

The COURT NO.4 Maternity Benefit Act, 1961

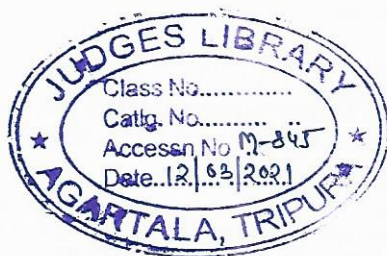
[Act 53 of 1961]

along with

**Maternity Benefit (Mines and Circus)
Rules, 1963**

and

Case Law



Book No.....¹⁵.....

Page No.....⁶⁴.....

EBC

Lucknow | Delhi | Prayagraj | Guwahati
Bengaluru | Ahmedabad | Nagpur

The Maternity Benefit Act, 1961

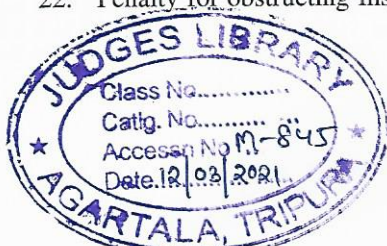
List of Amending Acts and Adaptation Orders

1. Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970 (51 of 1970)
 2. Maternity Benefit (Amendment) Act, 1972 (21 of 1972)
 3. Maternity Benefit (Amendment) Act, 1973 (52 of 1973)
 4. Maternity Benefit (Amendment) Act, 1976 (53 of 1976)
 5. Maternity Benefit (Amendment) Act, 1988 (61 of 1988)
 6. Maternity Benefit (Amendment) Act, 1995 (29 of 1995)
 7. Maternity Benefit (Amendment) Act, 2008 (15 of 2008)
 8. Maternity Benefit (Amendment) Act, 2017 (6 of 2017)
-

The Maternity Benefit Act, 1961

CONTENTS

<i>Sections</i>	<i>Pages</i>
1. Short title, extent and commencement	4
2. Application of Act	5
3. Definitions	6
4. Employment of, or work by, women prohibited during certain period	8
5. Right to payment of maternity benefit	8
5-A. Continuance of payment of maternity benefit in certain cases	10
5-B. Payment of maternity benefit in certain cases	10
6. Notice of claim for maternity benefit and payment thereof	10
7. Payment of maternity benefit in case of death of a woman	11
8. Payment of medical bonus	11
9. Leave for miscarriage, etc.	11
9-A. Leave with wages for tubectomy operation	12
10. Leave for illness arising out of pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy or tubectomy operation	12
11. Nursing breaks	12
11-A. Crèche facility	12
12. Dismissal during absence or pregnancy	12
13. No deduction of wages in certain cases	13
14. Appointment of Inspectors	13
15. Powers and duties of Inspectors	17
16. Inspectors to be public servants	17
17. Power of Inspector to direct payments to be made	17
18. Forfeiture of maternity benefit	18
19. Abstract of Act and rules thereunder to be exhibited	18
20. Registers, etc.	18
21. Penalty for contravention of Act by employer	18
22. Penalty for obstructing Inspector	19



[1]

Book No. 15
Page No. 64

<i>Sections</i>	<i>Pages</i>
23. Cognizance of offences	19
24. Protection of action taken in good faith	19
25. Power of Central Government to give directions	19
26. Power to exempt establishments	19
27. Effect of laws and agreements inconsistent with this Act	20
28. Power to make rules	20
29. Amendment of Act 69 of 1951	22
30. Repeal	22

The Maternity Benefit Act, 1961

[Act 53 of 1961 as amended by Acts 51 of 1970, 21 of 1972, 52 of 1973¹, 53 of 1976², 61 of 1988³, 29 of 1995⁴, 15 of 2008⁵ and 6 of 2017⁶]

[12th December, 1961]

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

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows:

CASE LAW ► Object.—The Maternity Benefit Act, 1961 is a beneficial piece of legislation and its object is to ensure security of tenure for the working woman. If the conduct such as of turning away the employee after her maternity leave, is not firmly dealt with, it will encourage other employers to defeat the object of the Act. It is therefore necessary to impose costs to discourage and curtail such activities, *Shri Swami Vivekanand Shikshan Sansthechya Sevakanchi Sahakari Patsanstha Maryadit v. Kumari Deepa Narayan Jadhav*, 2016 SCC OnLine Bom 2248.

A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women constitute almost half of the segment of our society and have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided with all the facilities to which they are entitled. To become a mother is the most natural phenomenon 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 realise the physical difficulties which a working woman would face in performing her duties at the workplace 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 honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre-or post-natal period, *Municipal Corpn. of Delhi v. Female Workers (Muster Roll)*, (2000) 3 SCC 224 : 2000 SCC (L&S) 331.

