CHAPTER - V

POSITION OF WOMEN UNDER VARIOUS LAWS ABOUT MOTHERHOOD AND CHILDHOOD.
PROVISION OF INDUSTRIAL LAW AND WOMEN:

"Motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock shall enjoy the same social protection".

-Art 25(2) of The Universal Declaration of Human Rights.

"Women are one-half of the world but until a century ago..... it was a man’s world. The laws were man’s laws the Government a man’s Government. The country a man’s country... The man’s world must become a man’s and woman’s world....

--Martha Thomas, American Educator (1908)

Introduction: -

In the sphere of Industrial Law, the women have been assigned a special position in view of their unique characteristics, physically and mentally. The Constitution of India which is the fundamental law of the land contains number of provisions to protect the interest of woman and also to prohibit gender
discrimination. The preamble specifically declares that one of the main purposes of the constitution is to secure social, economic and political justice along with equality of status and of opportunity to all the citizens. This is irrespective of the sex. This specific mandate given to the state has resulted in number of protective, beneficial and health provisions made in various enactments for the benefit of woman.

Article 42\textsuperscript{82} to the Constitution of India directs the State to make provisions for securing just and humane conditions of work and for maternity relief. In pursuance of this objective, the Parliament has passed the Maternity Benefit Act, 1961 to regulate the employment of women in certain establishment for certain periods before and after child birth and to provide for maternity and other benefits. This enactment consists of 30 sections and has been amended in 1970,72,73,76,88, and recently in 1995 to make it more effective and beneficial for women.

Prohibition of employment or work -

\textbf{After The Delivery Or Miscarriage etc:}

\textsuperscript{82} Dr. J.N. Pandey – The Constitutional Law of India
According to Section 4, of the Act no woman who delivers a child or who undergoes Medical Termination of pregnancy or miscarriage shall be employed during the six weeks immediately following the date such a movement.

**Before The Delivery Or Miscarriage Etc:**

No pregnant woman is required to do any work which is of an arduous nature or which involves long hours of standing or which in any way interferes with her pregnancy or the Normal development of the foetus or likely to pass her miscarriage or adversely affect her health, during the period of one month immediately preceding the period of six weeks, before the date of or expected delivery and during any period of six weeks for which the pregnant woman does not avail of leave of absence. Thus a pregnant woman in her last stages of pregnancy should not be assigned any difficult or hard work that may affect her pregnancy.

**Maternity Benefit Covers Miscarriage And Medical Termination Of Pregnancy Also**

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83 The Medical Termination Of Pregnancy Act 1971
In view of the amendment made in 1995 the benefits conferred on a woman in case of her delivery or miscarriage also cover the Medical Termination of pregnancy under the provisions of Medical Termination of pregnancy Act, 1971. Therefore, in the case of abortion also a woman can claim the said benefit.

**Other Benefits:**

**Section 8 :- Payment of Medical Bonus :-**

Every woman who is entitled to maternity benefit is also entitled to receive medical bonus of Rs. 250/- from her employer, if the employer does not provide pre-natal and post-natal care free of cost.

**Section 9 :- Leave For Miscarriage Or Medical Termination Of Pregnancy**

In case of miscarriage or medical termination of pregnancy, the woman is entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately after such an event.

**Section 9A :- Leave With Wages For Tubectomy Operation :-**
In case of family planning operation that is tubectomy performed on a woman employee, she is entitled to leave with wage at the rate of maternity benefit for a period of two weeks immediately after such operation.

**Section 10 :- Leave For Illness Due To Pregnancy, Delivery Ect. :-**

Any woman employee suffering from illness arising out of pregnancy, delivery, pre-mature birth of child, miscarriage, medical termination of pregnancy or tubectomy operation is entitled to leave with wages at the rate of maternity benefit for maximum period of one month. This leave period is in addition to the period of absence allowed to her for any individual event aforementioned as applicable under the Act.

