securing just and humane conditions of work and for maternity relief; a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities…for all workers- agricultural, industrial or otherwise.

The court, on having scanned the various provisions of the Act, concluded that there was nothing in the Act which entitled only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily wage basis. "The provisions of the Act which have been set out above 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."

It has emphasized the significance and relevance of the Doctrine of Social Justice several decisions, like in J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. Badri Mali [1964]3SCR724 holding that the concept has become an 'integral' part of industrial law and therefore, it cannot be suggested that the processes of industrial adjudication can or should ignore the claims of social justice when dealing with industrial disputes. It was rightly held that a just social order can be can be achieved only when workers, who constitute almost half of the segment of our society, are treated with dignity and provided all facilities to which they are entitled,

irrespective of the nature of their duties, their avocation and the place where they work.

Concentrating on the position of women workers and the relevance of the Maternity Benefit Act, 1961 the court opined. "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. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honorably, peaceably, undeterred by the fear, of being victimized for forced absence during the pre or post-natal period."

Moreover, the Municipal Corporations or Boards have already been held to be "industry" within the meaning of "Industrial Disputes Act". (Baroda Borough Municipality v. Its Workmen (1957) IILJ8SC)

2. Rattan Lal and Ors. vs. State of Haryana and Ors., 1985(3) SLR 548=1985(2) SLJ 437 (SC).

Grievance of the teachers appointed on ad hoc basis by the State of Haryana with regard to non-payment of salary during the summer vacations and denial of other privileges such as casual leave, medical leave, maternity leave etc., came to be considered.

These benefits, summer vacations along with salary and allowances payable and all other privileges such as casual leave, medical leave, maternity leave etc which are available to all government servants are, the Court observed, denied to the ad hoc teachers unreasonably on account of the pernicious system of appointment adopted by the State Government.

Strongly deprecating the policy of the state government under which ad hoc teacher were being denied salary and allowances for the period of the summer vacations, the Apex court ordered the payment of the above mentioned privileges including maternity and medical leave to those entitled to it.

3. AIR India vs. Nergesh Meerza and Ors.

The provisions on Retiring Age implied that the normal age of

retirement of an Air Hostess is 35 years, or on marriage, if it took place within four years of service, or on first pregnancy whichever occurred earlier. So far as the question of marriage within four years was concerned, the Court said that these provisions did not suffer from any constitutional infirmity, in view of the role it place in the promotion and boosting up of the family planning programme and in avoiding the huge expenditure involved in recruiting additional Air Hostess to replace the working months if they conceive.

As regards the second limb of the provisions according to which the services of Air Hostess would stand terminated on first pregnancy, the Court observed that this was a most unreasonable and arbitrary provision.

"The Regulation does not prohibit marriage after four years and if an Air Hostess after having fulfilled the first condition becomes pregnant, there is no reason why pregnancy should stand in the way of her continuing in service. The Corporations represented to us that pregnancy leads to a number of complications and to medical disabilities, like sickness due to air pressure, nausea in long flights etc which may stand in the efficient discharge of the duties by the Air Hostess. This, however, appears to be purely an artificial argument because once a married woman is allowed to continue in service then under the provisions of the Maternity Benefit Act, 1961 and the Maharashtra Maternity Rules, 1965 (these apply to both the Corporations as their Head Offices are at Bombay), she is entitled to certain benefits including maternity leave. In case however, the Corporations feel that pregnancy from the very beginning may come in the way of the discharge of the duties by some of the Air Hostess, they could be given maternity leave for a period of 14 to 16 months and in the meanwhile there could be no difficulty in the Management making arrangements on a temporary or ad hoc basis by employing additional Air Hostess. We are also unable to understand the argument of the Corporation that a woman after bearing children becomes weak in physique or in her constitution. There is neither any legal nor medical authority for this bald proposition. Having taken the Air Hostess in service and after having utilized her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor Air Hostess not to have any children and thus interfere with and divert the ordinary course of human nature. It seems to us that the termination of the services of an Air Hostess under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood. Such a provision, therefore, is

not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution."

Similar observations were made by the U.S. Supreme Court in City of Los Angeles, Department of Water & Power v. Maris Manhart 55 L Ed 2d 657 : 435 US 702 (1978) thus :

"It is now well recognized that employment decisions cannot be predicated on mere 'stereotyped' impressions about the characteristics of males or females. Myths and purely habitual assumptions about a woman's inability to perform certain kinds of work are no longer acceptable reasons for refusing to employ qualified individuals, or for paying them less. . . . It should be understood that the basic policy of the statute requires that we focus on fairness to individuals rather than fairness to classes. Practices that classify employees in terms of religion, race, or sex tend to preserve traditional assumptions about groups rather than thoughtful scrutiny of individuals."

Held, "For the reasons given above, we strike down the last portion of Regulation 46(i)(c) and hold that the provision 'or on first pregnancy whichever occurs earlier' is unconstitutional, void and is violative of Article 14 of the Constitution and will, therefore, stand deleted."

4. Bombay Labour Union vs. International Franchises Pot. Ltd. (1966) 2SCR 493: (1966) 1 LLJ 417: 28 FJR 233

A rule required that unmarried women were to give up service on marriage. The court observed that there was nothing which showed that married women were necessarily more likely to absent themselves from work than unmarried women or widows. If it were the presence of children which could be the reason for greater absenteeism among married women, then the case would be similar in the case of widows with children as well.

5. B. Shah vs. Presiding Officer, Labour Court, Coimbatore and others. Date of Judgment, 12/10/1977. Bench: Jaswant Singh and V.R. Krishna Iyer. Equivalent citations: 1978 AIR 12 ;(1977) 4 SCC 384

- 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.

- 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.
- 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.

6. Punjab National Bank by Chairman and Anr. vs. Astamija Dash and Astamija Dash vs. Punjab National Bank and Anr. AIR 2008 SC 3182

The writ petitioner could not prepare well at the second test as she suffered miscarriage.

As per the provisions of the **Maternity Benefit Act 1961** a woman is prohibited from working in an establishment during the period of six weeks from immediately following the day of her delivery, miscarriage or medical termination of pregnancy. **S.9** states that In case of miscarriage or medical termination of pregnancy, a woman shall be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage, or, as the case may be, her medical termination of pregnancy.

It is well established that a subordinate legislation must be made in conformity with the Parliamentary Act. But the Regulations framed by the board of directors of the Bank failed to provide for grant of Maternity Leave and other benefits to which a woman employee would be entitled to in terms of the MB Act 1961.

Even though the contention as regards the applicability of the MB Act had not been raised before the court, and even if it was assumed that the

Act was not applicable, it was emphasized that the State while exercising its power of discretion must conform to the doctrine of reasonableness. Therefore, a woman who had undergone miscarriage was entitled to a different treatment in view of the nature of the doctrine of equality as a positive concept as enshrined in Art.14 of the Constitution.

Held, "Article 14 does not apply in a vacuum. Whereas persons absolutely similarly situated, should be treated equally, equal treatment to the persons dis-similarly situated would also attract the wrath of Article 14. It is from that point of view that the writ petitioner's case ought to have been considered vis-a-vis Indubala."

"The Executive Committee of the Bank had fixed the number of chances to be given to an employee in the confirmation test. If it is enforced against the writ petitioner having regard to her physical position, to appear in the second examination, the provisions thereof, keeping in mind the principle underlying the statutory provisions of Maternity Benefit Act, may not be held to be applicable. She was, thus, entitled to another opportunity to appear at the examination. The Executive Committee or for that matter

the appellate authority cannot exercise the power of relaxation in a discriminatory manner."

The court did not accept that it was for the employer to decide as to the number of chances to be given to each employee and that the Bank could not be deprived of such discretionary jurisdiction.

Ratio Decidendi: *When conflict occurs between an executive order and a statutory Regulation, the latter will prevail - Whereas persons absolutely similarly situated, should be treated equally, equal treatment to the persons dis-similarly situated would also attract the wrath of Article 14*

DELHI

7. Food Corporation of India Workers Union vs. Shri G.R. Majhi and Ors., MANU/DE/9806/2006

The maternity leave and other maternity benefits are available to all employees of the establishment in terms of the provisions of the Maternity Benefit Act 1961. The certified standing orders do not over rule the provisions of the Maternity Benefit Act 1961. The certified standing orders are in respect of leave other than maternity leave since maternity leave is covered by Maternity Benefit Act 1961.

8. Seema Gupta vs. Guru Nanak Institute of Management, 135 (2006) DLT 404.

Petitioner filed writ petition against the order by which her services were terminated on grounds of unauthorized leave/absence within 2 months of extended maternity leave.

The correspondence between the parties to the petition reveals that the petitioners request for leave was on account of her "erratic and indifferent health condition as well as that of her infant child"

Even though the petitioner did not request for one full years' leave initially, she did so once rejoined duties. She made an application for the purpose after she was served with repeated show cause notices which alleged habitual absenteeism.

Rule 43 (4)(b) - enables the employer to grant, and the employee to seek up to one years' leave in continuation of the initial maternity leave. The special position and relevance of the above rule can be understood in the light of the fact that the employee is absolved of the normal requirement of having to produce a certificate, clearly implying that medical concerns alone are not determinative in granting such extended leave.

This provision, the court elaborated, ought to be construed in the light of the Universal Declaration of Human Rights and CEDAW, which form and integral part of the States obligation to promote the Directive Principle enshrined in Art.42 of the Constitution.

The hon'ble court held, "The present case, and application of Rule 43, falls into what may be justly described as a "horizontal" application of the fundamental right, viz Article 15(3) in order to give effect to Article 42. Fundamental rights are ordinarily enforceable against State or state agencies, or those "authorities" acting as instrumentalities of the state. Yet, once the object of a fundamental right, such as for instance, the equality clause, or protective legislation relating to gender, is sought to be given shape through some statute, and made applicable to non-state "actors" such intervention is known as horizontal application of the concerned fundamental right. In this case, Rule 43 is an instance of application of gender protective rights to public, but non-state entities like the respondent institution. In another sense, the rule has to be understood as a larger social concern for extending special care to employees who are given maternity benefits."

If exigencies of service were upheld as a valid justification for denying or rejecting the valuable right to claim extended maternity leave up to 1 year, such special right would be rendered meaningless, existing only on paper. The respondent did not apply its mind to peculiarities of the case or the special nature of the right involved. Thus Impugned termination letter could not be sustained; it was held illegal and respondent was directed to reinstate the petitioner to her post.

9. K Chandrika vs Indian Red Cross Society 131(2006) DLT 585

Services of the petitioner were terminated while she was on maternity leave. There was no evidence to show that the petitioner had received the communication. The Industrial adjudicator concluded that the workman had no intention of joining duty with the management and the relief of reinstatement and consequential benefits was denied to her. The court held that the petitioner's services were terminated illegally and unjustifiably. The court ordered that the Petitioner be reinstated in service with continuity of service for the purposes of computation of service benefits. Back wages at the rate equivalent to 50 per cent of the basic pay was also granted. In normal circumstances, full wages would have been granted as back pay but as the organization was not for profit, this would have been onerous — Writ petition allowed.

10. Mrs. Bharti Gupta vs. Rail India Technical and Economical Services Ltd. [RITES] and others. 123(2005) DLT 138

Court held that the nature of maternity benefits and the entitlement of employees had been clearly spelt out by provisions of the Maternity Benefit Act, and since the said Act was a social welfare and benevolent legislation, the term 'establishment' had to be construed liberally to include RITES.

