

Course Name: Labour Welfare and Industrial Relations

Professor Name: Prof. Dr. Abraham Cyril Issac

Department Name: School of Business

Indian Institute of Technology Guwahati

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Lecture: 33

Lec 33: Maternity Benefit Act 1961: Growth, Definitions, Main Provisions, & Other Provisions

Hello learners, welcome back to the course on labour welfare and industrial relations. We move to the last lecture, I have clubbed both lecture 4 and 5 together here. We move to the last lecture of module 7, where we look into something which we have already understood. But here my intention again would be to go a bit deeper into the act. which is nothing but the Maternity Benefit Act 1961, one of the most critical and important act when it comes to the labor welfare part.

And also, I look into the assessment of this act. And this assessment could be or would be made on the basis of the essential, you know, court verdicts and case law discussions. So welcome to this particular class.

I'm Dr. Abraham Cyril Issac. I'm an assistant professor at the School of Business, Indian Institute of Technology, Guwahati.

Now, when you look into this particular Maternity Benefit Act, very quickly, we will revise this Maternity Benefit Act of 1961. It protects the employment of women at the time of maternity, fully paid wages during the absence from work. And to take care of her child. So this has been the primary objective. We have seen this, what this act is all about, what are the critical aspects concerning this act.

We have also seen that it is for establishments employing 10 or more employees. So it goes much deeper. It goes that, you know, the entire act is with the people who are there or, you know, who are expecting mothers or are actually in the verge of pregnancy and

the postnatal care. So when you're looking into the amendment specifically, the maternity amendment or the maternity amendment bill 2017 is what has been a change maker throughout the entire welfare. We have again slightly introduced this topic.

We'll go into greater details today. Let's understand with certain specific definitions of what do you mean by what? So let's go into that. Let's understand what do you mean by child? Child includes a stillborn child.

Please understand this. So any doubts existing there, there should not be any doubt with respect to that. These definitions are part and parcel of the entire act. So child includes a stillborn child as well. So when you are looking into the entire act you should understand that establishment means a factory it could be a mine a plantation an establishment wherein persons are employed for the exhibition of equestrian acrobatics and other performance so it has a certain ambit whereby people are you know part and parcel of the particular unit woman means a woman employed whether directly or through any agency for wages in any particular establishment and employer means in relation to an establishment which is under the control of the government a person or authority appointed by the government for the supervision and control of employees or where no person or authority is so appointed the head of the department now when you are looking into the municipal corporation of delhi some of the particular cases which are associated with respect to this particular act Please understand that the Maternity Benefit Act 1961 aims to provide all facilities to a working woman in a dignified manner so that she may overcome the state of motherhood in an honorable manner. So when you look into the entire scheme of things, honorably, peacefully, undeterred by the fear of being victimized for the forced absence during the pre or postnatal period has been the critical aspect. But when you are looking into the benefits, you have to understand that which all the employer shall not require such women to perform any work unless requested to do so by the employed lady.

So one, which negatively affects her pregnancy or the fetus development normally to any work that could result in her miscarrying or otherwise have a negative impact on her health. So every woman has the right to maternity benefit and her employer is responsible for paying them at the amount of the average daily income for the time she was actually

away from the work. That is maybe the time leading up to the day of her delivery, or on the day she gave birth for the period immediately afterwards so these would be the actual benefits and on that background you have to understand what is the essence coming out as part of this particular act we will also see that there are other critical acts when it comes to the practicality of the applicability of this act you know many are looking into something like establishments deli shops and establishment acts everything coming under that will be included similarly it may be noted that the provisions contained in this act let's say otherwise provided in sections 5a 5b shall not attract to any factory or other establishments to which the provisions of the employee state insurance act 1948 is also being referred to. So these are some of the critical aspects when you look into the Maternity Benefit Act. There are also certain financial benefits. So according to this law, every woman is entitled to maternity benefits. We have categorically established that and the option of receiving a medical bonus from her employer.

