

Hon'ble Member of Parliament, Lok Sabha

Sub: Realising Universal Maternity Entitlement through the Maternity Benefit (Amendment) Bill, 2016

The Maternity Benefit Act, 1961 is being amended after 55 years and the Maternity Benefit (Amendment) Bill, 2016 was introduced in Rajya Sabha and passed without being referred to a Standing Committee.

The Amendment is intended to be progressive and to have far reaching consequences, but if the Bill is passed in its current form, then it will offer only incomplete benefits to a small section of women in our society.

The Maternity Benefit Act, 1961 practically applies only to women working in organized sector while 90% of the working women are in the unorganized and informal sector and thus do not receive any wage compensation during pregnancy and after child birth. For such women to be covered under MBA, there are many conditions which are either unreported or unfulfilled due to the nature of their work. There is no proper monitoring or grievance redressal mechanism in place under MBA.

In order to ensure that a wonderful opportunity to bring substantial benefits to women across India isn't missed in the rush to pass this Bill, **we request you to demand from the government to refer the Bill to a Standing Committee**(alternatively you can consider moving an amendment to refer the Bill to a Select Committee), to incorporate the following in the Bill:-

- 1. Universal and unconditional application** - The maternity benefits be extended to all women, irrespective of their, age, work status and including surrogate and adoptive mothers.
- 2. Nine Months of Maternity leave** – with full compensation of wages calculated at least at the prevalent minimum wage rate.
- 3. Proper Implementation**—through decentralised grievance redressal mechanisms, monitoring framework and penalties for non-implementation
- 4. Anti-discrimination provisions** – must prohibit discrimination against pregnant women or women with young children and provide penalty for the same.
- 5. Paternity Leave** – of two weeks for biological and adoptive fathers as a standalone entitlement.

Additionally we demand, immediate and proper implementation of maternity entitlements to the tune of Rs.6000 per child as envisaged under National Food Security Act, 2013 but which hasn't been implemented yet.

Please find attached a detailed note explaining the rationale behind our demands.

We look forward to your cooperation in realizing a healthy future for our women and children.

Thank You

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Right to Food Campaign

National Alliance for Maternal Health Human Rights

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## REALISING UNIVERSAL MATERNITY ENTITLEMENTS

Maternity rights include women's right to reproductive choice, right to health and nutrition care as well as the recognition that pregnancy and childbirth is an additional burden on women's bodies which requires that they take time off from their other routine work and get adequate rest. Women require rest from hard labour during the last trimester of pregnancy and immediate post-delivery period, and a reduction in time spent on work (paid and unpaid) to be able to exclusively breastfeed the child for six months. Extensive research has shown that exclusive breastfeeding for six months is in the best interests of the child for many reasons. Further, the dependence of the child on the mother or an adult care giver, during the first few years of life requires that supporting structures are provided.

Women must be given maternity benefits during the period from pre-delivery (proposed three months) and for six months after delivery (so that she can be enabled to exclusively breastfeed). Maternity Entitlements enable a woman **to take care of herself and her child** by providing her with cash benefits or paid leave so that she can take off from work and **take care of her child and herself**. Since the mother's and the child's needs and rights are intertwined especially during pregnancy and the first six months of the baby's life, the mother has to be enabled through wage protection, so that she can withdraw herself from all other forms of "labour" and engage herself in "reproductive labour". Further, proper care during the period of pregnancy and early childhood has a number of social benefits including contributing towards a healthy and productive future labour force. The provision is also required for adoptive parents for the same period of care and bonding as the infant settles in the new environment. This has been already recognized as a "Social Function" under Article 5(b) of CEDAW of which India is a signatory.

The period of pregnancy, childbirth and early child care has been neglected by the State and by society in India, in spite of the Constitution having directed the state to provide special protections for maternity and the care under Article 42 specifically and protection of children. The Law Commission Report No.259 talks about extending maternity entitlements to six months universally and puts the onus on the State. It will be relevant to say that in most cases the State is playing a mitigating role or is singularly responsible for providing maternity entitlements.

While there are a number of piece-meal legislations and policies that address maternity entitlements, these are not comprehensive and are not implemented properly. The National Food Security Act (NFSA), 2013 includes a universal maternity entitlement scheme of at least Rs. 6,000 for all pregnant and lactating women but this scheme is still confined to 52 districts as a pilot, four years after its implementation and three years after the Act has been passed.

The Maternity Benefits Act (MBA), 1961, exists but covers a very small section of women in the country. In spite of being called a Maternity Benefit Act, in effect it is largely covering women employed in organised sector (estimated to be around 5-10% of the total female workforce in India), with very weak and ineffective grievance redressal mechanisms for women in contractual labour, plantation workers etc.