**Section 11 :- Nursing Breaks:**

Every woman who returns to duty after delivering a child is entitled to two breaks in the course of her daily work until the child attains the age of 15 months. These breaks and provided for the purpose of nursing the child and are in addition to the regular intervals of rest allowed to her. According to
Rule 6 of the maternity Benefit (Mines and Circus) Rules, 1963 each of the two breaks shall be of fifteen minutes duration where a distance is to be covered for the purposes of journey to and from the place where the child is kept, an extra period of live to fifteen minutes duration can be given to the woman.

Section 2 :- No Dismissal During Absence Of Pregnancy :

When a woman absents herself from work in accordance with the provisions of this Act, her employer cannot discharge or dismiss her during or due to such absence. The employer also shall not give notice of such discharge or dismissal. If the woman employee is discharged or dismissed as mentioned above, it shall not have effect of depriving her of the maternity benefit or medical bonus. In other word the dismissal or discharge during absence of pregnancy is unlawful for the purpose of claiming maternity and other benefits conferred by the Act.

However if the woman employee is dismissed for any gross misconduct, she will forfeit the maternity benefit or medical bonus or both. Under Rule 8 of The maternity Benefits (Mines and Circus) Rules, 1963, the following acts constitute gross
misconduct for the purpose of dismissal under section 12 of the Act.

(a) Wilful destruction of employer’s goods or property.
(b) Assaulting any superior or co-employee at the place of work.
(c) Criminal offence involving moral turpitude resulting in conviction in a court of law.
(d) Theft, fraud or dishonesty in connection with the employer’s business or property: and.
(e) Wilful non-observance of safety measures or rules on the subject or wilful interference with safety devices or with fire fighting equipment.

Section 21, 22 :- Penalties :-

If any employer fails to pay any amount of maternity benefit to a woman under this Act or violates any of the provisions of this Act, he is liable to be punished with a minimum imprisonment of three months but which may extend to one year also with fine. Similarly if an employer obstructs the Inspector or any other authority appointed by the
government under this Act from implementing the provision of this Act, the same is an offence and is punishable. Thus this Act creates special offences in so far as non-implementation of the provision of this Act is concerned.

Other Benefits: -

Apart from the above provisions with regard to the working hours, permitted intervals and prohibition of employment of woman, number of enactments provide various other benefits to the woman employees. They include maternity Benefit, Insurance, crèches for the infants of woman employees and Nursing breaks. Some of this benefits have already been discussed in the preceding chapters. The following paras explain the provision with regard to crèches etc.

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SEX DETERMINATION TESTS AND FEMALE FOETICIDE

I. **Sex Determination Tests:**

(i) Introduction.

(ii) Sex-Determination and misuse of Techniques.

(iii) Regulations of pre-natal diagnostic techniques.

(iv) Scheme of legislation.

(v) Regulations of Techniques and permitted use.

(vi) Prohibition of Sex-Determination.

(vii) Safeguards before use of Techniques.

(viii) Constitution of central Supervisory Authority.

(ix) Registration of Genetic centers etc.

(x) Prohibition of Advertisement.

(xi) Penal provision.

II. **Termination of Pregnancy:**

(i) Introduction.

(ii) The medical Termination of pregnancy Act.
(iii) Circumstances permitting Termination of pregnancy.
(iv) Grave injury to mental health.
(v) Age of the pregnant woman.
(vi) Consent of pregnant woman.
(vii) Place of Termination of pregnancy.

Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994\textsuperscript{84} :-

Introduction :- Like in any other countries in India also the female foeticide and infanticide are on the rise. In the old days when the scientific techniques were not advanced, it was impossible to determine the sex of the child being carried in the womb of mother until it was delivered.