This medical bonus part is critical. It includes the medical bonus from her employer in the event that neither the prenatal nor postpartum care is provided by the latter at no cost to the employer so the employer is responsible for paying all debts including maternity benefits to the woman's nominee or legal representative in the event of her death now let's look into some of the exemptions women prohibited during the certain period so no employer specifically shall unknowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. So please note that this is one of the exemption that has come in.

No woman shall work in any establishment during the six weeks immediately following the day of her delivery of her miscarriage without prejudice to the provisions of Section 6. No pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in this particular section. So any work which is of an artist nature or which involves, let's say, long hours of standing or which in any way is likely to interfere. Please recall the previous lectures. We have already mentioned this.

Any activity which is likely to interfere with her pregnancy or the normal development of the fetus or is likely to cause some miscarriage or otherwise to adversely affect her health

will not be entertained. The period... Is something as referred the period of one month immediately preceding the period of six weeks before the date of her expected delivery or any period during the set period of six weeks for which the pregnant woman does not avail the leave of absence under this particular act, this is what the prohibition of the entire act is when you look into the claim part how can you claim a maternity benefit you have to submit a notice to the employer along with the following information which has been listed now when you have to understand when you are going to understand the claiming there are certain explicit conditions for claiming maternity benefit only when a woman is has really worked for the employer from whom she claims maternity benefits for the period of not less than 80 days in the 12 months immediately preceding the date of her anticipated delivery is she eligible to receive maternity benefits I would like to underline this particular statement only when a woman has recently worked for the employer so that has been the condition for claiming the maternity benefits so before the actual part of claiming the maternity benefit, we should understand what are the preconditions set before claiming the maternity act. Now, methods of claiming the maternity benefit is that any woman wishing to exercise the right to maternity benefit must submit a notice to her employer in the manner and in the form required by the businesses she is employed with in order to be eligible to claim the maternity benefit as provided by the 1961 Act. should be included in the notice along with, as you can understand, the maternity benefit and any additional funds to which she may be actually entitled in accordance to this Act. Also, the name of the individual who should receive such payments, the nominee specifically, A statement stating that she will not work at the company while collecting these maternity benefits specifically.

And finally, the day her absence from work officially started. So following the woman's provisions of documentation providing her pregnancy, the employer is required to pay the woman's maternity benefit in advance. So this is the entire claiming part, claiming of maternity benefit segment. When you are denied the benefit or when you are denied the actual leave, you have to complain. Now, what is the process of filing a complaint?

Please note, my intention here was to go a bit deeper and this is what we'll try to underscore here. What or how will file a complaint? Filing of a complaint under the

Maternity Benefit Act. A woman has 60 days to appeal the decision if she is denied maternity benefits or medical benefits released from her job or expelled while on maternity leave. So she may do this by approaching an inspector designated by the Maternity Benefit Act.

Please note that in the unlikely event that she disagrees with the inspector's request, she has 30 days to make a counteroffer. to the suggested expert and if she agrees with the inspector's request or if a more significant legal issue is raised she may also file a lawsuit within a year so please note there has been situations where employers are not very prudent, not very pragmatic or not very prompt in actually giving the maternity benefit. So there are situations you will feel awkward, but please note there are employers who have been categorically denying the maternity benefit and the act has to intervene and these are some of the processes when it comes to filing a complaint. Now it does not stop there.

There are certain penalties for contravention. Let's look into those penalties specifically. If an employer fails to pay any amount of maternity benefit, what will happen? I've already mentioned that there are certain people who come as barriers. But when,

you know such a case of employer failing to pay any amount of maternity benefit what are the penalty for contravention if any employer fails to pay this amount or the maternity benefit to a woman entitled under this act or discharges or dismisses such a woman during or on account of her absence from work In accordance with the provisions of this act, he shall be or the employer shall be punishable with imprisonment, which shall not be less than three months, but which may extend to one year and with fine, which shall not be less than 2000 rupees, but which may extend to 5000 rupees, provided that the court may. For sufficient reasons to be recorded in a writing, impose a particular sentence of imprisonment for a lesser term or fine only in lieu of this imprisonment. So that could be one possibility. Another penalty for contravention could be that if any employee contravenes the provision of this act specifically or the rules made thereunder.