Giving birth to and taking care of child is fundamental right of a woman and child. The parliament has enacted the Maternity Benefit Act, 1961, which regulates the employment of women and certain period before and after child birth and to provide the maternity benefits. Every woman shall be entitled and her employer shall be liable for the payment of maternity benefits, *Mamta v. Employee State Insurance Corpn.*, 2014 SCC OnLine Raj 3412.

1. Act 52 of 1973, enforced w.e.f. 1-3-1975 vide S.O. 113-A(E), dt. 27-2-1975.

2. Act 53 of 1976, enforced w.e.f. 1-5-1976 vide S.O. 337(E), dt. 30-4-1976.

3. Act 61 of 1988, enforced w.e.f. 10-1-1989 vide S.O. 47(E), dt. 6-1-1989 (1989 CCL-III-207).

4. Act 29 of 1995, enforced w.e.f. 1-2-1996 vide S.O. 80(E), dt. 31-1-1996.

5. Act 15 of 2008, enforced w.e.f. 15-4-2008.

6. Act 6 of 2017, enforced w.e.f. 1-4-2017, except sub-section (5) of Section 3, which enforced on 1-7-2017 [Vide S.O. 1026(E), dt. 3-3-2017]

1. Short title, extent and commencement.—(1) This Act may be called the Maternity Benefit Act, 1961.

(2) It extends to the whole of India ⁷[* * *].

(3) It shall come into force on such date⁸ as may be notified in this behalf in the Official Gazette,—

⁹[(a) in relation to mines and to any other establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, by the Central Government; and]

(b) in relation to other establishments in a State, by the State Government.

NOTES

The Act came into force in the following States and Union Territories on the dates noted against each:—

1. Andhra Pradesh	—	1-5-1962
2. Bihar	—	21-11-1964
3. Gujarat	—	1-5-1964 (Noti. No. KH-SH-222/MBA/1063-T, dt. 15-4-1964.)
4. Haryana	—	1-6-1964 (G.S.R. 137/CA 53/61/S-1/64, dt. 1-6-1964.)
5. Himachal Pradesh	—	9-4-1973
6. Jammu & Kashmir	—	15-3-1973
7. Kerala	—	15-8-1970
8. Madhya Pradesh	—	1-2-1964, Shops—29-5-1970. <i>See also</i> M.P. Act 43 of 1981.
9. Maharashtra	—	1-9-1965
10. Mysore	—	1-5-1967 (Noti. No. LMA 38/LBW-66, dated 28-4-1967; Shops 26-4-1969.)
11. Punjab and Haryana	—	1-6-1964 (G.S.R. 137/CA/53/61/S-1/64, dated 1-6-1964.)
12. Orissa	—	20-2-1966 (Noti. No. 1191-IV-M-6/64—LEH, dated 1-2-1966.)
13. Rajasthan	—	1-1-1967 [Noti. No. F 3(5)(L&E)/62, dated 29-12-1966.]

7. Omitted by Act 51 of 1970.

8. The Act came into force w.e.f. 1-11-1963 in relation to mines in the territories to which it extends *vide* S.O. 2920, dt. 5-10-1963.

9. Subs. by Act 52 of 1973 (w.e.f. 1-3-1975).

- | | | |
|-------------------|---|--|
| 14. Tamil Nadu | — | 1-9-1967 [Noti. in Gaz., dt. 25-8-1967, p. 1460.] |
| 15. Uttar Pradesh | — | 22-2-1974 [Noti. No. 512(V)-2/36-72, dated 22-2-1974.] |

Union Territories

- | | | |
|-----------------------|---|---|
| 1. Chandigarh | — | 1-4-1964 (mines); 1-6-1964 (other establishments) |
| 2. Goa, Daman and Diu | — | 1-6-1967 |
| 3. Pondicherry | — | 1-10-1963, Regn. VII of 1963 |

Repeal of States Acts

1. Bihar Maternity Benefit Act (24 of 1947) repealed by Bihar Act 3 of 1963, w.e.f. 3-2-1963
2. Assam Maternity Benefit Act, 1944 repealed by Assam Act (12 of 1964).
3. Maternity Benefit (Gujarat Amend.) Act (30 of 1963) repeals the Bombay Maternity Benefit Act, 1929 as applied to Saurashtra Area of the State of Gujarat.
4. Punjab Maternity Benefit Act, 1943 repealed w.e.f. 1-6-1964.
5. Orissa Maternity Benefit Act, 1953 repealed w.e.f. 20-2-1966.
6. U.P. Maternity Benefit Act, 1938 repealed by U.P. Act 4 of 1974.

State Amendments.—Assam Acts 12 of 1964, 1 of 1965 and 2 of 1984; Gujarat Acts 30 of 1963 and 27 of 1965 and Tamil Nadu Act 23 of 1964.