However with the advent of modern techniques developed in the recent times, it became quite possible to ascertain the sex of the child in the womb even in the early stages of pregnancy. The technique used to diagnose the condition, and sex of the fetus is medically called ‘amniocentesis’ which is one of the many pre-natal diagnostic techniques. These techniques are actually intended to test or analyze the amniotic fluids, blood or any tissue of a pregnant

\textsuperscript{84} Pre-Natal Diagnostic Techniques Act, 1994
woman for the purpose of detecting any genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or sex linked diseases. The procedures used for conducting any pre-natal diagnostic tests include all gynecological or obstetrical or medical procedures such as ultrasoundography, taking or removing samples of blood or any tissue of a pregnant woman etc.

Scheme of Legislation :-

The Pre-Natal Diagnostic Techniques (Regulation and prevention of misuse) Act, 1994 consists of 34 Sections spread over in 8 chapters. The Act regulates the use of such techniques and prevents their misuse for sex-determination, not only by individuals such as Gynecologist, Medical geneticists, and Pediatricians but also by any Genetic counseling centre, Genetic Laboratory or Genetic clinic.

Regulation of Techniques & Permitted Use:-

According to section 4 of the Act, the pre-diagnostic techniques may be conducted only for the purpose of detecting any abnormality like chromosomal abnormality, genetic metabolic
disease, sex-linked genetic disease. Or congenital anomaly etc. Thus, if a woman is pregnant and is tested HIV positive, pre-diagnostic technique may be legally applied to determine whether her child in the womb also is HIV positive. Similarly, if the pregnant mother is suffering from venereal Disease, the technique may be applied to test whether the child in the womb also is affected with such disease.

These technique may be used or conducted only when any of the following conditions is satisfied.

(i) When the pregnant woman is above 35 years, of age:

(ii) When the pregnant woman has already undergone 2 or more abortions or fetal loss:

(iii) Where the pregnant woman has been exposed to potentially dangerous agents like drugs, radiation, infection or chemicals.

(iv) Where the pregnant woman has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease etc.
Therefore, no relative or husband of the pregnant woman can seek or encourage the conduct of any pre-natal diagnostic techniques except when any one of the above conditions is fulfilled.

Section 6: - Prohibition of Determination of Sex:-

The Act absolutely prohibits the determination of the sex of a fetus and communication thereof by any Genetic Centre, laboratory or clinic. Therefore techniques like ultra-sonography can be used only for detecting the genetic disorders or abnormalities and not for determination of sex of the fetus.

Section 5: - Safeguards Before Use of Techniques:-

Before using or conducting a per-natal diagnostic technique, on a pregnant woman the concerned Genetic counseling centre, Laboratory or clinic must fulfill the following conditions.

(i) It must explain the possible side effects and consequences of using the techniques to the pregnant woman.

(ii) Obtain her written consent to undergo such procedure in the prescribed form, in the language she understands.
(iii) Give her a copy of her written consent.

Under no circumstances, the sex of the fetus should be communicated to the woman concerned or her relatives.

Section 7 and 16 :- Constitution of Central Supervisory Authority:-

The Act empowers and directs the central Government to constitute an authority called the central Supervisory Board consisting of the minister for family welfare, the secretary of such ministry / Department and 21 other members including eminent geneticists, gynecologist, Social scientists and woman parliament members etc. for a period of 3 years. The functions of the board include advising the Government on policy matters related to the use of pre-natal diagnostic techniques, creating public awareness and properly implementing the Act.,

Section 18–21 :- Registration of Genetic Centers :-

Under section a8 of the Act, every Genetic counseling centre, Genetic Laboratory or Genetic clinic must be registered under the Act, after the commencement of the Act. No person shall open any
such centre unless such registration is made separately or jointly.

The Government is vested with the power to cancel or suspend the registration, if it is found that such centers have misused the techniques.

Section 22 :- Prohibition of Advertisement Regarding Sex Determination :-

The Act provides that, no person, organization or Genetic centre should advertise in any form regarding the facility of the pre-natal determination of sex available at such centre or laboratory. Therefore no publicity can be given as to the existence or availability of the facility.

