

# Chapter 11

## A Critical Study of the Maternity Benefit (Amendment) Act, 2017: With Special Reference to the Work From Home Concept

Pyali Chatterjee

 <https://orcid.org/0000-0002-3307-0465>

School of Law, Presidency University, Bangalore, India

### ABSTRACT

*The Maternity Benefit Act was amended in 2017 to achieve one of the goals of the government of providing a safe environment to women before and after delivery. For the first time the work from home concept was considered here for the maternity benefit but with certain conditions. But every law has certain drawbacks in it. In 2017 when the concept of work from home was included in the act, the act failed to explain about what kind of work can be considered under the work from home concept. The Act gives the complete authority to employers to decide whether work from home benefits should be given to the women employee or not. This was one of the major drawbacks in the amendment of 2017. There are other drawbacks, too, which the researcher is also going to highlight in her study. Here the researcher will elaborately discuss the drawbacks of Maternity Benefit (Amendment) Act, 2017 especially about the provisions of the work from home facility.*

### INTRODUCTION

The Maternity Benefit Act, 1961 of India is a piece of social welfare legislation which was enacted for the benefit of the women during pre-pregnancy and post pregnancy. But before discussing the Act first, we have to know about what actual *social welfare legislation* is. According to Dr. R.N. Saxena, social legislation is that legislation which is passed by the government with an aim to bring social reform (Singh, n.d.). Even Dr. Shikha Singh in her lecture explain social legislation are those legislation which particularly designed for the protection and improvement of those group of the society who are

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economically backward, or due to age, sex, race, physical or mental defect cannot achieve health and decent living standards for themselves.

By going through this definition, what we find is that social welfare legislation is a kind of law which is enacted for the benefit of the certain weaker section of peoples. Even Social legislation is important for the society for the following reasons-

1. It ensures social justice.
2. It helps in bringing social reform.
3. It promotes social welfare.
4. It helps to bring in social changes.
5. It protects and promotes social rights.

Thus the Maternity Benefit Act, 1961 was introduced to regulate the employment of women in certain periods before and after child birth. This Act provides maternity benefits which include maternity leave, wages, bonus nursing breaks etc. The most important part of the Act is that it was enacted with an intention to protect the dignity of motherhood by providing her with full wages and other benefits for the maintenance of herself and for her child when she is not working. This Act basically focuses about the pre-pregnancy and post- pregnancy health issues of the pregnant lady as well as about the child up to 15 months that's the leave is divided into parts pre-natal and post-natal. With change of time and situation The Maternity Benefit Act, 1961 was also amended in 2017. Like any other Act, this amended provision too has certain drawbacks in it.

## **BACKGROUND**

Recently in 2017, The Maternity Benefit Act, 1961 was amended and certain provisions were added in it. The following are the provisions which was included in it-

1. One of the important amendments done in the parent Act was the increase of maternity leave. Basically Section 5(3) of the Act speaks about the period up to when the maternity benefit can be given. According to it "woman shall be entitled to maternity benefit for a minimum period of twelve weeks that is six weeks up to and including the day of her delivery and six weeks immediately following that day" (Mishra, 2008, p. 840). Regarding the meaning of weeks here in one of the cases, *B. Shah V. Presiding Officer, AIR 1978 SC 12* the court held that the term "week" means a cycle of seven days including Sundays (Saha, 2018, p.328).

Now in 2017 this provision was amended. The maximum period which was 12 weeks earlier is 26 weeks now, means one can take 8 weeks leaves before the expected date of delivery and after delivery remaining 18 weeks as per the new amendment. [Section 5(3)]

2. Though in the new amendment act, the duration of the leave has been increased from 12 weeks to 26 weeks under section 5(3), but legislature has failed to made changes in section 6 of the Maternity Benefit Act, 1961. Section 6 speaks about notice of claim for maternity benefit. As per section 6(2) a woman can apply for maternity leave from 6 weeks before the expected date of delivery (Mishra,

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