STATE AMENDMENTS

Kerala.—In its application to the whole State of Kerala all the provisions of the Maternity Benefit Act, 1961 shall apply to the private educational institutions including unaided schools inclusive of teachers in the State of Kerala. [Vide Noti. No. GO(P).No.35/2020/LBR 184/2020, dated 6-3-2020, published in the Kerala Gazette, Extra., Vol. IX, No. 807, dated 7-3-2020]

2. Application of Act.—¹⁰[(1) It applies, in the first instance,—

- (a) 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;
- (b) 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:]

Provided that the State Government may, with the approval of the Central Government, after giving not less than two months' notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

10. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).



(2) ¹¹[Save as otherwise provided in ¹²[Sections 5-A and 5-B], nothing contained in this Act] shall apply to any factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948, apply for the time being.

Note.—Made applicable to Beedi and Cigar Workers by Section 37 of Act 32 of 1966.

CASE LAW ► Applicability.—Provisions of the Act entitle maternity leave even to women engaged on casual basis or on muster-roll basis on daily wages and not only those in regular employment, held, are wholly in consonance with the Directive Principles of State Policy contained in Articles 39, 42 and 43 of the Constitution of India, *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, (2000) 3 SCC 224.

Maternity benefit cannot be denied, even to daily-wage workers, *Glem Brook Estate v. Plantation Office*, (2012) 133 FLR 268 (Mad).

Benefits of maternity leave with full salary cannot be denied to a female employee appointed on contractual basis, *Anuradha Arya v. Govt. Girl Sr. School*, 2017 SCC OnLine CAT 1851.

When the firm has only three persons, it will not come under the Maternity Benefit Act, 1961, *Thomas John Muthoot v. Labour Officer, Punalu*, 2014 SCC OnLine Ker 10569 : (2014) 143 FLR 407.

3. Definitions.—In this Act, unless the context otherwise requires,—

- (a) appropriate Government” means, in relation to an establishment being a mine ¹³[or an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances,] the Central Government and in relation to any other establishment, the State Government;
- (b) “child” includes a stillborn child;
- ¹⁴[(ba) “commissioning mother” means a biological mother who uses her egg to create an embryo implanted in any other woman;]
- (c) “delivery” means the birth of a child;
- (d) “employer” means—
 - (i) 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;
 - (ii) in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed the chief executive officer of the local authority;
 - (iii) in any other case, the person who, or the authority which has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person

11. Subs. by Act 21 of 1972.

12. Subs. by Act 53 of 1976 (w.e.f. 1-5-1976).

13. Ins. by Act 52 of 1973 (w.e.f. 1-3-1975).

14. Ins. by Act 6 of 2017, S. 2 (w.e.f. 1-4-2017).

whether called a manager, managing director, managing agent, or by any other name, such person;

¹⁵[(e) “establishment” means—

- (i) a factory;
- (ii) a mine;
- (iii) a plantation;
- (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

¹⁶[* * *]

¹⁷[(iv-a) a shop or establishment; or]

- (v) an establishment to which the provisions of this Act have been declared under sub-section (1) of Section 2 to be applicable;]
- (f) “factory” means a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948);
- (g) “Inspector” means an Inspector appointed under Section 14;
- (h) “maternity benefit” means the payment referred to in sub-section (1) of Section 5;
- ¹⁸[(ha) “medical termination of pregnancy” means the termination of pregnancy permissible under the provisions of the Medical Termination of Pregnancy Act, 1971.]
- (i) “mine” means a mine as defined in clause (j) of Section 2 of the Mines Act, 1952 (35 of 1952);
- (j) “miscarriage” means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code (45 of 1860);
- (k) “plantation” means a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951);
- (l) “prescribed” means prescribed by rules made under this Act;
- (m) “State Government”, in relation to a Union Territory, means the Administrator thereof;
- (n) “wages” means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes—
 - (1) such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to;
 - (2) incentive bonus; and

15. Subs. by Act 52 of 1973 (w.e.f. 1-3-1975).

16. Omitted by Act 61 of 1988 (w.e.f. 10-1-1989).

17. Ins. by Act 61 of 1988 (w.e.f. 10-1-1989).

18. Ins. by Act 29 of 1995, S. 2 (w.e.f. 1-2-1996).

(3) the money value of the concessional supply of foodgrains and other articles,
but does not include—

- (i) any bonus other than incentive bonus;
 - (ii) overtime earnings and any deduction or payment made on account of fines;
 - (iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and
 - (iv) any gratuity payable on the termination of service;
- (o) “woman” means a woman employed, whether directly or through any agency, for wages in any establishment.