If advertisement is given, in contravention of the above provision, the same is punishable with imprisonment up to 3 years or with fine up to 10,000 Rs.

Section 22-28 :- Penal Provisions :-

Any contravention of the provisions of this Act is made an offence. The guilty individual is liable to be punished with various punishments depending on the nature of the contravention.
If a company commits such an offence, any person who is the incharge of such company at the time of offence shall be deemed to be guilty of the offence. Thus vicarious liability is imposed on the individuals heading the companies or organizations violating.

The Law views the offences committed under this Act as very serious. This could be seen from section 27 of the Act which makes every offence under the Act, a cognizable, non-bailable and non-compoundable.

The above discussion makes it amply clear that the state wants to protect the dignity and status of women and punishes those who attempt to commit or help commit female infanticide either directly or indirectly. The offence of causing miscarriage are discussed in greater detail elsewhere in this book.

**Termination of Pregnancy**

**Introduction :-**

In India, Termination of pregnancy by unregistered medical practitioners and quacks is common place. The reasons for such abortions are many which include superstitions and carrying
illegitimate children etc. prior to 1971 a termination of pregnancy was not regulated by any law. However the Indian Penal Code provides for many provisions to punish the persons responsible for miscarriage. Sections 312 to 316 of the Indian Penal Code punish the persons causing miscarriage, preventing a child being born life or causing the death of quick unborn child. Inspite of these penal provisions the practice of causing miscarriage continued in India for various social and medical reasons.

Therefore the parliament has decided to provide for the termination of certain pregnancy by registered medical practitioners.

The termination of pregnancy by quacks, and unregistered and unqualified medical practitioners caused irreparable damage to the woman concerned and also caused death in many cases. The practice has been found to be hazardous to the health of the woman who are pregnant. In most of the cases the abortion was forcefully carried out to prevent the birth of a female child and in the process most of the women also lost their lives besides certain other medical damages. These were the main reasons that prompted the Parliament to make a law to regulate
termination of pregnancy only in certain cases and only by registered medical practitioners. The main purpose of the Legislation called The Medical Termination of Pregnancy Act, 1971 is to provide for the termination of pregnancy by registered medical practitioners where it continuance would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health or where there is a substantial risk that if child were born.

The Medical Termination of Pregnancy Act, 1971\textsuperscript{85}:-

The Parliament has passed this enactment to provide for the termination of certain pregnancies by registered medical practitioners and other matters connected with such termination. The Act consists of 8 Sections dealing with various aspects like the time, place and circumstances in which a pregnancy may be terminated by medical practitioners legally. Here the 'Medical Practitioners' means the persons who possess any recognized medical qualifications as defined in The Indian Medical Council Act, 1956 and whose name has been entered in State Medical

\textsuperscript{85} The Medical Termination of Pregnancy Act, 1971
Register. Such person must have experience or training in gynecology and obstetrics.

Section 3 :- Circumstances In Which Pregnancy May be Terminated :-

A pregnancy may be terminated by a medical practitioner only when any of the following conditions is fulfilled :-

(a) Where the length of pregnancy does not exceed 12 weeks that is three months, it may be terminated by a single registered medical practitioner.

-Or-

(b) Where the length of pregnancy exceed 12 weeks but does not exceed 20 weeks, it may be terminated by not less than two registered medical practitioners.

Such termination can take place only when such medical practitioners (s) forms (s) an opinion in good faith that,
(i) The continuance of pregnancy would involve a risk to the life of the pregnant women or of grave injury to her physical or mental health; or

(ii) There is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be serious handicapped.

Therefore it is clear that termination of pregnancy can take place only on medical grounds that too when the registered medical practitioner has formed above opinion in good faith.