RITES, is an instrumentality of State (under Article 12 of the Constitution of India) and therefore bound by Part III of the Constitution. In view of the admitted facts regarding petitioners continued employment and the circumstances that the petitioner went on leave with effect from 11.11.2000 after which she delivered the baby on 5.12.2000, the RITES could not have escaped its obligations to pay benefits under the Maternity Benefit Act 1961.

11. Vandana Kandari vs. University of Delhi 170 (2010) DLT 755

The court held that any Act on the part of any university or college which deprives or detains in any semester any female student, merely on

the ground that she was unable to attend classes, being in the advanced stage of pregnancy, or due to the delivery of the child, is an act which completely negates not only the conscience of the Constitution but also women's rights and the concept of gender equality. Withholding relaxation to these students is equivalent to making motherhood a crime.

The apex court has in of Lata Singh v. State of U.P AIR 2006 SC 2522 and S. Khushboo v. Kanniamal and Anr. MANU/SC/0310/2010 held that live- in relationships and pre-marital sex as not being offences, recognizing their legal validity. "The society today is changing at a rapid pace and we must be in tune with the realities and not hold on to archaic social mores. Once such a right, however unpopular, is recognized then it cannot be ruled out that there can be more cases of girl students proceeding on maternity leave when while they are still in college." Therefore a female student cannot be deprived of her student status or be detained in any semester due to her inability to attend classes because of her pregnancy.

12. Dr. Vishakha Kapoor vs. National Board Of Examination and Anr. MANU/DE/0971/2009

- The appellant was served with termination order after giving birth to a child on the ground of unauthorized absence. The appellant claimed that the termination letter exhibited infirmities and complete insensitivity to basic human rights and values. The appellant had return and application seeking maternity leave immediately after giving birth to a child.

  It was admitted and established through facts that the Respondent is an establishment within the meaning of the Act.

- Hon'ble court held, "Section 12 of the Act makes it clear that where a woman absents herself from work in accordance with the provisions of the Act, it shall be unlawful for her employer to discharge or dismiss her on account of such absence. The second part of said Sub-section further stipulates that any notice of discharge or dismissal that would expire during such absence or which would vary to her disadvantage any of the conditions of her service shall be unlawful. A reading of the aforesaid Sections makes it clear that the Appellant was entitled to 12 weeks of leave including up to six weeks before delivery and the rest after birth of the child on 16.1.2008. This aspect was completely unnoticed and has been ignored while passing the termination order dated

8.2.2008. The entitlement to leave upto maximum period of 12 weeks is statutory and mandatory. The termination order ignores this and treats this period of 12 weeks as unauthorized leave and is, therefore, contrary to law. Secondly, the notice of discharge/dismissal could not have been issued during this period of statutory leave/absence. The Appellant was entitled to at least six weeks leave from the date of birth of her child on 16.1.2008. The notice of discharge/termination was issued on 8.2.2008 within this period of six weeks."

- Hence the termination order was found liable to be struck down.

PUNJAB AND HARYANA

13. Anima Goel Ms. vs. Haryana State Agricultural Marketing Board [2007 (112) FLR 1134]: [2007] IIILLJ 64 P H, 2008 [1] SLJ 121 P H.

The petition was directed against the orders declining the request of the petitioner to grant her maternity leave. The petitioner was working as a contractual employee; the issue raised was as to whether the petitioner was entitled to the benefit of S.5 of the Maternity Benefit Act. This matter had already been decided by the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi v. Female Workers (muster, Roll) and Anr, a view which was upheld in the case of Smt. Vandana Sharma and Anr. V.State of Haryana and Ors. C.W.P. No. 5518/2002, decided on April 11, 2002 and other number of petitions.

14. Mrs. SavitAhuja vs. State of Haryana and others. 1988 (1) SLR 735

The Hon'ble Court observed that merely because the appointment of the petitioner was on ad hoc basis, she should not be disentitled of maternity leave, a privilege available to all other government servants of the States appointed on regular basis. Such disentitlement would result in the services of the ad hoc female employee who is pregnant and has reached the stage of confinement being terminated. This would be highly unjust and discriminatory against female ad hoc employee on the ground of sex which violates Articles 14, 15and 16 of the Constitution. Being ultra vires of the Constitution it cannot be sustained.

15. Division Bench of the Punjab & Haryana High Court in the case of RajBala vs. State of Haryana and Ors., 2002(3) RSJ 43

- The contention of the State government that several mistresses, teachers, lecturers appointed in different schools and colleges in the States were not entitled to maternity leave on the ground they were contractual appointees was rejected on the basis of the decisions of the Supreme Court in the case of Rattan Lal (supra) and Municipal Corporation (supra). Hence, the state government was directed to grand the benefit of maternity leave to the petitioners.

- The Court further observed, "…there is hardly any distinction between an ad hoc employee and a contractual employee. Both are engaged for a definite term as may be specified in the letter of appointment. So far as they are performing the same duties and functions and are holding the same post, it will be very difficult to draw the fine line of distinction between these two classes."

16. Parkasho Devi vs. Uttar Haryana BijliVitran Nigam Limited and Ors. (2008) IIILLJ 488 P&H

- In view of the Rules of the Punjab Civil Services Rules (Vol. I Part I)applicable to Haryana and adopted by the Nigam the claim of the petitioner for grant of maternity leave benefit on account of miscarriage was not maintain as she had three living children.

- Court observed and explained, "So far as reliance placed by learned Counsel for the petitioner upon the provisions of Section 9 of the Act to content that the petitioner is entitled to six weeks' maternity leave because under this Section there is no restriction that the maternity leave benefit will be available upto two living children only is concerned, it may be stated that it is clearly stated in Section 2 of the Act that it applies, in the first instance, to every establishment being a factory, mine or plantation including any such establishment belonging to government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. It shall also apply to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months. As such, the provisions of the Act do not apply to the employees of the Nigam."

RAJASTHAN

17. Durgesh Sharma vs. State of Rajasthan and others. Judgment delivered on 24/09/2007 by Justice P.S. Asopa. RLW2008(2)Raj1304

- The petitioner challenged the order of the Respondent which directed that employees working on consolidated /fixed salary were not entitled to maternity leave.
- Held, that the matter was to be understood with reference to Rule 103 of the Rajasthan Service Rules read with Circular dated 25.2.55 according to which a female government servant was entitled thrice for maternity leave, and that this court interpreted the Rule 103 of RSR and Circular by holding that the same is applicable to the person working in temporary capacity, though getting consolidated wages. The legislation made by the Parliament for casual worker and Rule 103 of RSR had been promulgated by the then Rajpramukh of Rajasthan under Article 309 of the Constitution of India made no distinction on the ground of mode of payment of the female casual labour and female Govt. employees for grant of maternity leave.
- Therefore the impugned order was held liable to be quashed.

18. Smt. NeetuChoudhary vs. State of Rajasthan and Ors, 2005(5) RDD 1144 (Raj.)

- Maternity benefit cannot be denied to the female employees merely on account of the mode of payment of wages.

19. Dr. (Smt.) Hemlata Saraswat vs. State of Rajasthan and Ors.MANU/RH/0004/2008

- Held, that the communication made by Directorate of Medical and Health Services, Rajasthan, Jaipur denying maternity leave to the petitioner on the ground that the rules did not mention about grant of such leave to the Medical Officer working on consolidated salary, was unjustified and did not appear bonafide.
- "…No distinction with regard to nature of appointment of female Government servant can be made by Government for grant of maternity leave U/r 103 of RSR since natural course has to take

place at its own and nature of appointment is of no significance for purposes of maternity leave."

- The concerned authorities disregarded their Constitutional duties as well as the decisions rendered by the Apex Court in Neetu Choudhary (decided on 19.04.2005) and Smt. Sumitra Choudhary (decided on 19.09.2005) and Female Workers (Muster Roll). In view of these the impugned communication stood quashed.

KERALA

20. Management of Kallayar Estate, Jay Shree Tea and Industries Ltd. vs. Chief Inspector of Plantations and Anr. , [1999 (81) FLR 639].

- In the instant case the Court dealt with the question as to whether for being entitled to the relief as provided in S.9 of the Act, i.e leave for miscarriage, whether a woman worker should have put in 160 days of work prior to the miscarriage, as is the requirement U/S.5 of the Act.

- S.5 clearly lays down that in the case of delivery a woman worker is entitled to 12 weeks leave i.e., six weeks for pre-natal period and six weeks for post-natal period and in the case of miscarriage she is entitled only for the period of 6 weeks leave with wages following the day of miscarriage on production of a certificate.

- Provisions contemplated U/S.9 and 5 are independent of each other and should not be related or combined. Their relation, if at all, is limited in scope, i.e, so far as the rate of benefit is concerned. Only in this context have the two been treated at par. If the condition prescribed in S.5 were also applicable to S.9, the leave for miscarriage could have been mentioned in S.5 itself. "Considering the intention of the Legislature and the condition prescribed in Section 5 of the Act and in the absence of similar condition in Section 9, I am of the view that in the case of miscarriage of a woman worker, she can claim the benefit under Section 9 even if she has not worked for 160 days in the period of 12 months preceding date of miscarriage."

- Due to the unexpected nature of miscarriage, being beyond the control of any woman, there cannot be a date of 'expected

delivery'. Most importantly, the Maternity Benefit Act, being a piece of social welfare legislation has to interpreted and decided in favour of the workman whenever a question of interpretation arises- it is a commitment of the welfare state.

21. Dr. Thomas Eapen vs. Asst. Labour Officer and Ors. (1993)IILLJ 847 Ker

The issue dealt with the interpretation of Sections 6 and 23 of Travancore and Cochin Shops and Establishments Act, 1125, Maternity benefits Act, 1961 and Section 5 of Kerala Shops and Establishments Act, 1960. Petitioner contended the respondents claim for maternity benefit on the ground that hospitals were not covered by the Act as per the government notification.

Petitioner stated that the definition of 'shops' covered hospitals and express notification entitled him to take exemption from granting maternity benefit

However, this decision was later overruled holding that "*exemption under S&E Act does not mean exemption from operation of Maternity Benefit Act, 1961*"

22. Ram BahadurThakur (P) Ltd. vs. Respondent: Chief Inspector of Plantations, (1989) IILLJ 20 Ker.

- Question arose as to whether the four days during which the third respondent worked for half a day each can be counted as full days for computing the period of 160 days as contemplated in Section 5(2) of the Act.
- Court stated that if for computing annual leave with wages, half or more than half day's (less than a full day) work was to be reckoned as one day, there was no reason why a different view in computing 160 days under the Act should be taken. "This view will advance the object of the Act. The Maternity Benefit Act is a beneficial piece of legislation which is intended to achieve the object of doing social justice to women workers employed in factories, mines or plantations". Therefore a beneficent rule of construction has to be adopted by the courts. The Plantations Labour Act was also of similar nature for workers engaged in plantations. When a women worker was entitled to annual leave with wages at the rate of one day for every 20 days work and in

calculating those 20 days, half a day's work was to be counted as one day, then the same mode of calculation should have been adopted in calculating the number of actual days of work U/S.5 (2) of the Act as well.

23. Tata Tea Ltd. vs. Inspector of Plantations. (1992) ILLJ 603 Ker

- If an employee is enjoying maternity benefit within the meaning of the Maternity Benefit Act, the employer cannot call upon her to come and work on holidays.
- It was also held that payments that have already been made by the employer towards the wages under the National and Festival Holidays Act should not be adjusted from the maternity benefit the employees are entitled to get under the Maternity Benefit Act.