CASE LAW ▶ “Wages”.—not restricted to contractual wages but extends to cover all remunerations in the nature of cash allowances, incentive bonus and money value of concessional supply of foodgrains and other articles, *B. Shah v. Labour Court*, (1977) 4 SCC 384 : 1977 SCC (L&S) 560.

4. Employment of, or work by, women prohibited during certain period.—

(1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, ¹⁹[miscarriage or medical termination of pregnancy].

(2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery, ²⁰[miscarriage or medical termination of pregnancy].

(3) 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 sub-section (4) any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus or is likely to cause her miscarriage or otherwise to adversely affect her health.

(4) The period referred to in sub-section (3) shall be—

- (a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;
- (b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under Section 6.

5. Right to payment of maternity benefit.—²¹[(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.]

19. Subs. for “or her miscarriage” by Act 29 of 1995, S. 3 (w.e.f. 1-2-1996).

20. Subs. for “or her miscarriage” by Act 29 of 1995, S. 3 (w.e.f. 1-2-1996).

21. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).

Explanation.—For the purpose of this sub-section, ‘the average daily wage’ means the average of the woman’s wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity,²²[the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948), or ten rupees, whichever is the highest.]

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than ²³[eighty days] in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of ²⁴[eighty days] aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation.—For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment,²⁵[the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages], during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

²⁶[(3) The maximum period for which any woman shall be entitled to maternity benefit shall be ²⁷[twenty-six weeks of which not more than eight weeks] shall precede the date of her expected delivery:]

²⁸[Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:]

²⁹[Provided further that] where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

³⁰³¹[Provided also that] where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery, for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.]

³²[(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of

22. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).

23. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).

24. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).

25. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).

26. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).

27. Subs. for “twelve weeks of which not more than six weeks” by Act 6 of 2017, S. 3(A)(i) (w.e.f. 1-4-2017).

28. Ins. by Act 6 of 2017, S. 3(A)(ii) (w.e.f. 1-4-2017).

29. Subs. for “Provided that” by Act 6 of 2017, S. 3(A)(iii) (w.e.f. 1-4-2017).

30. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).

31. Subs. for “Provided further that” by Act 6 of 2017, S. 3(A)(iv) (w.e.f. 1-4-2017).

32. Ins. by Act 6 of 2017, S. 3(B) (w.e.f. 1-4-2017).

twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.]

CASE LAW ▶ Eligibility for maternity leave.—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 foetus. 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. The court scanned the different provisions of the Act, but did not find anything contained 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, *Municipal Corpn. of Delhi v. Female Workers (Muster Roll)*, (2000) 3 SCC 224 : 2000 SCC (L&S) 331.

▶ **Entitlement to benefit.**—An employee entitled to benefit of the Maternity Benefit Act cannot claim for payment of wages under Section 5(1) of the Kerala Industrial Establishments National and Festival Holidays Act, 1958, *Tata Tea Ltd. v. Inspector of Plantations*, (1992) 1 LLJ 603 (Ker).

▶ **Calculation of maternity benefit.**—Actual absence includes wageless holidays falling within the period of seven days week to be computed, *B. Shah v. Labour Court*, (1977) 4 SCC 384 : 1977 SCC (L&S) 560.

³³[**5-A. Continuance of payment of maternity benefit in certain cases.**—Every woman entitled to the payment of maternity benefit under this Act shall, notwithstanding the application of the Employees' State Insurance Act, 1948 (34 of 1948), to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under Section 50 of that Act.]

³⁴[**5-B. Payment of maternity benefit in certain cases.**—Every woman—

- (a) who is employed in a factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), apply;
 - (b) whose wages (excluding remuneration for overtime work) for a month exceed the amount specified in sub-clause (b) of clause (9) of Section 2 of that Act; and
 - (c) who fulfils the conditions specified in sub-section (2) of Section 5,
- shall be entitled to the payment of maternity benefit under this Act.]

6. Notice of claim for maternity benefit and payment thereof.—(1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may

33. Ins. by Act 21 of 1972.

34. Ins. by Act 53 of 1976 (w.e.f. 1-5-1976).

nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.

(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

³⁵[(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.]

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

7. Payment of maternity benefit in case of death of a woman.—If a woman entitled to maternity benefit or any other amount under this Act, dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to sub-section (3) of Section 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under Section 6 and in case there is no such nominee, to her legal representative.

³⁶**[8. Payment of medical bonus.**—(1) Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of one thousand rupees, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

(2) The Central Government may before every three years, by notification in the Official Gazette, increase the amount[†] of medical bonus subject to the maximum of twenty thousand rupees.]

³⁷**[9. Leave for miscarriage, etc.**—In case of miscarriage or medical termination of pregnancy, a woman shall, on production of such proof as may be prescribed,

35. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).