**Grave Injury To Mental Health:**

If the pregnancy is alleged to be caused by rape, the anguish caused by such pregnancy is presume to constitute grave injury to mental health. The result of failure of any family planning device used by any married woman or husband, the anguish caused by such unwanted pregnancy is presumed to constitute grave injury to the mental health of the pregnant woman. Therefore a pregnancy caused by
rape or which is unwanted may be medically terminated under section 3 of the Act.

**Section 3 :- Age of The Pregnant Woman :-**

Section 3 (4) of the Act specifically provides that the pregnancy of woman, who has not attained the age of 18 years cannot be terminated except with the written consent of her guardian. Similarly if the pregnant woman is above 18 years of age and is a lunatic, then also the written consent of her guardian is essential.

**Section 4 :- Place of Termination of Pregnancy :-**

A medical termination of pregnancy can be made only at a hospital established or maintained by the Government or at other places approved for that purpose by the Government. Therefore the termination of pregnancy may be carried out only at a hospital which is fully equipped with all the medical facilities.

**Overriding Effect of The Act :-**

The Medical Termination of pregnancy Act, 1971 has been given overriding effect over The Indian Penal code, 1860, which deals with the
Relevant Provisions of

FACTRORES ACT, 1948\textsuperscript{86}

(Relative Portions)

19. Latrines and Urinals :-

(1) In very factory-

(a) Sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at the factory:

(b) Separate enclosed accommodation shall be provided for male and female workers:

(c) Such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall unless specially exempted in writing by the chief Inspector, communicate with any work-room except through an intervening open space or ventilated passage:

\textsuperscript{86} Factories Act, 1948
(d) All such accommodation shall be maintained in a clean and sanitary condition at all times:

(e) Sweepers shall be employed whose primary duty it would, be to keep clean latrines, urinals and washing place.

22. **Work On Or Near Machinery In Motion:**

(2)⁸⁷ No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery).

27. **Prohibition of Employment of Women And Children Near Cotton – Openers:**

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton – opener is at work:

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⁸⁷ Subs by Section 6 of Act 25 of 1954 for the original sub – section (2).
Provided that if the feed – end of a cotton – opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed – end is situated.

48. **Creches:-**

(1) In every factory wherein more than (thirty women workers)\(^{38}\) 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.

(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 this section applies of additional facilities for the care of children belonging to women workers, including suitable provision of

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\(^{38}\) Subs by Section 23 Act. No. 94 of 1976 for fifty women worker's (w.e.f. 26-10-1976)
facilities for washing and changing their clothing:

(c) Reacquiring 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.

66. **Further Restrictions On Employment Of Women** :-

(1) The provisions of this chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely.

(a) No exemption from the provisions of section 54 may be granted in respect of any woman:

(b) No woman shall be (required or allowed to work in any factory)\(^9\) except between the hours of 6 a.m. and 7 p.m.

Provided that the state Government may, by notification in the official Gazette, in respect of (any factory or group or class or description of

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\(^9\) Subs by Section 29, ibid, for employed in any factory’ (w.e.f.26-10-1976)
factories)\textsuperscript{90}, very the limits laid down in clause (b) but so

(a) In sub-section (1) the latter and brackets “a” before the words “in the case of sickness,” the word “and” after the words “sickness allowances” and clause (b) shall be omitted:

(b) In sub-section (2) the words “or maternity” shall be omitted.

30. \textbf{Repeal} :-

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.

\textsuperscript{90} Subs. By section 29, ibid, for any class or description of factories; (w.e.f.26-10-1976)
RELEVANT PROVISIONS OF

THE EMPLOYEE'S STATE INSURANCE

ACT, 1948\(^1\).

MATERNITY BENEFIT

In exercise of powers confereed by section 97 of the Act, the central Government has framed the above Regulations. The Regulations 87 to 95 deal with the maternity benefit available to an insured woman.

87. **Notice of pregnancy** :-

An insured woman, who decides to give notice of pregnancy before confinement, shall give such notice in form 19 to the appropriate local office by post or otherwise and shall submit, together with such notice, a certificate of pregnancy in form given in accordance with these regulations on a date not earlier than seven days before the date on which such notice is given.