He shall, the employer shall, if no other penalty is elsewhere provided by or under this act for such contravention, be punishable with imprisonment which may extend to one year

or with fine which may extend to 5000 rupees or with both possibly. Provided that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, please note the quote shall in addition recover such maternity benefit. or amount as if it were a fine and pay the same to the present entitled. So this has been the penalty for contravention and what happens in the scenario of an employer contravenes the provisions of this Act. When you look into Maternity Benefits Amendment Act 2017, we have to understand this from the changes that have come in in this particular Act.

But before that, you have to understand that there has been a period of granting maternity benefit, which we have already touched upon in accordance with if you refer the act subsection five of section five. If a woman's job requires her to work from home. The employer may permit her to do so after she has claimed the maternity benefit for the time period and on the conditions that they may mutually agree upon. So what has happened is that the maximum time a woman may get maternity benefits is 26 weeks. Now, not including the eight weeks prior to the due date of her anticipated delivery.

And this is as per the Section 5. Now, it has been amended by the Maternity Benefit Amendment Act 2017. Another change or furthermore, what we understand is that in the event that a woman passes away within this time. the maternity benefit will only be paid for the days leading up to and including the day of her passing so accordingly you will see the section 5 specifically I think subsection 4 a woman who legally adopts a child under the age of 3 months or a mother who commissions an adoptions adoption will be eligible for maternity benefit i've already mentioned this it is not only with respect to the biological birth it is also with respect to the adoption practice for maternity benefits for a period of 12 weeks starting on the day the child is given to the adopting mother or the commissioning mother as applicable so,

This has been some of the critical clauses or critical aspects when you look into the Maternity Benefit Act. We have already seen came into force on April 1st, 2017. The clauses relating to child care facility came into force on July 1, 2017. So this offers better benefits, has better reach and has better coverage and promotes better child care. Now,

when you are looking into the entire Amendment Act, specifically 2017, we have to understand the main highlights of this Amendment Act in material benefit.

So when you look into the history, the Maternity Benefits Amendment Bill 2017 was approved by Rajya Sabha and Lok Sabha in 2016. And the President of India gave his assent on March 27, 2017. The Maternity Benefits Amendment Act 2017's provision states, became operative and as we have seen in the previous slide, April 1, 2017. However, the clauses relating to child care facility came into force on July 1, 2017 only so the act after the change still adheres to its fundamental principles but clearly it offers better benefits and promotes better child care as you can see from the different salient features of the amended act now according to what we understand there are four levels of this statute that have you know undergone the following changes one is the duration of leave part When you look into the leave, the amendment offers 26 weeks of maternity leave, not to exceed eight weeks prior to the anticipated due date, unless they have two or more living children. So this has been what we see that the overall period of maternity leave is shown to have increased by 117 percentage since the previous act. So additionally, it complies with ILO suggestion of 18 weeks or more. So this amendment specifically passed in order to provide mothers enough time for self-healing and certainly to improve the child care, both of which would lower the rate of infant mortality.

Otherwise, a big issue within our country. Now, when you look into the adoption part, adoption is an exception to this rule. Please note a commissioning mother or a woman who adopts a child. Under three months old is eligible for 12 weeks of maternity leave. Now, another significant factor could be job protection.

The original acts discharge and dismissal clause remain unchanged. When you look into the third factor, which is nothing but the financial benefits, no immediate financial benefits have been put into practice from part of the amended act. However, if you look into the amendment, it stipulates that a woman has the right to work from home provided both her employer and she mutually agrees to this. This is what I've already mentioned with a change in work order, with a change in work culture, with the new work contracts emerging. This has been fundamental.

And this has been critical. And please note, this is pre-COVID. This has happened 2017. So this is also very significant and futuristic in its own terms and conditions. So every business with 50 or more employees should include a crèche facility.