36. Subs. by Act 15 of 2008, S. 2 (w.e.f. 15-4-2008).

[†] Central Government hereby increases the amount of medical bonus from two thousand five hundred rupees to three thousand five hundred rupees. [Vide Noti. No. S.O. 2831(E), dated 19-12-2011 (w.e.f. 19-12-2011)]

37. Subs. by Act 29 of 1995, S. 4 (w.e.f. 1-2-1996).

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.]

CASE LAW ▶ Miscarriage.—Leave for miscarriage can be claimed even if woman worker had not worked for 160 days in period of 12 months preceding the date of miscarriage, *Management of Kallayar Estate, Jay Shree Tea and Industries Ltd. v. Chief Inspector of Plantations*, 1998 Lab IC 3394 (Mad).

³⁸[**9-A. Leave with wages for tubectomy operation.**—In case of tubectomy operation, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her tubectomy operation.]

10. Leave for illness arising out of pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy or tubectomy operation.—A woman suffering from illness arising out of pregnancy, delivery, premature birth of child, ³⁹[miscarriage, medical termination of pregnancy or tubectomy operation] shall, on production of such proof as may be prescribed, be entitled, in addition to the period of absence allowed to her under Section 6 or, as the case may be, under Section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.

11. Nursing breaks.—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.

⁴⁰[**11-A. Crèche facility.**—(1) Every establishment having fifty or more employees shall have the facility of crèche within such distance as may be prescribed, either separately or along with common facilities:

Provided that the employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her.

(2) Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act.]

12. Dismissal during absence or pregnancy.—(1) When a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

38. *Ins.* by Act 29 of 1995, S. 5 (w.e.f. 1-2-1996).

39. *Subs.* for “or miscarriage” by Act 29 of 1995, S. 6 (w.e.f. 1-2-1996). (**Ed.**—The margin heading of the section amended accordingly.)

40. *Ins.* by Act 6 of 2017, S. 4 (w.e.f. 1-7-2017 vide S.O. 1049(E), dated 3-4-2017).

Ed.—The Corrigendum Notification No. S.O. 1049(E) refers to S. 4(1) (*sic*) of the Maternity Benefit (Amendment) Act, 2017.

(2) (a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in Section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus:

Provided that where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.

⁴¹[(b) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus or both, or discharged or dismissed shall be final.]

(c) Nothing contained in this sub-section shall affect the provisions contained in sub-section (1).

13. No deduction of wages in certain cases.—No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Act shall be made by reason only of—

- (a) the nature of work assigned to her by virtue of the provisions contained in sub-section (3) of Section 4; or
- (b) breaks for nursing the child allowed to her under the provisions of Section 11.

14. Appointment of Inspectors.—The appropriate Government may, by notification in the Official Gazette, appoint such officers as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits of the jurisdiction within which they shall exercise their functions under this Act.

NOTIFICATION

Noti. No. S.O. 274(E), dated January 20, 2020.—In exercise of the powers conferred by Section 14 of the Maternity Benefit Act, 1961 (53 of 1961) and in supersession of the notification of the Government of India in the Ministry of Labour and Employment, number S.O. 1596(E), dated the 14th November, 2005 (2005-CCL-III-658[274]), published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii), dated the 14th November, 2005, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the officers mentioned in column (2) of the table below to be the Inspectors for the purpose of the said Act for the area of jurisdiction as specified against them in column (3) thereof in the local limits with which each such officer having jurisdiction as specified in Column 2 of the Table—

41. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).

TABLE

Serial No.	Office	Jurisdiction
(1)	(2)	(3)
1.	Chief Labour Commissioner (Central), New Delhi, Chief Adviser (Labour Welfare), New Delhi, All Deputy Chief Labour Commissioners (Central), All Regional Chief Labour Commissioner (Central), All Assistant Labour Commissioners (Central), All Labour Enforcement Officers (Central), Posted at Chief Labour Commissioner's Headquarter, New Delhi, and All other Deputy Chief Labour Commissioners (Central).	Whole of India.
2.	Regional Labour Commissioner (Central), Ajmer and Jaipur, All Assistant Labour Commissioners (Central) in the Ajmer region, All Labour Enforcement Officers (Central) in the Ajmer region.	State of Rajasthan.
3.	Regional Labour Commissioner (Central) in Ahmedabad region, All Assistant Labour Commissioners (Central) in the Ahmedabad region, All Labour Enforcement Officers (Central) in the Ahmedabad region.	The State of Gujarat and the Union Territories of Dadra, Nagar Haveli and Daman and Diu.
4.	Regional Labour Commissioner (Central) Asansol, All Assistant Labour Commissioners (Central) in the Asansol region, All Labour Enforcement Officers (Central) in the Asansol region.	The civil districts of Burdwan, Birbhum, Bankura and Purulia in the state of West Bengal.
5.	Regional Labour Commissioner (Central), Mumbai and Pune, All Assistant Labour Commissioners (Central) in Mumbai region, All Labour Enforcement Officers (Central) in the Mumbai region.	(i) The State of Maharashtra (excluding civil districts of Nagpur, Bhandara, Akola, Amravati, Wardha, Buldhana, Jalgoan, Chandrapur, Gadchiroli, Nanded, Parbhani, Yeotmal, Osmanabad, Latur, Beed, Hingoli, and Wasim). (ii) State of Goa.