\(^1\) THE EMPLOYEE'S STATE INSURANCE ACT, 1948
88. **Claim For Maternity Benefit Commencing Before Confinement:**

Every insured woman claiming maternity benefit before confinement shall submit to the appropriate local office by post or otherwise

(i) A certificate of expected confinement in form 21 given in accordance with these regulations, not earlier than fifteen days before the expected date of confinement:

(ii) A claim for maternity benefit in form 22 stating therein the date on which she ceased or will cease to work for

(iii) Within thirty days of the date on which her confinement takes place, a certificate of confinement in form 23 given in accordance with these regulations.

89. **Claim For Maternity Benefit Only After Confinement Or For Miscarriage:**

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

89-A. Claim For Maternity Benefit After The Death Of An Insured Woman Leaving Behind The Child :-

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

89-B. Claim For Maternity Benefit In Case Of Sickness Arising Out Of Pregnancy, Confinement, Premature Birth Of Child Or Miscarriage :-

(1) Every insured woman claiming maternity benefit in case of sickness arising out or pregnancy,
confinement, premature birth of child or miscarriage, shall submit to the appropriate office by post or otherwise a claim for benefit in one of the forms (12-A, 13, and 13-A)\(^{92}\) appropriate to the circumstances of the case together with the appropriate medical certificate in form 8,9,10, or 11 as the case may be, given in accordance with these Regulations.

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

**90. Other Evidence In Lieu Of A Certificate:**

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

91. **Notice Of Work For Remuneration**:–

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

92. **Date Of Payment Of Maternity Benefit**:–

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

Provided that such officer may issue a certificate, as aforesaid, under these Regulations, to or in respect of an insured woman who is or was not allotted to him or to the dispensary, hospital, clinic or other institution to which such officer is attached, if such officer is attending the woman for prenatal care, for confinement, for miscarriage or for sickness arising out of pregnancy, confinement, pre-mature birth of child or miscarriage or in case of death, was attending the deceased insured woman or the child at the time of the death of the insured woman or the child:

Provided further that a certificate of pregnancy, of expected confinement, of confinement or miscarriage required under these Regulation may be issued by a registered midwife which shall be accepted by the corporation on counter — signatures by the Insurance Medical Officer:

Provided that such officer may issue a certificate of pregnancy, expected confinement or confinement under these regulations to an insured woman who is not allotted to him or to the
dispensary, hospital, clinic or other institution to which such officer is attached, if such officer is attending the woman for pre-natal care or for confinement:

Provided further that a certificate of pregnancy, of expected confinement or of confinement required under these regulations may be issued by a registered midwife which shall be accepted by the corporation on counter signature by the insurance Medical Officer.
THE MATERNITY BENEFIT ACT, 1961


(12th December, 1961)

An Act to regulate the employment of women in certain establishments for certain periods before and after child – birth 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 :-

1. **Short Title, Extent And Commencement** :-

   (1) This Act may called the maternity benefit Act, 1961.

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

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95 Act 61 of 1988, enforced w.e.f. 10-1-1989 vide Noti No. S.Q. 47 (E) dt. 6-1-1989.

96 Act 29 of 1995 menforced w.e.f. 1-2-1996

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(3) It shall come into force on such date as may be notified in this behalf in the official gazette,

(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 establishment in state by the state Government.

2. **Application of Act**

("(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.

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97 Omitted by Act 51 of 1970
98 The Act came into force w.e.f. 1-11-1963 in relation to mines in the territories to which it extends vide Not, no S.O. 2920, dt. 5-10-1963
(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 person 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 declare that all or any other establishment or class of establishments, industrial commercial, agricultural or otherwise.

(2) \(^{100}\) (Save as otherwise provided in \(^{101}\) (Section 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 (48 of 1948) apply for the time being.