An amendment to the Maternity Benefits Act, 1961 extending the period of maternity leave from 14 weeks to 26 weeks was recently passed in the Rajya Sabha. It is expected that it will soon be introduced in the Lok Sabha. In India, 90% women workers are in the informal and unorganized sector and do not receive any wage compensation during pregnancy and after childbirth, endangering their health and that of the infant. This includes women working as agricultural labour, cultivators, domestic workers, street vendors, home-based workers, care givers, etc. in paid and unpaid activities. Women engaged in production process like a brick kiln worker or the one who helps a weaver in a home-based production are not even recognised as workers. Other than for regular employees in the public sector, it is not even clear how much this Act is being implemented even in workplaces that come under its purview. The

Maternity Benefits Act has failed not only those in the unorganised sector but also women in the organised sector, including government frontline workers like ASHAs who are expected to provide maternal health care linkages to all women.

Currently, the provisions of MBA(1961) are applicable to contract workers, plantation workers and mine workers and also through other legislations to construction workers, women workers in factories and establishment through ESCI. Several of these acts require that women workers have worked continuously for 180-200 days before they can claim Maternity Entitlements under the MBA. However, it has been seen that most women workers are not registered as workers, neither do they work continuously, thus they are actively discriminated against during pregnancy. Hence, amendments for preventing discrimination in employment along with strong deterrence measures and effective grievance redressal are urgently needed to ensure that the MBA Act is implemented in word and spirit.

#### Demands

This revision of the Maternity Benefits Act 55 years later, should now recognise women's work in all spheres, markets, and domestic, for care and reproduction and subsistence; and guarantee maternity entitlements to all pregnant women, adoptive parent(s), surrogate mothers etc. without discrimination.

The Act must have provisions for penalty for discrimination in employment that pregnant women face in contractual work, factories and establishments and ensure that safe enabling work conditions are provided for pregnant and lactating women and infants in their care.

The amended Maternity Benefits Act must include nine months of maternity leave with full compensation of wages for all women. For working women in the organised sector, or for women who have a fixed wage, the amount may be quantified as nine months of paid leave. For all other women, the maternity allowance payable must be in the form of cash at the rate of minimum wages on the day of cash computation. The government would be responsible for ensuring that mechanisms are put in place to ensure that such cash maternity entitlements are provided for all women who are not in regular employment in the formal sector.

The Act must also ensure institutional mechanisms for grievance redress and community monitoring through tripartite mandated committees for grievance redress at every level, accessible mechanism to register complaints starting from Panchayat (under VHSNC) /Urban Local Bodies, District Level and above and Community based monitoring and Social Audit through Gram Sabha as under MGNREGS Act. Penalties for non-implementation must be clearly defined. The Act must further include stringent non-discrimination clauses which makes it impossible to fire women workers on some pretext during the time of pregnancy and child birth.

The maternity entitlements must be unconditional without an eligibility criteria related to the age of the mother, number of children etc. Women and their third children cannot be penalized and deprived of such a benefit for no fault of theirs.

Providing universal and unconditional maternity entitlements is primarily the responsibility of the state. In this context of inadequate and completely absent maternity entitlements, we demand that the following:

#### Cash Maternity Entitlements

The immediate implementation of the National Food Security Act 2013, within which the Central Scheme for Maternity Entitlements should immediately be up-scaled from its pilot phase.

The universal guarantee of at least Rs. 6000/- under the NFSA is only to be read as a beginning, and it should subsequently be rationalised as wage compensation.

Maternity entitlements in all sectors, including under NFSA, must be universal and unconditional, and not linked to the number of children or age of the woman, as that is fundamentally discriminatory to both women and children.

## Maternity Benefits Act/Legislation for Universal and Comprehensive Maternity Benefits

The amended Maternity Benefits Act must include progressive realisation of nine months of maternity leave (three months before childbirth to six months after) with full compensation of wages for all women, calculated at least according to minimum wages at prevalent rates.

This revision of the Maternity Benefits Act (1961) should recognise women's work in all spheres, markets, and domestic, for care and reproduction and subsistence; economic and non-economic and guarantee maternity entitlements to all pregnant women, adoptive parent(s), surrogate mothers etc. without discrimination.

Comprehensive maternity entitlements must be provided for all women working under government programmes by issuing guidelines nationally including anganwadi workers and helpers, ASHA workers, mid-day meal cooks and helpers and women working under MGNREGS. These have been already done by several states across the country and have shown to have positive impacts.

The legislation must include decentralised grievance redress mechanisms, a monitoring framework and clear penalties for non-implementation.

The legislation must also include stringent provisions against discrimination in employment of pregnant women and women with young children.

Paternity Leave of two weeks is to be paid to all biological fathers and adopting fathers as a standalone entitlement and not to be clubbed within women's entitlements.