6.	Regional Labour Commissioner (Central), Bhubaneshwar and Rourkela, All Assistant Labour Commissioners (Central) in the Bhubaneshwar region, All Labour Enforcement Officers (Central) in the Bhubaneshwar region.	The State of Odisha.
7.	Regional Labour Commissioner (Central), Bangalore and Bellary, All Assistant Labour Commissioners (Central) in the Bangalore region, All Labour Enforcement Officers (Central) in the Bangalore region.	The State of Karnataka.
8.	Regional Labour Commissioner (Central), Kolkata, All Assistant Labour Commissioners (Central) in Kolkata region, All Labour Enforcement Officers (Central) in Kolkata region.	(i) The State of West Bengal (excluding the civil districts of Burdwan, Birbhum, Bankura and Purulia. (ii) The State of Sikkim and the Union Territory of Andaman and Nicobar Islands.
9.	Regional Labour Commissioner (Central), Chandigarh and Jammu, All Assistant Labour Commissioners (Central) in Chandigarh region, All Labour Enforcement Officers (Central) in Chandigarh region.	(i) The State of Himachal Pradesh. (ii) The State of Haryana. (iii) The State of Punjab. (iv) The State of Jammu and Kashmir. (v) The Union Territory of Chandigarh.
10.	Regional Labour Commissioner (Central) Cochin, All Assistant Labour Commissioners (Central) in Cochin region, All Labour Enforcement Officers (Central), in Cochin region.	(i) The State of Kerala. (ii) The Union Territory of Lakshdweep. (iii) Mahe in the Union Territory of Pudducherry.
11.	Regional Labour Commissioner (Central), Dhanbad and Ranchi, All Assistant Labour Commissioners (Central) in Dhanbad region, All Labour Enforcement Officers (Central), in Dhanbad region.	The civil districts of the State Jharkhand, namely, Dhanbad, Bokaro, Hazaribagh, Kodarma, Ranchi, Lohardaga, Gumla, Simdega, Chatra, East Singhbhum, West Singhbhum, Giridih, Deoghar, Saraikela (Kharsanwa) and Jamtara.
12.	Regional Labour Commissioner (Central), Guwahati, All Assistant Labour Commissioners (Central) in Guwahati region,	The State of Assam, Nagaland, Meghalaya, Tripura, Manipur, Mizoram and Arunachal Pradesh.

	All Labour Enforcement Officers (Central), in Guwahati region.	
13.	Regional Labour Commissioner (Central), Hyderabad, All Assistant Labour Commissioners (Central) in Hyderabad region, All Labour Enforcement Officers (Central), in Hyderabad region.	The State of Andhra Pradesh and the area of Yanam in the Union Territory of Pudducherry.
14.	Regional Labour Commissioner (Central), Chennai, All Assistant Labour Commissioners (Central) in Chennai region, All Labour Enforcement Officers (Central), in Chennai region.	The State of Tamil Nadu and the Union Territory of Pudducherry (except Yanam and Mahe).
15.	Regional Labour Commissioner (Central), Nagpur, All Assistant Labour Commissioners (Central) in Nagpur region, All Labour Enforcement Officers (Central), in Nagpur region.	The civil districts of the State of Maharashtra, namely, Nagpur, Bhandara, Akola, Amravati, Wardha, Buldhana, Jalgaon, Chandrapur, Gadchiroli, Nanded, Parbhani, Yeotmal, Osmannabad, Latur, Beed, Hingoli and Wasis.
16.	Regional Labour Commissioner (Central), New Delhi, All Assistant Labour Commissioners (Central) in New Delhi region, All Labour Enforcement Officers (Central), in New Delhi region.	National Capital Territory of Delhi.
17.	Regional Labour Commissioner (Central), Jabalpur and Bhopal, All Assistant Labour Commissioners (Central) in Jabalpur region, All Labour Enforcement Officers (Central), in Jabalpur region.	The State of Madhya Pradesh.
18.	Regional Labour Commissioner (Central), Kanpur and Lucknow, All Assistant Labour Commissioners (Central) in Kanpur region, All Labour Enforcement Officers (Central), in Kanpur region.	The State of Uttar Pradesh (excluding the civil districts of Saharanpur, Bijnore, Meerut, Ghaziabad, Bulandshahar, Muzaffarnagar, Bareilly, Moradabad, Pilibhit, Shahjahanpur, Badaun, Rampur, Baghpat, Shamli and Gautam Budh Nagar).
19.	Regional Labour Commissioner (Central), Patna,	The State of Bihar and the civil districts of Garwa,