(3) **Definitions** :-

In this Act, unless the context otherwise requires,-

\(^{100}\) Subs, by Act 61 of 1988 (w.e.f. 10-1-1989).

\(^{101}\) Subs, by Act 21 of 1972.
(a) "Appropriate Government" means in relation to an establishment being a mine (or an establishment where persons are employed for the exhibition of equestration, acrobatic and other performances), the central Government and in relation to Government:

(b) "Child" includes a stillborn child:

(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 persons 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 whether called a manager, managing director, managing agent, or by any other name, such person:

(e) \(^{102}\) "establishment" means –

(i) a factory:

(ii) a mine:

(iii) a plantation:

(iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatics and other performances:

(…..) \(^{103}\)

"(iva)\(^{104}\) a shop or establishment: or"

(v) an establishment to which the provisions of this Act have been declared under sub-section (4) of section 2 to be applicable:

\(^{102}\) Subs, by Act 52 of 1973

\(^{103}\) Omitted by Act 61 of 1988 (w.e.f. 10-1-1989)

\(^{104}\) Ins. by Act 61 of 1988 (w.e.f. 10-1-1989)
(f) "Factory" means a factory as defined in clause (m) of section 2 of the factories Act, 1948 (63 of 1948):

(g) "Inspector" means and inspector appointed under Section 14:

(h) "Maternity benefit" means he payment referred to in sub-section (1) of section : 5

((ha)\textsuperscript{105} "Medical termination of pregnancy" means the termination of pregnancy permissible under the provisions of the medical Termination of pregnancy Act, 1971 (34 of 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 pregnant uterus at any period to or during the twenty sixth week or pregnancy but does not include any miscarriage the causing of which is punishable under the Indian Penal Code (45 of 1860):

\textsuperscript{105} Ins by Act 29 of 1995 Section 2 (w.e.f. 1-2-1996).
(k) "Plantation" means a plantation as defined in clauses (f) of section 2 of the plantation Labour Act, 1951 (69 of 1951):

(i) (1) "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

(3) the money value of the concessional supply of food grains 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:
(v) "woman" means a woman employed, whether directly or through any agency, for wages in any establishment.

4. **Employment Of Or Work By, Women Prohibited During Certain Period**

(1) No employer shall knowingly employ women in any establishment during the six weeks immediately following the day of her delivery or 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 or miscarriage or medical termination of pregnancy.

(3) Without prejudice to the provisions of section 6, no pregnant woman shall on a request being made

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106 Subs by section 3 of the maternity Benefit (Amendment) Act no 29 of 1995 for “” w.e.f. 1-2-1996.
by her in this behalf, be required by her employer to do during the period specified in subsection (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 fetus 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** :-

(1) Subjects 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 wages 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 the day)

**Explanation** :-

For the purpose of this sub-section the average daily wages mean 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 absent herself on account of maternity ("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 (Eighty days in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of (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, (the days for which she has been laid off or was on holidays declared under any law for the time being in forces to be holidays with wages), during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) “The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery”.

Provided 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 deaths.

(Provided further 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”.

(5-A. **Continuance Of Payment Of Maternity Benefit In Certain Cases**\(^{107}\))

Every woman entitled to the payment of maternity benefit under this Act shall, notwithstanding the application of the Employee’s State Insurance Act, 1948 (31 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).

(5-B. **Payment Of Maternity Benefit In Certain Cases**\(^{108}\))

Every woman-

(a) Whose is employed in a factory or other establishment to which the provisions of the employees’ State Insurance Act, 1948 (34 of 1948) apply,

\(^{107}\) Ins by Act 21 of 1972.

\(^{108}\) Ins. by Act 53 of 1976 (w.e.f. 1-5-1976)
(b) Whose wages (excluding remuneration for overtime work) for a month exceed the amount specified in sub-clause (b) of clause (a) 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).