Now, we'll talk about the crèche facility in detail. So either independently or as part of the common areas, you should have a crèche facility. So this has been another benefit. The employer will permit the woman four visits to the child care provider specifically. Now, this has been the significant difference.

Now, when you look into, you know, point wise understanding what we have discussed, the most important modification extends a leave from 12 to 26 weeks. So this, according to the WHO, a child should be nursed for 24 weeks after birth to lower the death risk. And this has been certainly taken into consideration as part of the amended or Amendment Act 2017. So additionally, it ought to lower the number of women quitting their jobs. Also, please note, this is a significant period whereby they can recover and come back to the job.

And as a result of, you know, the sufficient maternity leave, generally now the women are not quitting the job additionally the longer leave period is in accordance with the maternity benefits convention the suggestion number 183 as you can see so the addition of maternity leave for commissioning and adopting women is an important one that allows them to take care of themselves and the children while also honoring their parenthood specifically now when you look into the maternity benefit amendment act Please note that there has been certain critical impact. An employer can allow a woman to work from home during pregnancy, as I already mentioned, because of the changed working situation. If the nature of work is suggesting that.

So after the maternity leave period, the woman can also use the option of working from home for a mutually agreed upon period as agreed between the employee and the employer. So this has been significant when it comes to, you know, the changing work contracts also. Now, let's look into the typical addition that has come up in, let's say, with the amended act. What we can understand is that with the amendment in the particular

act, something that gained prominence was the creche facility. Now, till the earlier maternity benefit act.

The act only looked into people who were, you know, about pregnancy, you know, pre and postnatal care, etc. So all those aspects were traditional. Now, it is also understood that the mother needs to be with the child for some part of her, some part of his or her initial, you know, childhood days. So that is why even to support a working woman or a working mother, there has been facility of creche that has been brought in. So I would like to go deeper into this, understand the notion, the idea behind it and how it actually benefits the working mother in every significant situation.

So let's look into the Creche very quickly. Creche is a facility which enables parents to leave their children while they are at work. So when you look into this particular act, section 11A, every establishment to which the act applies and have 50 or more employees must establish a creche facility within such distance as may be prescribed so this has been fundamental in bringing about the change in the life of such working mothers the creche must be established either separately or along with the common facilities So the employer must allow women at least four visits a day to the creche and it shall also include the interval for rest allowed to her.

So every establishment is required to intimate in writing and electronically to every woman at the benefit. At the time of appointing her initially regarding every benefit available under the Maternity Benefit Act. So this has been a critical clear instructions given to the employer that all this information has to be communicated clearly. When you are looking into, you know, the different aspects in a case of every establishment, it is required that this communication should be proper, both in writing and electronically. Let's say you are joining one organization.

There should be clear cut communication that these are the maternity benefit or benefits that the organization is intending to give you. And accordingly, they can plan whether to actually, you know, continue or actually join the company in the first place and to continue there. When you are looking into Creche, how it has to be constructed, there has to be a detailed aspect, how it would be actually created, the location, the facilities, all

these aspects are clearly covered under this Act. When you look into the factor, Creche is for whom? Let's understand that first.

The use of actually the Creche facility is proposed to be extended to children. of the age group of six months to six years of all employees including temporary daily wage consultant and contractual personnel so be sure of this that it is not only the permanent employee many a times we know there has been cases or situations or circumstances where there has been some undue advantage given to the permanent employee but this is not the case with this particular act and the creche part in this particular act so please note that the use of creche facility is proposed to be extended to children of the age group of six months to six years of all employees including temporary daily wage consultant and even contractual person and you look into the crèche location as I've already mentioned the center should be near it should not be far away the mother should be visiting her child and that is the requirement at the workplace site or the beneficiaries neighborhood almost within 500 meters that is the So legality that is associated with the location part. Now, when you're looking into the timing spot, the creche preferably should open for eight hours to 10 hours.