24. Malayalam Plantations Ltd. vs Inspector of Plantations (AIR 1975 Ker.86)

- The full bench of the Court, in accordance with the view that maternity benefit was to be calculated with reference to the working days only, held that nothing in the Act indicated the duration of maternity benefit would cover non- working wage–less days .Thus days of the week for which a women worker was entitled to the benefit was to be multiplied by 6 and not by 7.
- This view was overruled by the Supreme Court in B. Shah v Labour Court Coimbatore (AIR 1978 SC 12)

25. Noorul Islam Education Trust vs. Assistant Labour Offices, [2008 (117) FLR 533]

According to the petitioner, who relied on ***Dr. Thomas Eapen Vs. Asst. Labour Officer and Or,*** by virtue of the government notification U/S.5 of Kerala' Shops and Commercial Establishments Act, 1960, private hospitals were exempted from all provisions of the said Act; and in view of this exemption, petitioner contended that the provisions of the Maternity Benefit Act were also not applicable to it.

- According to Maternity Benefit Act, provisions are applicable to all shops & establishment with effect from January 10, 1989 by virtue of the express provision contained in clause (b) of S.2(1)

which states that the provisions of the Maternity Benefit Act are applicable to all the "shops" and "establishments" in the State of Kerala as those terms are understood under the provisions of the Kerala Shops and Commercial Establishments Act, 1960, provided ten or more persons are employed in them as stipulated.

- It was not disputed that hospital qualified as an establishment for the purposes of Section.2(8) and that was the reason why the government had exempted it from the provisions of the said Act by the notification U/S.5. Yet private hospitals continued to be covered by the provisions of the M.B. Act as an effect of S.2(1), irrespective of the exemption they enjoyed under Kerala' Shops and Commercial Establishments Act. Thus the decision in *Dr. Thomas Eapen Vs. Asst. Labour Officer and Or* did not lay down the correct legal position and hence stood overruled.

JAMMU AND KASHMIR

26. Jammu & Kashmir High Court in the case of Simi Dutta vs. State, 2001(4) SCT 726

The claim of a lecturer, appointed on an ad hoc basis, for Maternity leave was allowed. The Court rejected the position of the State Government holding that a distinction had to be made between female employees appointed to the regular basis and those on ad hoc basis.

GUJARAT

27. Yamini J Dave vs. The Director, IUCAA and Another. Gujarat High Court - Decided On: 06.04.2004 MANU/GJ/0316/2004

Held, that termination effected during persons absence owing to maternity leave during probation period, is illegal.

28. BhartibenBabulal Joshi vs. Administrative Officer. Judgment delivered on 23/12/2003 Gujarat HC, MANU/GJ/0692/2003

The Court laid down that the fact that the petitioner was not in regular service was no ground to deny maternity benefit to her. Held, petitioner was entitled to the benefit of maternity leave along with salary for duration of such leave.

29. F.M. Kolia and Anr. vs.Manager, The Tiles and Pottery Works Ltd. and Ors. (1981) 22 GLR 528

Petitioner applied for maternity leave pay under M.B Act 1961 but her claimed was contested on the ground that she had attended work only for 143 days.

The establishment was seasonal factory which worked for only 8 month in a year and consequently the petitioner was 'prevented' from working during raining season as the factory remained closed. "..the establishment remains closed "for any other reason" contemplated by Section 2(kkk) of the Industrial Disputes Act, 1947. Therefore, days during rainy season when factory remains closed should be added to the days during which she worked."

In the light of this perspective, Court held that she had undisputedly completed 160 days as required by the Act qualifying for the benefit under S.5(2).

UTTAR PRADESH

30. Mrs. PramilaRawat vs. District Judge, Lucknow, and another. Judgment delivered on 10/05/2000 by Justice Pradeep Kant, 2000 AWC 1938

The petitioner was appointed on ad hoc basis on the post of Class 4 employee and continued to work without break. When the petitioner applied for maternity leave, she was refused the same and was compelled to perform her duties. Once she took leave for delivery she was not allowed to resume work, even though no order for termination had been passed.

Court held that the argument of the State counsel amounted to the creation of discrimination amongst female employees on the basis of the nature of their appointment, although the conditions of service were the same for all. Maternity benefit had to be extended to every woman irrespective of the capacity in which she had been employed by the government. The denial of maternity leave would be discriminatory in addition to putting in danger a woman's most satisfying desire of becoming a mother, only because she chose or was compelled to earn a livelihood by joining government service.

The relevant Rule 153 was amended to enlarge its scope and extend its benefit to temporary workers, and the words "female Government

servants" were followed by "whether permanent or temporary". But it should not be understood to imply that the definition has been confined to the extent that has been mentioned, that is, only permanent temporary government servants. "The harmonious and meaningful construction of the aforesaid provision would mean that a female Government servant event though she may be permanent or temporary, i.e., irrespective of the nature of her appointment and the capacity in which she has been appointed would be entitled for maternity benefit."

A different interpretation of the rule R.153 would be violative of Articles 14, 15 and 16 of the Constitution.

TAMIL NADU

31. S. Gowrishankar (Minor) rep. by Legal Guardian, Tmt. K. Ranganayagi vs. Respondent: The Secretary to Government, Government of Tamil Nadu, Finance (Pension) Department, The District AdiDravida Welfare Officer and The Accountant General (2008) 1MLJ 407

The question before the Court was whether children born of unwed mothers are eligible for pension benefits. The Hon'ble Court laid down– "For the purpose of Convention, the term "woman" means any female person, irrespective of age, nationality, race or creed, whether married or unmarried, and the term "child" means any child whether born of marriage or not." India is a party to the said Convention and in view of the same the M.B.Act 1961 was enacted adopting the same principle. This definition clearly shows that for the purpose of availing maternity benefit, giving birth after marriage is not relevant. The intention is to protect the mother and child. If the child who is born to an unwed mother is denied the right of inheritance from his own mother, there is a likelihood of the child being not cared by the society and becoming a vagrant which certainly could never have been the intention of our Constitution makers. Article 39(e) enjoins the State to protect, among other groups, children against abuse so that they are not forced by economic necessity to enter avocations unsuited to their age or strength.

In the decision Madhu Kishwar and Ors. v. State of Bihar and Ors. it has been held by the Supreme Court that India is party to Vienna Convention on the Elimination of all forms of all forms of Discrimination against Women (for short" CEDAW").

Article 1 has defined discrimination against women as –"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose on impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

Article 2(b) enjoin the State parties to eliminate discrimination against women by adopting "appropriate legislative measures and modification or abolishing existing laws, regulations, customs and practices which constitute discrimination against women.

Article 15 enjoins to accord to women equality with men before the law, in particular, to administer property…

"Though the directive principles and fundamental rights provide the matrix for development of human personality and elimination of discrimination, these conventions add urgency and teeth for immediate implementation".

"Covenants of the United Nation add impetus and urgency to eliminate gender-based obstacles and discrimination. Legislative action should be devised suitably to constitute economic empowerment of women in socio-economic restructure for establishing egalitarian social order. Law is instrument of social change as well as the defender for social change".

According to the U.N report of 1980 women constitute half of the world population, perform almost to thirds of work hours, receive one tenth of the worlds income and own less than one hundredth percent of world's property.

Articles 13, 14, 15 and 16 of the Indian Constitution prohibit discrimination on the ground of sex. Thus they combined effect of relevant provisions of our Constitution and CEDAW would imply state duty towards elimination of discrimination against women and therefore, children born of unwed mothers were held to be eligible for pension benefits.

32. S. Amudha vs. Respondent: Chairman, Neyveli Lignite Corporation, (1991) IILLJ 234 Mad.

Hon'ble court laid down that the non- selection of the petitioner on the ground that she was in the family way by 16 weeks was violative of Articles 14, 15 and 21 of the Constitution.

If no stipulation that a pregnant woman cannot be considered at the time of application, then such ground cannot hold good. She shall also be entitled to benefit under the M.B. Act. "When there is no physical hindrance while the appellant was working under the contract labour system, pregnancy cannot be a ground even to temporarily disqualify her.

Held, in Article 21 of the Constitution of India, life cannot be considered to be a mechanical one. It is attendant with all that is required to make the life blossom and all enjoyment within the permissible limits of law."

The right to beget a child is undoubtedly a fundamental right and the state or an authority like the Respondent Corporation cannot, by enforcing a regulation impose itself in this manner, curtailing the personal freedom of a woman who chooses to have a child. Depriving a woman of her right to earn a livelihood in spite of her selection, especially in times when unemployment is widespread and acute cannot be appreciated.

To argue that the petitioner was temporarily unfit does not stand scrutiny from the medical perspective. The Regulation did not classify the categories of service making it applicable to all-from a stenographer to an assistant doing desk work. From this point of view it is certainly arbitrary and therefore violative of Article 14.

Court held that the impugned Regulation was clearly archaic, opposed to civilized life and violated the fundamental rights enshrined in Article 14 and 21 of the Constitution.

33. Sivanarul vs. State of Tamil-Nadu (1985) IILLJ 133 Mad

It was argued that when a teacher took maternity leave, the education of children was effected and that due to lack of funds a substitute could not be appointed. The Hon'ble Court opined that this argument was ridden with assumptions –that in these modern days one should necessarily beget a child is unwarranted. Moreover, marriage is not merely a physical union but a union between two spirits. "No less than the Father of Nation, Mahatma Gandhi eloquently said; "Marriage is a natural thing in life, and to consider it derogatory in any manner is wholly wrong. The idea is to look upon marriage as a sacrament…"

The Court explained that, "To say that a teacher will lose her services on getting married is to forget the fact that the bloom or light of all life's

happiness consists in marriage. It is nothing more than a civilized way of living. To tie it merely to sex is not only obnoxious but is untrue."

34. N. Mohammed Mohideen and Sahna vs. The Deputy Commissioner of Labour (Inspection) (Beedi and Cigar Establishments Chief Inspector- Appellate Authority under the Maternity Benefit Act, 1961) and Inspector of Labour (Women) (Under the Maternity Benefit Act, 1961) (2009) ILLJ 177 Mad.

The facts of the case are that Respondent no.3 used to roll beedis in the petitioner's establishment. Respondent no.3 worked under Respondent no.1. Respondent no.3 gave birth to a third child and claimed for maternity benefit. Respondent no 2 issued notice to petitioner and computed some amount. Respondent no 3 filed appeal before appellate authority, but was dismissed on ground of limitation.

Held, that one of the basic human rights contained in the Universal Declaration of Human Rights is special care and assistance for motherhood. In pursuance of its world-wide programme regarding provisions for maternity protection, the ILO has adopted Conventions no.3 and 103 and a Recommendation no.95 concerning maternity protection. Even though India has not ratified the convention, it does subscribe to the principles contained therein, and one of the Directive Principles of State policy of the Indian Constitution is that the should make provision for maternity relief.

- Hon'ble Court observed, "There is no provision under the M.B. Act fixing any ceiling on the number of deliveries made by a female worker. So long as Article 42 of the Constitution read with the provisions of the M.B. Act is available, every female worker covered by the Act is entitled to claim maternity benefits without any ceiling on the number of deliveries made by them. That will be the correct interpretation which will be in tune with the judgment of the Supreme Court rendered in B. Shah V. Labour Court, Coimbatore and others [1977 (2) L.L.N. 606]"

35. Tata Tea Limited, Velonie Estate vs. The State of Tamil Nadu represented by its Secretary to Government, Labour and Employment Department and Ors. (2010) IILLJ 762 Mad.

In construing Welfare Statutes in the light of well-settled principles of statutory construction, literal construction must be avoided and

instances of misapplication must be recognised. "Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds."

In Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court it was emphasized that, "Welfare statutes must, of necessity, receive a broad interpretation." In view of this perspective the contention that weekly off and other holidays cannot be counted, cannot be accepted.