	All Assistant Labour Commissioners (Central) in Patna region, All Labour Enforcement Officers (Central), in Patna region.	Palamu, Latehar, Dumka, Godda, Sahibganj and Pakur in the State of Jharkhand.
20.	Regional Labour Commissioner (Central), Raipur, All Assistant Labour Commissioners (Central) in Raipur region, All Labour Enforcement Officers (Central), in Raipur region.	The State of Chhattisgarh.
21.	Regional Labour Commissioner (Central), Dehradun and Regional Labour Commissioner (Central), Noida, All Assistant Labour Commissioners (Central) in Dehradun region, All Labour Enforcement Officers (Central), in Dehradun region.	The State of Uttarakhand and the civil districts of Saharanpur, Bijnore, Meerut, Ghaziabad, Bulandshahar, Muzaffarnagar, Bareilly, Moradabad, Pilibhit, Shahjahanpur, Badaun, Jyotibaphule Nagar, Rampur, Bhaghat, Hapur, Shamli and Gautam Budh Nagar.

15. Powers and duties of Inspectors.—An Inspector may, subject to such restrictions or conditions as may be prescribed, exercise all or any of the following powers, namely—

- (a) enter at all reasonable times with such assistants, if any, being persons in the service of the Government or any local or other public authority, as he thinks fit, any premises or place where women are employed or work is given to them in an establishment, for the purposes of examining any registers, records and notices required to be kept or exhibited by or under this Act and require their production for inspection;
- (b) examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment: Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself;
- (c) require the employer to give information regarding the names and addresses of women employed, payments made to them, and applications or notices received from them under this Act; and
- (d) take copies of any registers and records or notices or any portions thereof.

16. Inspectors to be public servants.—Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

17. Power of Inspector to direct payments to be made.—⁴²[(1) Any woman claiming that—

42. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).

- (a) maternity benefit or any other amount to which she is entitled under this Act and any person claiming that payment due under Section 7 has been improperly withheld;
- (b) her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provisions of this Act,

may make a complaint to the Inspector.

(2) The Inspector may, of his own motion or on receipt of a complaint referred to in sub-section (1), make an inquiry or cause an inquiry to be made and if satisfied that—

- (a) payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders.
- (b) she has been discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may pass such orders as are just and proper according to the circumstances of the case.]

(3) Any person aggrieved by the decision of the Inspector under sub-section (2) may, within 30 days from the date on which such decision is communicated to such person, appeal to the prescribed authority.

(4) The decision of the prescribed authority where an appeal has been preferred to it under sub-section (3) or of the Inspector where no such appeal has been preferred, shall be final.

⁴³[(5) Any amount payable under this section shall be recoverable by the Collector on a certificate issued for that amount by the Inspector as an arrear of land revenue.]

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

19. Abstract of Act and rules thereunder to be exhibited.—An abstract of the provisions of this Act and the rules made thereunder in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

20. Registers, etc.—Every employer shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.

⁴⁴[**21. Penalty for contravention of Act by employer.**—(1) If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he 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 two thousand rupees but which may extend to five thousand rupees:

43. *Subs.* by Act 61 of 1988 (w.e.f. 10-1-1989).

44. *Subs.* by Act 61 of 1988 (w.e.f. 10-1-1989).

Provided that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

(2) If any employer contravenes the provisions of this Act or the rules made thereunder, he 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 five thousand rupees, or with both:

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, the court shall, in addition recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.]

22. Penalty for obstructing Inspector.—Whoever fails to produce on demand by the Inspector any register or document in his custody kept in pursuance of this Act or the rules made thereunder or conceals or prevents any person from appearing before or being examined by an Inspector shall be punishable with imprisonment ⁴⁵[which may extend to one year, or with fine which may extend to five thousand rupees], or with both.

⁴⁶[**23. Cognizance of offences.**—(1) Any aggrieved woman, an office-bearer of a trade union registered under the Trade Unions Act, 1926 (16 of 1926) of which such woman is a member or a voluntary organisation registered under the Societies Registration Act, 1860 (21 of 1860), or an Inspector, may file a complaint regarding the commission of an offence under this Act in any court of competent jurisdiction and no such complaint shall be filed after the expiry of one year from the date on which the offence is alleged to have been committed.

(2) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.]

24. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or order made thereunder.

25. Power of Central Government to give directions.—The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of the provisions of this Act and the State Government shall comply with such directions.

26. Power to exempt establishments.—If the appropriate Government is satisfied that having regard to an establishment or a class of establishments providing for the grant of benefits which are not less favourable than those provided in this Act, it is necessary so to do, it may, by notification in the Official Gazette, exempt, subject to such conditions and restrictions, if any, as may be specified in

45. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).

46. Subs. by Act 61 of 1988 (w.e.f. 10-1-1989).

the notification, the establishment or class of establishments from the operation of all or any of the provisions of this Act or of any rule made thereunder.

27. Effect of laws and agreements inconsistent with this Act.—(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act:

Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matters which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favourable to her than those to which she would be entitled under this Act.

28. Power to make rules.—(1) The appropriate Government may, subject to the condition of previous publication and by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the preparation and maintenance of registers, records and muster-rolls;
- (b) the exercise of powers (including the inspection of establishments) and the performance of duties by Inspectors for the purposes of this Act;
- (c) the method of payment of maternity benefit and other benefits under this Act in so far as provision has not been made therefor in this Act;
- (d) the form of notices under Section 6;
- (e) the nature of the proof required under the provisions of this Act;
- (f) the duration of nursing breaks referred to in Section 11;
- (g) acts which may constitute gross misconduct for purposes of Section 12;
- (h) the authority to which an appeal under clause (b) of sub-section (2) of Section 12 shall lie; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;
- (i) the authority to which an appeal shall lie against the decision of the Inspector under Section 17; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;
- (j) the form and manner in which complaints may be made to Inspectors under sub-section (1) of Section 17 and the procedure to be followed by them when making inquiries or causing inquiries to be made under sub-section (5) of that section;
- (k) any other matter which is to be, or may be prescribed.

(3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while

it is in session for a total period of thirty days which may be comprised in one session ⁴⁷[or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATE AMENDMENTS

Madhya Pradesh.—M.P. Act 21 of 2015, Part X, Part XI and Sections 17 and 18 in this regard provides w.e.f. 27-11-2015:

“PART X

EXEMPTION FROM MAINTAINING MULTIPLE REGISTERS SUBMISSION OF MULTIPLE RETURNS

17. Exemption from maintaining multiple registers and submission of multiple returns under certain Labour Laws in the State of Madhya Pradesh.—Notwithstanding anything contained in the provisions of the following Acts, namely—

- (i) Contract Labour (Regulation and Abolition) Act, 1970 (No. 37 of 1970);
- (ii) Equal Remuneration Act, 1976 (No. 25 of 1976);
- (iii) Factories Act, 1948 (No. 63 of 1948);
- (iv) Industrial Disputes Act, 1947 (No. 14 of 1947);
- (v) Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (No. 30 of 1979);
- (vi) Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 (No. 51 of 1988);
- (vii) Maternity Benefit Act, 1961 (No. 53 of 1961);
- (viii) Minimum Wages Act, 1948 (No. 11 of 1948);
- (ix) Motor Transport Workers Act, 1961 (No. 27 of 1961);
- (x) Payment of Bonus Act, 1965 (No. 21 of 1965);
- (xi) Payment of Gratuity Act, 1972 (No. 39 of 1972);
- (xii) Payment of Wages Act, 1936 (No. 4 of 1936);
- (xiii) Sales Promotion Employees (Conditions of Service) Act, 1976 (No. 11 of 1976);

the State Government by order may devise or notify forms for maintaining registers and records and furnishing returns by an employer or establishment in lieu of the forms prescribed under the said Acts and the rules made thereunder:

Provided that the State Government may allow the registers and records to be maintained in computerised or digital formats.

PART XI

MISCELLANEOUS PROVISIONS

18. Power to make rules.—(1) The State Government, subject to the condition of previous publication, may make rules for the purpose of giving effect to the provisions of this Act.

(2) All rules made under this Act shall, as soon as after they are made, be laid on the table of the Legislative Assembly.”

47. Subs. by Act 52 of 1973 (w.e.f. 1-3-1975).



29. Amendment of Act 69 of 1951.—In Section 32 of the Plantations Labour Act, 1951—

- (a) in sub-section (1), the letter and brackets “(a)” before the words “in the case of sickness” and word “and” after the words “sickness allowance” and “clause (b)” shall be *omitted*;
- (b) in sub-section (2), the words “or maternity” shall be *omitted*.

30. Repeal.—On the application of this Act—

- (i) to mines, the Mines Maternity Benefit Act, 1941 (19 of 1941); and
 - (ii) to factories situate in the Union Territory of Delhi, the Bombay Maternity Benefit Act, 1929, as in force in that territory shall stand *repealed*.
-