In this case, the workers can follow a certain shift system. So in case the establishment, let's say, has day and night shifts. Then the creche should also be run in shifts. So that is what is intended by the timing that has to be done in case of shifts. Now, when you're looking into the facilities provided, please note, as you can see, the creche should be made in concrete with a minimum space of 10 to 12 square feet per child.

With proper ventilation, proper drinking water facility and with no unsafe places. Let's say open drain should not be there. No pits should not be there. Garbage bins near the centers. All these things should be taken care of.

Further, there should be a guard who should have undergone police verification with a clear background check. Rams should be there. Handrails should be there. There should be every creche should have one supervisor per creche. The crush should have minimum of one trained worker for every 10 children.

So this has been the ratio that is mentioned in the particular act when it comes to the creche. When you look for every 20 children above the age of 3, the creche should have one trained worker along with the helper. Please note, no plumbers, drivers and electricians and other outside persons should be allowed inside the creche when the children are present. So this has been phenomenal and it has been very futuristic and looks into the possible potential threats that can otherwise come in. When you look into the act in finer details, you will see that a creche monitoring committee should be formed having representations from among the crush workers, the parents also and the administration.

And also it forms a grievance redressal committee or there is a requirement to form such a grievance redressal committee for inquiring into instances of sexual abuse as well. So this has been certain you know underlining features when it comes to the creche within the ambit of the act. Now let's quickly look into some of the very critical cases. The first one This is Srimati Archana Panedi versus the state of Madhya Pradesh and others.

Srimati Archana Panedi versus state of MP and others 2016 case. So the issue was about whether the petitioners as contractual employees were eligible for maternity leave benefits. So after considering the various judgment, the Madhya Pradesh High Court concluded that the constitution requires that her employer to give her access to all the amenities she needs to give birth and there is no reason why a woman who works as a contract employee should not receive the benefit of the maternity benefit act so please note the petitioner is to be given maternity benefit by the respondents so this has been one of the statements or one of the cases which has unequivocally underscored the relevance of the Maternity Benefit Act.

When you look into another important case, Dr. Rachna Chaurasia versus State of UP and others, which was passed in 2017. So in this particular case, the state government was ordered by a division bench of the High Court of Madras to provide 180 days of paid maternity leave to all women, regardless of the type of employment they hold. It could be permanent. It could be temporary. It could be ad hoc or even on a contractual basis all female employees who are hired regularly contractually ad hoc or temporarily and have a minor child or minor children who must be 18 years of age or younger and must be

granted a 730 day child leave according to the supplementary instructions given to the state's critical response so maternity leave shouldn't be separated from or excluded from a woman employee's employment term so it is part and parcel of the woman employee's employment term and this has been underscored with this particular case law when you are looking into the final case what we have today is practices was ministry of defense 2021 a very recent case the karnataka high court reaffirmed that the work from home advantage under section 5 clause sub clause 5 of the revised 2017 act May only be granted in circumstances where the nature of the task provided to woman permits her to do so. So in the case of Prachi Sen V. Ministry of Defense. 21 clearly underscores the relevance of the work from home arrangement also.

So please note. Over the entire module, what we have tried to understand is that we have gone deeper into every single possible welfare amenities acts which we have with us. We have seen the background, we have seen the evolution, we have seen the timeline. Most importantly, we have seen the applicability of this act. We have seen what happens when there are barriers set up.

For these are against these act. We have also seen what are the grievance redressal mechanisms available with you with this act. So this module is more of an eye opener to you. Initially, we were setting a certain background with respect to the understanding of different acts. But this module categorically has been an eye opener whereby you can actually see, understand, you know, whatever happens, the act has been created in a goodwill, in a bona fide intention with a certain goodwill that has to be circulated or trickled down to the employee.

But if there are barriers, if there are circumstances or situations that have been created that should go against the people or go against the act or go against the employee, then the act will intervene. There are sufficient checks and balance mechanisms which you have tried to thoroughly dissect in this particular module and understand. So that's all from this particular module and this particular class. See you with another module, another class some other day. Till then, take care.

Bye bye. Thank you.