In the matter of a plantation worker claiming maternity benefit, it was held that payment for 12 weeks did not mean 72 days (i.e. paid working days), but it should be paid for a total of 84 days. This interpretation was rendered by the Supreme Court in B. Shah v. Presiding Officer, Labour Court reported in (1977) 4 SCC 384.

Justice Ganguly expressed concern sharing the anxiety of Justice Singhvi, about a recent disturbing trend which is contrary to the above position and is sought to be justified in the name of globalization and liberalization of economy.

36. J. Sharmila vs. The secretary to Government, Education Department, The Chief Educational Officer, SarvaSikshaAbiyan and the Chief Educational Officer, SarvaSikshaAbiyan MANU/TN/3321/2010

The petitioner, a Block Resources Teacher Educator in Math's in Thoothukudi District, was denied maternity benefit for her second delivery stating that during the first labour, she had given birth to twins and therefore, by the present delivery, she had given birth to a third child. Hence by the order of the Government in G.O. Ms. No. 237, School Education Department, dated 29.6.1993 she would not be paid wages for her leave.

The question raised in the instant writ petition was as to whether a married woman Government servant was entitled to get fully paid towards maternity leave availed if she already had two surviving children.

The Hon'ble Court observed that the rule which required unmarried women to give up service on marriage was frowned upon by the Apex Court- Bombay Labour Union v. International Franchise Pvt. Ltd.

The Supreme Court in more than one decision tried to justify the rule

restricting the benefits beyond two child norm based on public policy and family planning as the goal of the State. In Air India case (cited supra) it was stated that "the Rule could be suitably amended so as to terminate the services of an Air Hostess on third pregnancy provided two children are alive which would be both salutary and reasonable for two reasons"- namely the health of the Air Hostess and the problem of over-population.

This observation came to be quoted in Javed's case (cited supra) where the Supreme Court was dealing with the disqualifying provisions found in the Haryana Panchayati Raj Act from contesting election. "But in both judgments, the constitutional guarantee as well as non obstante clause found in the Maternity Benefit Act, 1961 were not considered. So long as the non obstante clause is found under Section 27, the constitutional obligation found under Article 42 as well as ILO norms set out above are to be the guiding factor, it is not open to the Government to deny maternity protection including paid leave as provided."

The intention of the State Government is to afford protection to the woman for her second delivery and therefore it ought not to be based upon the number of children delivered by her in those two deliveries. The significance is to be gauged from the point of view of health of woman. Government did not accept the reasons found in the impugned order. Hence the petitioner is entitled to be paid full salary for the period of maternity leave.

CENTRAL ADMINISTRATIVE TRIBUNAL

37. Dr. Subina Narang vs. Union of India (UOI) and Ors. 2009(3) SLJ 263 (CAT)

Departmental candidates were eligible to appear in the selection through open selection. If they qualified, they were to be treated as having been promoted. Private Respondent and applicant were the only two departmental candidates aspiring for the post, but the circular issued by the Director to all concerned departments, was not circulated to these two. Respondents should have ensured that the applicant who was on maternity leave was duly informed. Hon'ble Court stated that "the applicant chose not to apply in time not out of choice but for the reasons beyond her control."

Article 11 of CEDAW, covering aspects such as maternity leave, social security, prohibiting dismissal on grounds of pregnancy, maternity leave,

special protection to women during pregnancy, protection of health, the right to free choice of profession and promotion and condition of service etc. lays down that States/parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.

Considering the decision in Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Anr where it was held that the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42.

Hon'ble Supreme Court concluded that no adverse action put be taken against the woman employee while she was on maternity leave, prohibiting dismissal or varying condition of service to her disadvantage during or on account of such absence.

Thus, held, that when the applicant was on maternity leave the Respondent should have made sure that she received the circular so that she could have applied for the post. There was no dispute that the applicant was eligible for selection.

38. Ms. SonikaKohli and Anr. vs. Union of India (UOI) and Ors., 2004 (3) SLJ 54 (CAT)

It was argued that maternity leave was not admissible to contract employees since they were not covered by the Punjab CSR Vol. I, Part-I., and was payable only two permanent/regular female employees.

The claim for maternity benefit is founded on the basis of fair play and social justice. In the background of Articles 42, 43 and 39 the Parliament enacted the M.B. Act in 1961 with the objective of regulating employment of women in certain establishment for certain before and after child birth and to provide for maternity and certain other benefits.

Hon'ble Court opined that to carve out a distinction between contract/part time teachers and regular teachers, as was done by the Administration in the instant case, is to view this problem in a narrow way. Anyone acquainted with the working of the Constitution and its objective of social and economic justice would without a doubt reject such an arguments. Court stated, "The weight of the law is that the contract appointees who cannot be differentiated in any manner with the ad hoc appointees are entitled to the benefit of maternity leave…In our view, all the female

teachers appointed on contract basis, are entitled to maternity leave as is admissible to the regular employees in accordance with the rules."

39. UmaRani, M.S. and Anr. vs.Union of India (UOI) and Ors. 2008(3) SLJ346(CAT)

Settling the issues as to the position of contract employees with regard to maternity benefit, Hon'ble Court held,

"Since, as per the terms and conditions mentioned above, the applicants are governed by the relevant rules and orders in force from time to time, and, since the maternity rule comes under Special kind of leave (other than Study leave), and the respondents have granted such leave earlier and in view of the principle laid down by the Apex Court in the case of Municipal Corporation of Delhi (supra), Maternity leave cannot be denied on the ground that Rule 43 of the CCS (Leave) Rules applies only in case of female Government servants including an apprentice or that the O.Ms. (supra) do not provide for maternity benefit to the Contract employees. It is pertinent to mention here that since the applicants herein have been appointed on contract basis and are working for about 10/8 years in a Central Government Organization, it is most natural for the female workmen to become mother as already pointed out by the Apex Court "to become a mother is the most natural phenomenon in the life of a woman." Respondents are, therefore, not justified in denying to provide maternity benefit to the female workmen who are working for them for years together".

4.2 MAJOR TRENDS IN JUDICIAL RESPONSE

It has been earlier noted that case laws regarding Maternity Benefit Act 1961 are few. Yet a reading of the judicial response to these makes it amply clear that the courts have done all that is within their power to uphold this piece of welfare legislation in its true letter and spirit.

Time and again the Apex court has reiterated while pronouncing judgments that the Maternity Benefit Act being a piece of welfare legislation which aims at protecting the health of the pregnant mother and her fetus , must necessarily be given a broad interpretation in favour of the woman worker by applying the beneficent rule of construction.

This would be in consonance with the Constitutional guaranty provided under Article 14, 15, 21, 42 upholding principles of equality, non-discrimination, right to life and directive principles of state policy.

Thus in various judgments the Apex court clearly laid down that the mode of payment, nature of appointment or service in the form of contractual, regular or non regular, permanent or temporary cannot be made grounds for denying maternity benefit to female employees.

The court recognizes the significance of the reproductive role and freedom of choice to be exercised by women and has ruled against arguments based on gender stereotypes employed by employers to discriminate against their female employees with regard to maternity.

It has been emphasized through several case laws that mere technicalities must not be allowed to defeat the purpose of Maternity Benefit Act, which is to allow women to efficiently balance their reproductive as well as productive roles. Therefore, the provisions of Maternity Benefit Act ought to be construed in the light of broader principles enshrined in our Constitutions, Universal Declaration of Human Right, and CEDAW(Convention on Elimination of all forms of Discrimination against women) etc.

The Supreme Court has generated a lot of optimism in this regard and has consistently taken a progressive view by laying down that the marital status of the woman, her living arrangement etc., cannot be valid grounds for withholding maternity benefit. The employers need not concern themselves with these. The court has visibly tried to expand the definition of terms such as 'establishment' , ' employee ' , 'working day', etc so as to bring under the protective umbrella of the Act as many working women as possible.

No such action by the employer or interpretation of the legislation should be upheld that serves to curtail the personal freedom of the woman who chooses to have a child. The State must recognize the social role of motherhood and extend as much assistance as possible in aiding a woman, who chooses to do both simultaneously- be a mother and work.

Chapter 5
Key Aspects of Maternity Leave

5.1 INTRODUCTION

The present chapter discusses the key aspects of Maternity leave provisions: the duration, the benefits and the source of the funding; examines the Employer & beneficiaries' perspective on Maternity Benefits Act; within the organization others existing measures for maternity protection; and also looks into the issue of non regular work among the workers due to maternity related issues.

The analysis is based on in-depth interview samples of 800 employees and 200 employers in various sectors like IT, ITES, Health and Education. Sample covered mothers in age brackets of 25-40 years. Women, mostly with small children, who at some time in their careers felt the need for proper maternity leaves in order to maintain work-family life balance.

It is a well known fact that women form a large part of the workforce in our economy, and their numbers in this role are only increasing. Going by the data provided by the employers regarding the number of women employed by them about 75% were shouldering the responsibilities of children. Impliedly, these women would have required maternity protection at some point in their careers. Thus, maternity protection is a crucial issue affecting a very large number of women who form a major chunk of our labour force.

In the course of our study we discovered that one of the reasons why working women make the choice to shift from one establishment to another, or take a career break is pregnancy and childbirth. Understandably, these women do not receive the kind of protection, assistance or benefit required by them during, before or after pregnancy and therefore, are very often, 'forced' out of the labour market.

In contrast to this, in countries where sturdy and sound systems of maternity protection have been followed, women's attachment to the labour force, their loyalty and commitment to their work and employer has been found to be stronger. Clearly, maternity protection and benefits are a crucial incentive for women to remain attached to the workforce.

5.2 BACKGROUND OF THE SAMPLE SURVEYED

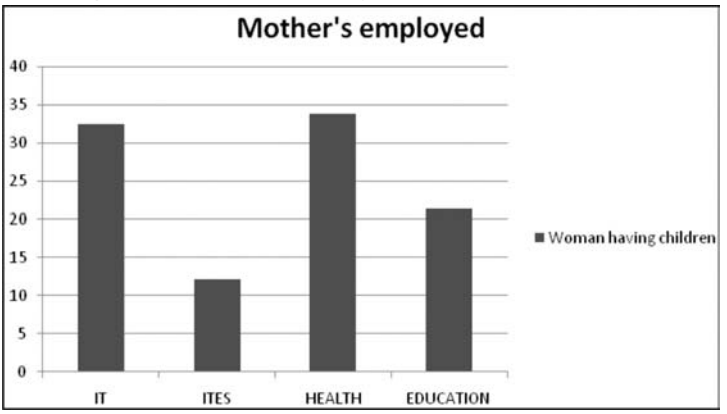
5.2.1 Percentage of Mother's Employed

TABLE 5.1
Percentage of Mother's employed in various sectors studied

	IT	ITES	HEALTH	EDUCATION
Mother's employed	32.4	12.2	33.8	21.4

Source: field Survey

GRAPH 5.1
Percentage of Mother's employed in various sectors studied



Source: Table 5.1

Table 5.1 above shows that 32% of women in IT, 12% in ITES, 33% in Health and 21% in Education Sector were the women with children.