5. **Notice Of Claim For Maternity Benefit And Payment There Of**

(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 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”.

109(“(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 fort-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 spectator 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 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-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.

8. **Payment Of Medical Bonus:-**

Every woman entitled to maternity benefit under this Act shall also be entitled to, receive from her employer a medical bonus of \(^{110}\) (two hundred and fifty rupees), if no prenatal confinement and

\(^{110}\) Subs by Act 61 of 1988 (w.e.f. 10-1-1989)
postnatal care is provided for the employer free of charge.

111(9). Leave For Miscarriage Ect.:-

In case of miscarriage or medical termination of pregnancy, a women 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 six weeks immediately following the day of her miscarriage or, as the case may be, her medical termination of pregnancy.

112(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 are of maternity benefit.

111 Subs by Section 4 of the maternity benefit (Amendment)Act, 1995 (Act no – 29 of 1995) for “ in case of miscarriage, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate or maternity benefit for a period of six weeks immediately following the day of her miscarriage”) w.e.f. 1-2-1996.

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 Or Miscarriage, Medical Termination Of Pregnancy Or Tubectomy Operation:**

A woman suffering from illness arising out of pregnancy, delivery, permuted birth of child.

113 (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

113 Subs. by section 6 of the maternity Benefit (Amendment) Act 1995, (Act no–29 of 1995) for the words” or Miscarriage”) w.e.f.1-2-1996
duration for nursing the child until the child attains
the age of fifteen months.

12. **Dismissal During Absence Or Pregnancy**:

(1) Where a woman absent 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.

(2) (a) This discharge or dismissal of a
woman at any time during her pregnancy,
if the woman but for such discharge or
dismissal would have entitled to
maternity benefit or medical bonus
refereed 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.

114 (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”.

114 Subs by Act 61 of 1988 w.e.f. 10-1-1989.
(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 Inspector:**

The appropriate Government may, notification in the official Gazette, appoint such officers as it thinks fit to be Inspectors for the purpose of this Act and may define the local limits of the jurisdiction within which they shall exercise their functions under this Act.
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 whom 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:**

115("(1) Any woman claiming that-

(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:

Her employer has discharged or dismissed her during or on account of her absence from work in

115 Subs. by Act No. 61 of 1988 w.e.f. 10-1-1989.
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 other 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 thirty days from the date on which such decision is communicated to such person, person, appeal to the prescribed authority.

(4) The decision of the prescribed authority where an appeal has been referred to it under sub-section (3) or of the Inspector where no such appeal has been preferred, shall be final.
((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 are she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorized absence she shall for – feit her claim to the maternity benefit for such period.

19. Abstract Act And Rules Thereunder To Be Exhibited:-

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

20. Registers, Ect. :-

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

(1) If any employer fails to pay any amount 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:

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

(2) If any employer contravenes the provisions of this Act or the rules made there under, 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 there under or conceals or prevents any person from appearing before or being examined by an Inspector, shall be punishable with imprisonment \(^1\) (which) may extend to one year, or with fine which may extend to five thousand rupees), or with both.

\(^{116}\) (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 organization registered under

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\(^{116}\) Subs. by Act 61 1988 (w.e.f. 10-1-1989).
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 or 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 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 benefit which are not less favorable than hose 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 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 anything inconsistent therewith contained in and 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 matter which
are more favorable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to receive benefit in respect of other matters 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 Inspector for the purposes of this Act:

(c) The method of payment of maternity benefit and other benefits under this
Act in so far as provisions has not been made therefore in this act:

(d) The form of notices under section 6:

(e) The nature of 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 Inspector 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 (2) of that section:

(k) Any other matter which is to be, or may by 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\textsuperscript{117} (for 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 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.

29. ***Amendment OF Act 69 Of 1981*** :-

In section 32 of the plantations Labour Act, 1951-

\textsuperscript{117} Subs. by Act No. 52 of 1973.