5.2.2 Education Level

TABLE 5.2: Education Level

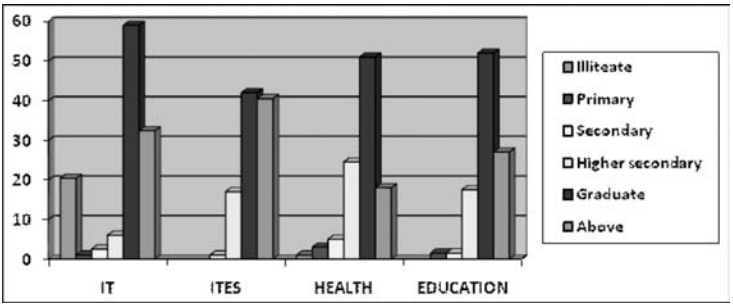
(In %)

Qualification	IT	ITES	HEALTH	EDUCATION
Illiterate	-	-	1	-
Primary	1		3	1.5
Secondary	2.5	1	5	1.5
Higher secondary	6	17	24.5	17.5
Graduate	59	42	51	52
Above	32.5	40.5	18	27

Source: Field Survey

GRAPH 5.2: Education Level

(In %)



Source: Table 5.2

Above Table (5.2) highlights that the maximum percentage of qualified staff in the various sectors studied i.e. 59% in IT, 42% in ITES, 51% in Health, 52% in Education Sector were Graduate. It is this category of women who benefited most from Maternity Benefit Act as they were aware of there rights and were assertive in availing their rights compared to other women which were less qualified comparatively.

5.2.3 Education Level of Beneficiaries' availing Maternity Leave

TABLE 5.3: Education Level of beneficiaries in IT sector

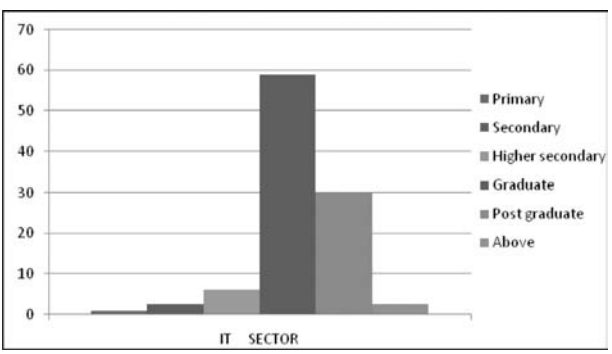
(In %)

Education level	Primary	Secondary	Higher secondary	Graduate	Post graduate	Above
IT SECTOR	1	2.5	6	59	30	2.5

Source: Field Survey

GRAPH 5.3: Education Level of beneficiaries in IT sector

(In %)



Source: Table 5.3

Table above (5.3) shows that maximum percentage of women who availed Maternity Leave were Graduate, as the Percentage of Graduate were highest in IT sector, as seen in the Table 5.2

TABLE 5.4: Education Level of beneficiaries in ITES sector

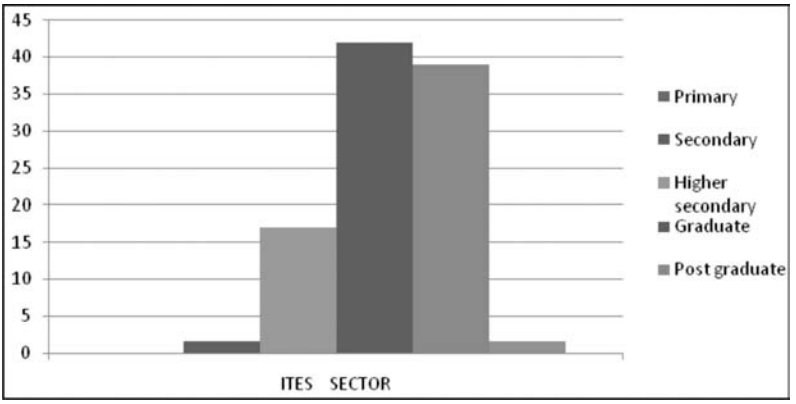
(In %)

Education level	Primary	Secondary	Higher secondary	Graduate	Post graduate	Above
ITES SECTOR	NIL	1.5	17	42	39	1.5

Source: Field Survey

GRAPH 5.4:
Education Level of beneficiaries in ITES sector

(In %)



Source: Table 5.4

Table above (5.4) shows that maximum percentage of women who availed Maternity Leave were Graduate, as the Percentage of Graduate were highest in ITES sector, as seen in the Table 5.2

TABLE 5.5: Education Level of beneficiaries in Health sector

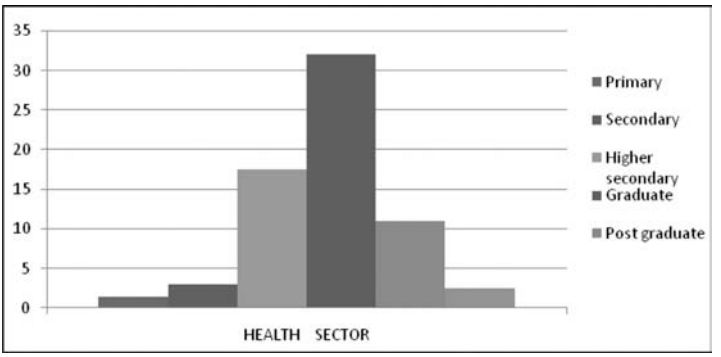
(In %)

Education level	Primary	Secondary	Higher secondary	Graduate	Post graduate	Above
HEALTH SECTOR	1.5	3	17.5	32	11	2.5

Source: Field Survey

GRAPH 5.5: Education Level of beneficiaries in Health sector

(In %)



Source: Table 5.5

Table above (5.5) shows that maximum percentage of women who availed Maternity Leave were Graduate, as the Percentage of Graduate were highest in Health sector, as seen in the Table 5.2

TABLE 5.6: Education Level of beneficiaries in Education sector

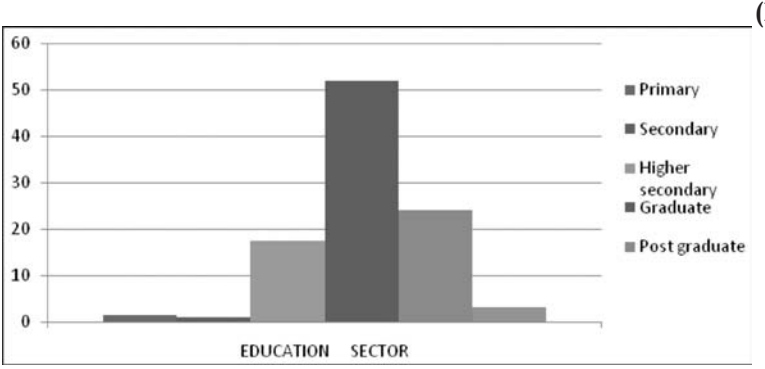
(In %)

Education level	Primary	Secondary	Higher secondary	Graduate	Post graduate	Above
EDUCATION SECTOR	1.5	1	17.5	52	24	3

Source: Field Survey

GRAPH 5.6: Education Level of beneficiaries in Education sector

(In %)



Source: Table 5.6

Table above (5.6) shows that maximum percentage of women who availed Maternity Leave were Graduate, as the Percentage of Graduate were highest in Education sector, as seen in the Table 5.2

Above tables shows that education does play an important role in availing legal rights.

5.2.4 Hierarchy Level within the Organisation

TABLE 5.7: Hierarchy Level within the Organisation

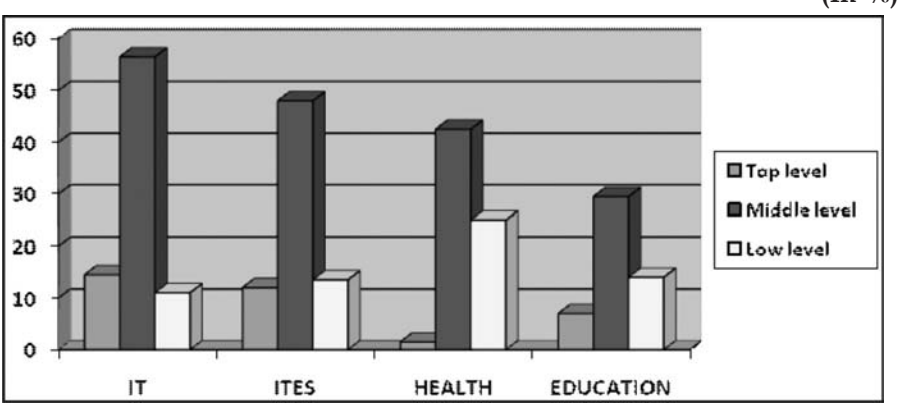
(In %)

Level	IT	ITES	HEALTH	EDUCATION
Top Level	14.5	12	1.5	7
Middle Level	56.5	48	42.5	29.5
Low Level	11	13.5	25	14

Source: Field Survey

GRAPH 5.7: Hierarchy Level within the Organisation

(In %)



Source: Table 5.7

Above Table 5.7 throws light on hierarchy with in the organizations. Top level represents the women earning above 50k. Middle level represents the women earning between 25k to 50k and Low level represents the women earning between 10k to25k. It was found that maximum percentage of women were working in Middle level category.

5.3 ISSUE OF NON-REGULAR WORK

5.3.1Shifts in Employment

TABLE 5.8: Shifts in Employment

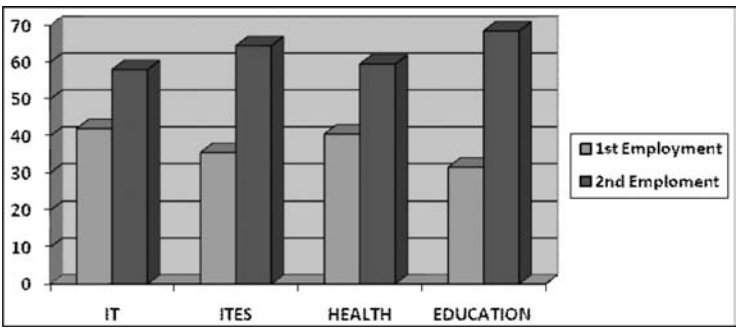
(In %)

	IT	ITES	HEALTH	EDUCATION
1st Employment	42	35.5	40.5	31.5
2nd Employment	58	64.5	59.5	68.5

Source: Field Survey

GRAPH 5.8: Shifts in Employment

(In %)



Source: Table 5.8

In the course of our study we discovered that one of the reasons why working women make the choice to shift from one establishment to another, or take a career break is pregnancy and childbirth. Understandably, these women do not receive the kind of protection, assistance or benefit required by them during, before or after pregnancy and therefore, are very often, 'forced' out of the labour market. In contrast to this, in countries where sturdy and sound systems of maternity protection have been followed, women's attachment to the labour force, their loyalty and commitment to their work and employer has been found to be stronger. Clearly, maternity protection and benefits are a crucial incentive for women to remain attached to the workforce. Table above (5.8) shows that 58% of women in IT sector, 64%in ITES, 59% in Health and 68% in education had shifted their Job due to Maternity related issues.

5.3.2 Reasons for Shift

TABLE 5.9: Reasons for shift

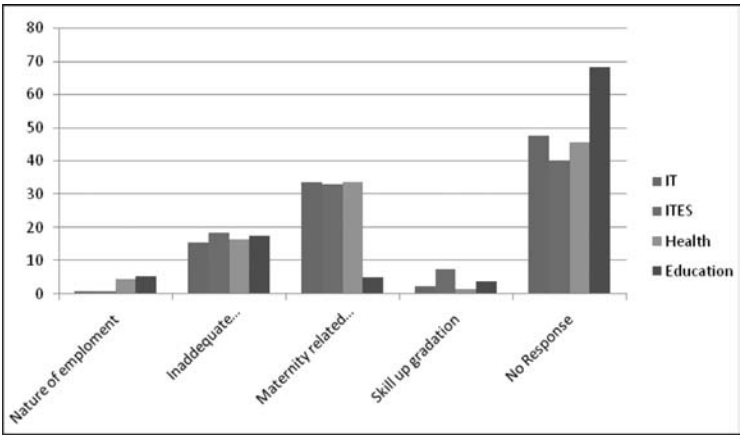
(In %)

Reasons for shift	IT	ITES	HEALTH	EDUCATION
Nature of employment	1	1	4.5	5.5
Inadequate wages	15.5	18.5	16.5	17.5
Maternity related reasons (Pregnancy or child birth, Other reason)	33.5	33	33.5	5
Skill up gradation	2.5	7.5	1.5	4
No Response	47.5	40	45.5	68

Source: Field Survey

GRAPH 5.9: Reasons for shift

(In %)



Source: Table 5.9

Above Table (5.9) highlights the reasons for shift in job. Majority of women moved to another job for reasons related to Maternity.

5.4 DURATION

Section 4 absolutely prohibits any women from working in an establishment during the six weeks after her delivery or miscarriage. Employers are forbidden to knowingly employ women during this period and employed women are required to take paid six-weeks leave. Pregnant

women have the further option of taking paid leave of absence up to six weeks before their expected date of delivery under Section 6(2). All working women are thus eligible for a total of 12 weeks of paid maternity leave, 6 weeks before and 6 weeks after delivery.

5.4.1 Total Period of Leave availed

TABLE 5.10: Total Period of leave availed

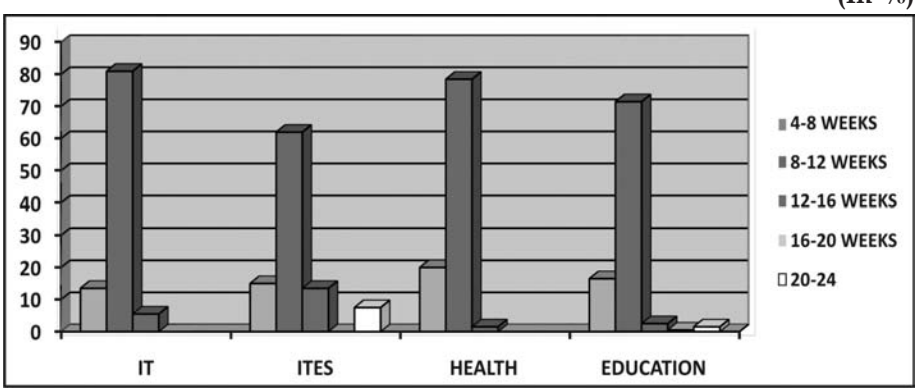
(In %)

	IT	ITES	HEALTH	EDUCATION
4-8 weeks	13.5	15	20	16.5
8-12 weeks	81	62	78.5	71.5
12-16 weeks	5.5	13.5	1.5	2.5
16-20 weeks	-	-	-	.5
20-24 weeks	-	7.5	-	1.5

Source: Field Survey

GRAPH 5.10: Total Period of leave availed

(In %)



Source: Table 5.10

A woman worker is entitled to maternity protection, as per the mandate of the Act she must receive at least 12 weeks of leave with pay. Table 5.10 shows that most women availed of or were provided either 12 weeks or less of maternity leave.

5.5 BENEFITS

ILO Conventions No. 3 and No. 103 emphasize that benefits should be provided through social insurance or other public funds and therefore that employers should not be individually liable for the cost of maternity benefits payable to women employed by them.

Three patterns tend to predominate for providing benefits collectively:

- In a number of countries, both maternity health care and paid maternity leave are part of a wider social insurance scheme which also characteristically covers retirement pensions, sickness and invalidity benefits, and health care costs.

- In another group of countries, both maternity medical costs and paid maternity leave are part of the health insurance system.

- In a third group of countries, paid maternity leave is administered in conjunction with cash sickness benefits or cash social insurance, while maternity medical costs are covered by the separate public or national health system.

- In India Employer has to make the entire contribution towards funding the benefits.

There are also a few countries with somewhat different patterns. For e.g. in New Zealand paid maternity leave is funded from general taxation, and the scheme is administered by the Inland Revenue Department. In Canada, there is a linkage to unemployment insurance. A few countries have individual employer liability schemes for paid maternity leave.

Section 5(1) of the Maternity Benefit Act provides that the maternity benefit to which every woman shall be entitled to and her employer shall be liable for, is a payment to a worker at the rate of average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for minimum six weeks immediately following that day.

5.5.1 Leave with Pay

TABLE 5.11: Leave with Pay

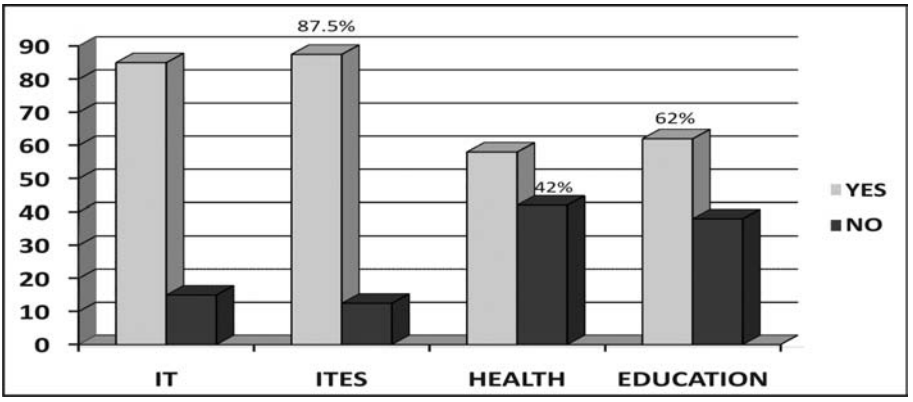
(In %)

	IT	ITES	HEALTH	EDUCATION
YES	85	87.5	58	62
NO	15	12.5	42	38

Source: Field Survey

GRAPH 5.11: Leave with Pay

(In %)



Source: Table 5.11

Table 5.11 illustrates that approximately 73% of women receive maternity leave with pay with the highest percentage being received in the ITES sector (87.5%). Health sector performed the worst on this count with only 58% of women in this sector enjoying leave with pay. In Health sector it was found Maternity Benefit were provided to the women employed in core sectors of health like doctors. Women working as paramedical staff like technician, nurses, receptionist, group IV, guards etc. were deprived of Maternity Leave Benefits. Where in IT, ITES it is adjusted in some form of insurance where in employee too has to contribute. It appears like Family and Medical leave Act of U.S.A where in leaves are provided for variety of reasons including child birth.

5.6 MEDICAL BONUS

Section 8 provides that every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of Rs.3500, (with effect from 19.12.2011) if no pre-natal confinement and post-natal care is provided for by the employer free of charge

5.6.1 Medical Bonus paid in advance

TABLE 5.12: Medical Bonus paid in advance

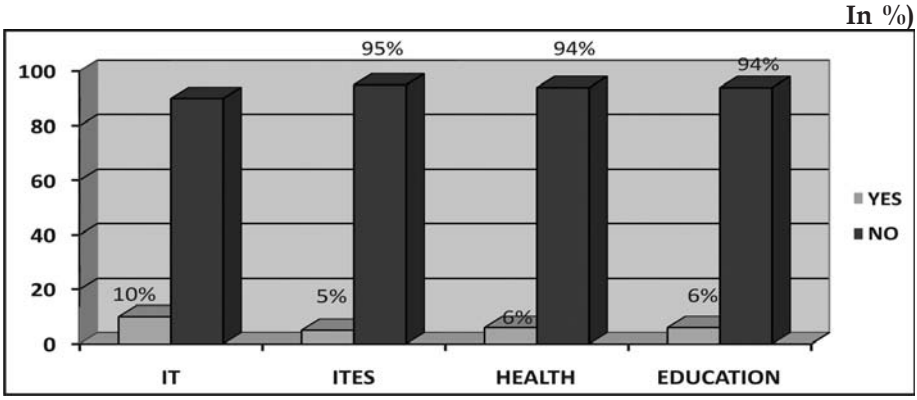
(In %)

	IT	ITES	HEALTH	EDUCATION
YES	10	5	6	6
NO	90	95	94	94

Source: Field Survey

GRAPH 5.12: Medical Bonus paid in advance

In %)



Source: Table 5.12

In above Table (5.12) research conducted revealed a dismal less than 7% of women entitled to this benefit actually receiving it. Moreover, even in this very low figure it remains ambiguous as to whether this payment is being borne by the employer, as required by the Act, or whether it is being adjusted in some form of insurance wherein the employee too has contributed.

5.7 NURSING BREAK

Under Section 11 of Maternity Benefit Act every woman delivered of a 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.

5.7.1 Nursing Break for the Child

TABLE 5.13: Nursing Break for the Child

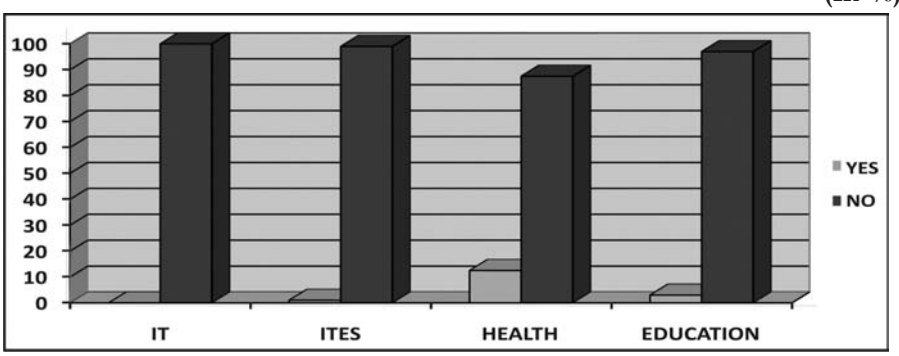
(In %)

	IT	ITES	HEALTH	EDUCATION
YES	0	1	12.5	3
NO	100	99	87.5	97

Source: Field Survey

GRAPH 5.13: Nursing Break for the Child

(In %)



Source: Table 5.13

Above Table 5.13 shows that out of all the women interviewed during the research a mere 4% (Education and ITES) said that they received nursing breaks in between their working hours. However, with the study illustrating that hardly any establishment has provided crèches, it is not difficult to understand that the provision for nursing breaks to be availed by young mothers exists only on paper. In Health sector women were using the rest rooms as the feeding rooms to nurse their child who were staying near the place of work.

5.7.2 Child Care Facility

TABLE 5.14: Child Care Facility

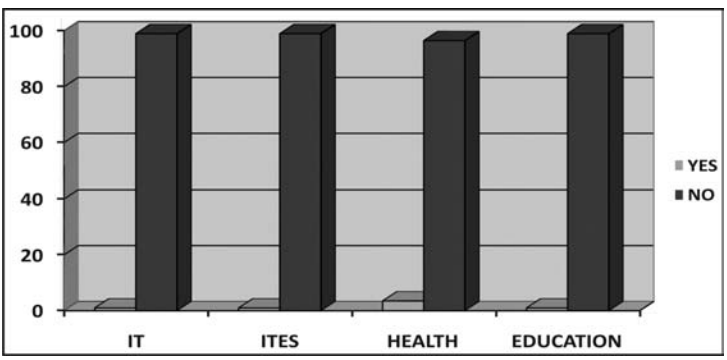
(In %)

	IT	ITES	HEALTH	EDUCATION
YES	1	1	3.5*	1
NO	99	99	96.5	99

Source: Field Survey

GRAPH 5.14: Child Care Facility

(In %)



Source: Table 5.14

Above Table 5.14 illustrates the Child Care facility existing in the Sectors studied. The provision of nursing break existing in Maternity Benefit Act is almost negligible, because of non-existence of Crèche facility in the premise.

5.7.3 Provision of the Rest Rooms

TABLE 5.15: Provision of the Rest Rooms

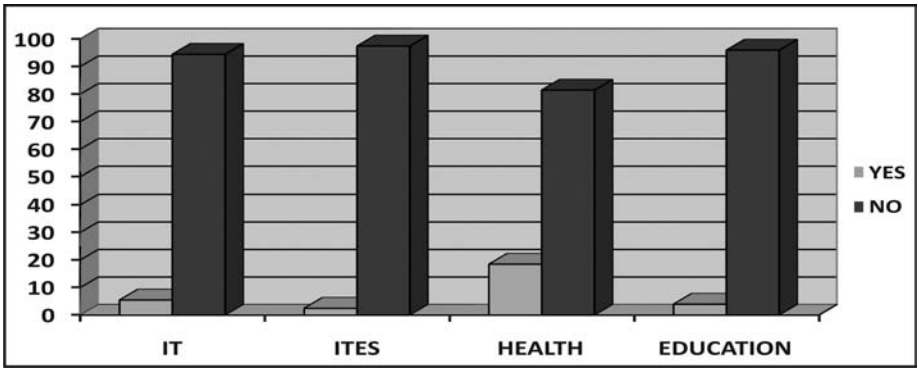
(In %)

	IT	ITES	HEALTH	EDUCATION
YES	5.5	2.5	18.5	4
NO	94.5	97.5	81.5	96

Source: Field Survey

GRAPH 5.15: Provision of the Rest Room

(In %)



Source: Table 5.15

Table 5.15 illustrates that most pregnant working women also do not enjoy the facility of rest rooms, with these being available only to a little over 7%. Almost 19% of the women in the Health sector said that they could use rest rooms because of nature of work of the nurses, this being the highest percentage among all the four sectors surveyed.

5.8 EMPLOYERS PERSPECTIVE ON MBA

Study reveals that employers perceive that they are vulnerable to both direct and indirect costs when they provide maternity protection to the women workers.

Indirect costs accruing to the employer are:

a) The cost of human capital depreciation with the returning mother very often needing just the same amount of training as a new job applicant on her position would need.

   This cost of human capital depreciation, the employers feel, is expected to increase with the increase in leave duration.

b) The costs of reorganization imposed on the employer.

A woman taking maternity leave creates a problem of having to reorganize work for an employer who has to find a way to have the work done that was formerly performed by the mother on leave by either

employing a substitute or arranging for work sharing which leads to work pressure among existing employees.

Direct costs of maternity leave :

a) Payments a woman receives during maternity leave.

b) Payment made to substitute appointed.

5.9 EMPLOYEES PERSPECTIVE ON MBA

As per the Act, no woman shall be entitled to these benefits unless she has actually worked in an establishment for a period of not less than 80 days in the twelve months immediately preceding the date of her expected delivery. This Act is applicable to shops and establishments in which ten or more persons are employed, or were employed, on any day of the preceding twelve months. Employees suggested that above 2 clauses should be obliterated from the Act, so that the provisions of the legislation can have a wider scope of applicability and the benefits are available to as many working women as possible. The duration of leave must be extended in order to allow a mother to fully recover and recuperate as well as efficiently nurse her new born child. Nursing breaks provision is not applicable unless and until Crèches / Rest room are available at the work place.

Chapter 6
Summing Up

6.1 MAJOR HIGHLIGHTS

Today we find legal provisions for Maternity leave in almost every country. As seen, their common and central feature is that they allow young mothers to leave their work place for a limited time around childbirth and return to their job afterwards. The ILO has also laid down standards regarding maternity protection which are intended to ensure that a woman's economic activities do not threaten her health or that of her child during and after pregnancy, and that a woman's reproductive role does not compromise her economic and employment security. The Maternity Benefit Act, 1961 has been brought into force with an identical intention.

Our study aims at finding out as to how far these principles upon which the idea of maternity protection rest are being adhered to and locate those areas which pose difficulty in their implementation.

The study conducted in the four sectors namely IT, ITES, Health and Education brought to light the problems faced by employers in giving effect to the provisions of the Maternity Benefit Act despite employing a large percentage of women. It was revealed that employers perceive that they are vulnerable to both direct and indirect costs when they provide maternity protection to the women workers.

As far as indirect costs accruing to the employer are concerned, there exists the cost of human capital depreciation with the returning mother very often needing just the same amount of training as a new job applicant on her position would need. This cost of human capital depreciation, the employers feel, is expected to increase with the increase in leave duration. Besides the potential cost of human capital depreciation, there are also costs of reorganization imposed on the employer. A woman taking maternity leave creates a problem of having to reorganize work for an employer who has to find a way to have the work done that was formerly performed by the mother on leave by either employing a substitute or arranging for work sharing.

Adding to the indirect costs of reorganization and human capital depreciation are the direct costs of maternity leave in the form of payments

a woman receives during maternity leave, since under the Act the employer is to shoulder the entire burden of financing these payments.

From the perspective of the woman worker entitled to maternity protection, as per the mandate of the Act she must receive at least 12 weeks of leave with pay. But our study shows that most women availed of or were provided either 12 weeks or less of maternity leave with pay. Where in women working in IT, ITES was also making contribution .

Approximately 73% of women receive maternity leave with pay with the highest percentage being received in the ITES sector (87.5%). Health sector performed the worst on this count with only 58% of women in this sector enjoying leave with pay.

Medical Bonus to be paid by the employer to the expecting mother is a significant aspect of Maternity protection contained in the Act. We found the scenario to be bleak and disappointing in this regard. Research conducted revealed a dismal less than 7% of women entitled to this benefit actually receiving it. Moreover, even in this very low figure it remains ambiguous as to whether this payment is being borne by the employer, as required by the Act, or whether it is being adjusted in some form of insurance wherein the employee too has contributed.

Out of all the women interviewed during the research a mere 4% said that they received nursing breaks in between their working hours. However, with the study illustrating that hardly any establishment has provided crèches, it is not difficult to understand that the provision for nursing breaks to be availed by young mothers exists only on paper. It defeats logic to provide breaks to mothers to nurse their young babies without establishing crèches at the place of work where these mothers can have easy access to their children.

Most pregnant working women also do not receive the facility of rest rooms, with these being available only to a little over 7%. Almost 19% of the women in the Health sector said that they could use rest rooms, this being the highest percentage among all the four sectors surveyed. The Health sector scoring the highest on this count is understandable since owing to the nature of working and services provided by this sector the existence of rest rooms does not require any specially directed effort to be made by the employer.

It would be pertinent to see as to what are the impediments faced by the agencies responsible for the implementation of the Act and how

these can be dealt with effectively by not only making modifications in the infrastructure but also in the outlook and approach.

The issues that challenge the government in successfully implementing the provisions of maternity protection are several. It is argued that women do not remain in the workforce for long and therefore it is expensive to invest resources in providing them such benefits. It is considered that as such family responsibilities are in hands of women and their receiving maternity protection does not result in any benefit to the society. Just on the contrary, it has been seen world over that maternity protection not only encourages women's attachment to the labour force, increases productivity and economic growth by lowering household poverty, health risks and maternity mortality, but also serves to increase gender equality.

As noted earlier, the employer faces various costs in putting in place a system of maternity protection to his female employees. Not only is the entire burden to be shoulder by him but also employers find it hard to replace staff during maternity leave. Ironically, even though women form a large part of the workforce they do not constitute important part of membership. In the long run though providing maternity protection can prove beneficial to the employer since costs of recruitment, training, lost productivity balance and may even outweigh cost of maternity protection. With the system of maternity protection in place employers will find a more committed, loyal and happier workforce in addition to an opportunity to cultivate better reputation and stronger recruiting position and demonstrate commitment to the community and social goals. Employers must realize that unlike sickness or disability leave maternity leave can be planned for minimal disruption and maximum efficiency.

The relative inactivity of the trade unions in relation to espousing the issue of maternity protection for women workers can be attributed to their position that it is not an issue that concerns the entire workforce but only a part of it, and in some sector a very small part. It must be stressed that gender and family responsibility issues concerns all workers and not only women workers of reproductive age. Trade unions also hold that this probably is not the right moment politically and economically to champion the cause of maternity protection. But it is impossible to deny that the maternity protection is a collective responsibility and that there is a necessary minimum standard that should exist at all times for all female workers. It is a matter of fundamental rights of women and goes beyond politics or economics.

The study throws light on the loopholes, ambiguities and reasons for the lack of motivations to give effect to a sturdy system of maternity protection. Certain suggestions can be useful keeping in mind not only the results that this threw up as well as the international experience regarding maternity.

Most importantly the duration of leave must be extended, especially post natal, in order to allow a mother to fully recover and recuperate as well as efficiently nurse her new born child.

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 and as has been seen in several countries which have an efficient system of maternity protection, some form of social insurance scheme must be employed to meet this need.

6.2 INSTANCES OF MATERNITY PROTECTION FROM OTHER COUNTRIES

6.2.1 Good Practices

SWEDEN

- Maternity Leave and Benefits are the responsibility of the Ministry of Social Affairs
- It is obligatory for women to take 2 weeks leave before or after delivery; they can decide whether or not to take part of the paid parental insurance benefit during this period of leave
- Pregnant women can take ***indefinite leave*** paid at 80 per cent of earnings if a job is a risk to the fetus and no other work can be made available. If a job is physically demanding and therefore hard for a pregnant woman to perform, she is eligible to take up to 50 days of leave during the last 60 days of pregnancy paid at 80 per cent of income
- Payments come from the ***Swedish Social Insurance Agency***. Employers and the self-employed make contributions for this purpose; employers pay 31.42 per cent of earnings, with 2.2 per cent for 'parental insurance'. The government meets any shortfall
- All employees are eligible, ***irrespective of time in employment***

- The benefit is ***gender neutral***, being for the second parent or another close person if the second parent is unknown

CROATIA

- Maternity leave, Maternity Exemption from work, Maternity Care for the child are the responsibility of the Ministry of Family, Veterans' Affairs and Intergenerational Solidarity
- Maternity leave: 28 days before the expected day of birth, then until the child turns six months of age. It is obligatory to take 28 days before the expected date of delivery and 42 days after the birth, without interruption. In exceptional circumstances, based on a medical assessment, leave can start 45 days before the expected date of delivery
- Maternity leave: 100 per cent of earnings, with no ceiling on payments
- A parent who does not meet the condition of at least 12 months of continual insurance receives 50 per cent of the 'budgetary base rate' of HRK3,326 per month
- Funded from ***general taxation***
- After the compulsory Maternity leave, a parent can ***use the remaining period of leave on a part-time basis***, in which case the duration is doubled with compensation at half the level of full-time leave; this part-time leave can continue until nine months after birth. After the compulsory Maternity leave period, ***the father of the child has the right to use the remaining period of Maternity leave***, if the mother agrees
- Parents outside the labor system, due for example to retirement, incapacity or studying are also eligible

DENMARK

- Maternity leave is the responsibility of the Ministry of Labor
- Length of leave-Eighteen weeks: four weeks before the birth and 14 weeks following birth.
- Full earnings up to a ceiling of DKK766 (€1051) per working day before taxes for fulltime employees, or DKK3,830 (€515) weekly.

- Employees either receive a daily cash benefit under the sickness benefit scheme, which is the basic system available for all employees; or they receive full coverage of their former earnings from their employer if covered by a labor market agreement which gives this entitlement (see 'additional note' for proportion receiving full earnings replacement)
- Sickness benefit scheme funded by state from general taxation, except for first eight weeks when municipalities bear half of the cost
- To help employers finance these costs, different leave funds have been set up. In1996 a leave fund was set up to reimburse private employers' leave costs, so that the cost for compensation was pooled. Several municipal employers set up identical funds in the following years, and in 2005 it was made obligatory for all municipal employers. Municipal employers pool the costs of employees' take-up of leave, So that a workplace with a predominance of female workers should not face higher costs. From 2006, private employers also have to be members of a leave fund
- Eligibility for an employee is based on a period of work of at least 120 hours in 13 weeks preceding the paid leave. Workers with temporary contracts are excluded only if they are not eligible for unemployment benefit
- Eligibility for self-employed workers (including helping a spouse) based on professional activity on a certain scale for at least six months within the last 12-month period, of which one month immediately precedes the paid leave
- People are eligible who have just completed a vocational training course for a period of at least 18 months or who are doing a paid work placement as part of a vocational training course
- Unemployed people are entitled to benefits from unemployment insurance or similar benefits (activation measures)
- Students are entitled to an extra 12 months educational benefit instead of the Maternity leave benefit
- People on sickness benefit continue to receive this benefit which is the same amount as the Maternity leave benefit

6.2.2 QUESTIONABLE PRACTICES

UNITED STATES OF AMERICA

- There is no statutory right to any of the types of leave or other statutory measures covered in country notes. The federal ***Family and Medical Leave Act (FMLA***) provides leave for a variety of reasons including: childbirth or the care of a newborn child up to 12 months; for the placement and care of an adopted or foster child; for the care of a seriously ill child, spouse or parent; or for a serious health condition of the employee that makes him/her unable to work for more than three consecutive days. The federal Department of Labor is responsible for FMLA
- Length of leave (before and after birth)-Up to 12 weeks in a 12 month period
- Payment and funding- ***Unpaid***
- Flexibility in use- FMLA may be taken in one continuous period or divided into several blocks of time
- FMLA covers all employees working for a covered employer and who have worked for that employer for at least one year (even if not for a continuous period) and for at least 1,250 hours over the preceding 12 months
- Private employers and non-profit organizations with less than 50 employees are exempt (all public sector employees are covered)

KUWAIT

- A woman is entitled to maternity leave to a ***maximum of 30 days prior to delivery and 40 days after delivery*** on full day. Thereafter she may be absent from work ***without pay*** for up to 100 consecutive or non-consecutive days, provided she presents a medical certificate stating that she is ill as result of gestation and parturition
- A pregnant woman will get a 70-day paid leave, not included in her other leaves, for delivery on the condition that she gives birth within this period. After completing the maternity leave, the employer can grant a working woman, based on her request, leave of not more than four months without pay to care for the baby
- The employer should not terminate a working woman while she is on such leaves or if she took sick leave due to an illness caused by

pregnancy or delivery as per a medical report issued by her attending physician

- Working women are entitled to a ***two-hour break during work hours to nurse their babies*** in accordance with the conditions stipulated in the ministry's decision. The employer must establish a nursery for children below four years old if he has more than 50 female workers or not more than 200 men

TUNISIA

- Within the MENA region, the Tunisian government offers the shortest amount of time for maternal leave for women (30 days)
- Separate maternity leave laws apply to women who work in the public or private industry
- Women who work as civil servants or public employees have 60 days of maternity leave while those women who work in the private industry only receive 30 days
- Maternity leave may be extended by 15 days due to sickness as result of pregnancy or confinement
- Payment- Two-thirds of the average daily wage
- For women working in agriculture, 50% of the flat-rate daily wage
- For civil servants full salary is paid during maternity leave and half salary during the optional period of additional post natal leave of four months(available only to civil servants)
- Funding is through the National Social Security Fund
- Nursing Breaks-2 Thirty minute paid breaks until the child's first birthday
- An employer may not dismiss a woman on grounds that she has suspended her work during the period before and after her confinement

6.3 SUGGESTIONS

The study throws light on the loopholes, ambiguities and reasons for the lack of motivations to give effect to a sturdy system of maternity

protection. Certain suggestions can be useful keeping in mind not only the results that this threw up as well as the international experience regarding maternity.

Most importantly the duration of leave must be extended in order to allow a mother to fully recover and recuperate as well as efficiently nurse her new born child. Within this, the duration of post natal period must be extended keeping in mind factors like rise in number of late marriages, cesarean(C- section) births, nuclear families and increasing urbanization. In the 44th Indian Labor Conference, held in February,2012, it has been recommended that Maternity Leave Under the Maternity Benefit Act be Increased from the Present Level of 12 Weeks to 24 Weeks

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 as has been seen in several countries (Sweden, Croatia) which have an efficient system of maternity protection, some form of social insurance scheme or general taxation must be employed to meet this need.

The study clearly shows that the provision of nursing breaks has been rendered 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 Institute may consider conducting the orientation programme for the Inspectors, Employers, N.G.O's and the Trade Union representatives to play an active role in this direction.

It has been seen that maternity leave alone does not prove helpful to a woman who chooses to become a mother while sustaining a career. It results in mounting a very huge pressure of family, child care responsibilities as well as demands of workplace. A provision of paternity leave will allow the father to share the responsibilities and therefore truly give shape to the idea of aiding women in balancing their productive and reproductive roles.

REFERENCES

- Avasthi, Abha and AK Srivastava(2001), *Modernity, Feminism and Women Empowerment,* New Delhi: Rawat Publications
- Agarwal, A.N. (ed.), *Indian Labour Problems,* Kitabistan, Allahabad, 1947.

- Ferree, Myra Marx. 1987. "She works hard for a Living Gender and Class on the Job."Pp.322-347 in Beth B. Hess and Myra Marx Ferree (Eds.) Analyzing Gender: A Handbook of Social Science Research. Newbury Park, Calif: Sage.
- Gupta, Poonam and S.K. Gupta (2008), Role and Status of Working Women, New Delhi: UDH Publishers and Distributors (P) Ltd.
- Stockard, Jean and Miriam M. Johnson (1992), *Sex and Gender in Society*, New Jersey: Englewood Cliffs.
- Patel, Krishna Ahooja (1995), Women and Sustainable Development: An International Dimension, New Delhi: Ashish Publishing House.
- Rudman, Lauria A. (2008), the Social Psychology of Gender, New York: The Guilford Press.
- Stockard, Jean and Miriam M. Johnson (1992), Sex and Gender in Society, New Jersey: Englewood Cliffs.
- Sharma, Seema and Kanta Sharma (2006), Encyclopedia of Indian Women Series: Working Women, New Delhi: Anmol Publications Pvt. Ltd.
- Creightan, W.B.(1979), Working Women and Law, London: Mansell
- Aggarwal, Nomita (2002), Women and Law in India, Delhi: New Century Publications.
- Patel, Krishna Ahooja (1995), Women and Sustainable Development: An International Dimension, New Delhi: Ashish Publishing House.

Citation of Case Laws

- Municipal Corporation of Delhi Vs. Respondent Female Workers (Muster Roll) & Anr. AIR2000SC1274
- J. Sharmila Vs. The secretary to Government, Education Department, The Chief Educational Officer, Sarva Siksha Abiyan and The Chief Educational Officer, Sarva Siksha Abiyan.MANU/TN/3321/2010
- Tata Tea Limited, Velonie Estate Vs. The State of Tamil Nadu represented by its Secretary to Government, Labour and Employment Department and Ors. (2010)IILLJ762Mad.
- Dr. Vishakha Kapoor Vs. National Board Of Examination and Anr. MANU/DE/0971/2009

- Merind Ltd. And Anr. Vs. Prescibed Authority (Under Payment of Wages Act) and Assistant Labour Commissioner and Anr. (2009) IVLLJ120ALL
- Dr. Subina Narang Vs. Union of India (UOI) and Ors. 2009(3) SLJ263(CAT)
- N. Mohammed Mohideen and Sahna Vs. The Deputy Commissioner of Labour (Inspection) (Beedi and Cigar Establishments Chief Inspector- Appellate Authority under the Maternity Benefit Act, 1961) and Inspector of Labour (Women) (Under the Maternity Benefit Act, 1961) (2009)ILLJ177Mad.
- Parkasho Devi Vs. Uttar Haryana Bijli Vitran Nigam Limited and Ors. (2008)IIILLJ488P&H
- Punjab National Bank by Chairman and Anr. Vs. Astamija Dash and Astamija Dash Vs. Punjab National Bank and Anr. AIR2008SC3182
- Dr. (Smt.) Hemlata Saraswat Vs. State of Rajasthan and Ors.MANU/RH/0004/2008
- Noorul Islam Education Trust Vs. Assistant Labour Offices, [2008(117) FLR533]
- Food Corporation of India Workers Union Vs. Shri G.R. Majhi and Ors. ,MANU/DE/9806/2006
- Seema Gupta Vs. Guru Nanak Institute of Management , 135(2006) DLT404.
- Anima Goel Ms. Vs. Haryana State Agricultural Marketing Board [2007(112)FLR1134]
- Ms. Sonika Kohli and Anr. Vs. Union of India (UOI) and Ors. ,2004(3) SLJ54(CAT)
- Management of Kallayar Estate, Jay Shree Tea and Industries Ltd. Vs. Chief Inspetor of Plantations and Anr. , [1999(81)FLR639.
- Dr. Thomas Eapen Vs. Asst. Labour Officer and Ors. (1993) IILLJ847Ker
- S. Amudha Vs. Respondent: Chairman, Neyveli Lignite Corporation, (1991)IILLJ234Mad.
- Ram Bahadur Thakur (P)Ltd. Vs. Respondent: Chief Inspector of Plantations ,(1989)IILLJ20Ker.
- Rattan Lal and Ors. Vs. State of Haryana and Ors. , 1985(3)SLR548

- AIR India vs. Nergesh Meerza and Ors.
- Bombay Labour Union v. International Franchises Pot. Ltd. (1966) 2SCR 493
- B. Shah vs. Presiding Officer, Labour Court, Coimbatore and others 1978 AIR 12
- K Chandrika Vs Indian Red Cross Society 131(2006) DLT 585
- Mrs. Bharti Gupta Vs. Rail India Technical and Economical Services Ltd. [RITES] and others. 123(2005)DLT 138
- Vandana Kandari Vs. University of Delhi 170(2010) DLT 755
- Mrs. Savita Ahuja v. State of Haryana and others. 1988(1) SLR 735
- Division Bench of the Punjab & Haryana High Court in the case of RajBala v. State of Haryana and Ors. , 2002(3) RSJ 43
- Durgesh Sharma vs. State of Rajasthan and others. RLW2008(2)Raj 1304
- Smt. Neetu Choudhary v. State of Rajasthan and Ors. , 2005(5) RDD 1144 (Raj.)
- Tata Tea Ltd. vs. Inspector of Plantations. , (1992) ILLJ 603 Ker
- Malayalam Plantations Ltd. V Inspector of Plantations (AIR 1975 Ker.86)
- Jammu & Kashmir High Court in the case of Simi Dutta v. State, 2001(4) SCT 726
- Yamini J Dave Vs. The Director, IUCAA and Another. MANU/GJ/0316/2004
- Bhartiben Babulal Joshi vs. Administrative Officer. MANU/GJ/0692/2003
- F.M. Kolia and Anr. Vs. Manager, The Tiles and Pottery Works Ltd. and Ors. (1981)22 GLR 528
- Mrs. Pramila Rawat Vs. District Judge, Lucknow and another. 2000 AWC 1938
- S. Gowrishankar (Minor) rep. by Legal Guardian, Tmt. K. Ranganayai Vs. Respondent: The Secretary to Government, Government of Tamil Nadu, Finance (Pension) Department, The District Adi Ddravida Welfare Officer and The Accountant General (2008)1 MLJ 407
- Sivanarul v. State of Tamil Nadu (1985) IILLJ 133 Mad

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