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## Implementation of “The Maternity Benefit (Amendment) Act, 2017”

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**Abstract:** *The analysis of impact of amended Maternity benefit act is very important in terms of employment, women empowerment, social status & Health, Corporate acceptance of the new regulation. Though the Act has a statutory background & compulsion to the organization however, it is important for the individual to understand the impact of the same, so that all the parties involved the in the implementation will get the right directions to work on.*

**Keywords:** *Maternity Act, Leaves, Creche, Medical Bonus.*

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### INTRODUCTION

In the history of mankind women has been subject to various constraints and compulsion in the man-dominated society. The Problem of her suppression has not been confined to any particular region, religion or any socio-cultural relationship and it has travelled beyond all these boundaries. Basically, it appears that sex-discrimination has been a root-cause of her subordinated position. This discrimination is very clearly visible in the field of industrial workers ever since the world became industrialized.. It is also a tyranny that about half of the world population is Crushed under the giant wheels of industrialization.

However with the passage of time and growing awareness among the woman-folk. emergence of several woman organizations and evolution of the concept of civilized society, the situation improved gradually and the various Constitutions, including Indian, has made special provisions for the protection of women, particularly when she is on her family-way and undergoes pregnancy when she needs more protection, medically, and emotionally

Some of the early efforts in this direction have been made by the International Labour Organisation (I.L.O.) which adopted several Conventions and Recommendations for the protection of working women especially during her pregnancy period. Early Conventions were adopted as Convention No. 3 of 1919, Convention No. 103 (Revised) of 1952 and a Comprehensive Convention No. 183 of the year 2000. While India, too, has provided protection to woman worker in its Labour Legislation and also enacted the Maternity Benefit Act, 1961. The ILO has remarkably defined the words, 'woman' and 'child' with all necessary elaboration so as to include within the meaning of woman, an unmarried woman and in the definition of 'child' an illegitimate child also. However these expressions under the Maternity Benefit Act, 1961 simply defines under Section 3(b) "child includes a still born child" and under Section 3(o) 'woman means a woman employed, whether directly or through an agency, for wages in any establishment. Thus there is no special mention in the Maternity Benefit Act, of a woman whether married or unmarried and a child whether legitimate or illegitimate. The Maternity Benefit Act, 1962 Section 1. Short title, extend and commencement (1) This Act may be called the Maternity Benefit Act, 1961. (2) It extends to the whole of India. (page 727 , khan and khan)

This Act was passed 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. By way of this Act the working women have come in for a great deal of protection. The Maternity Benefit Act 1961 was passed by the Central Legislature as a measure of Social Justice to woman workers employed in the industry. Prior to the enactment of the present Maternity Benefit Act, the maternity benefit legislation was framed and administrated in almost all the states from 1930 onwards conferring maternity benefit on women workers, But these enactments were neither uniform in their application nor comprehensive in their scope. In order to regularize the benefits provided to working women The Central Government Enacted this Maternity Benefit Act 1961.

## **THE MATERNITY BENEFIT ACT 1961**

**Object:** The object of the act is:

1. To provide for maternity benefits to women workers in certain establishment
2. To regulates the employment of women worker in such establishment for certain period before and after child birth.

The Act is applicable to every establishment which is a factory mine or plantation including Government establishments and to every establishments where in persons are employed for the exhibition of equestrian, acrobatic and other performances. The Act being a piece of social legislation prohibits the employment of women during specified period before and after delivery. It also provides for maternity leave and payment of certain monetary benefits to be paid for women workers during the period.

**Coverage:** The Act has come into force w.e.f. 5th October, 1963 and extends to whole of India including State of Jammu and Kashmir. It applies, in first instance, to a mine and to any other establishment by the Central Government and w.e.f 1.3.1975, it applied to a Circus also by including in its ambit persons employed for the exhibition of equestrian, acrobatic and other performances. It also applies to other establishments in a State by the State Government [Section I (3)( a)].

The Maternity Benefit Act, 1961 applies to every establishment being a factory, mine or plantation including an establishment belonging to Government including Circus.

It also applies to every shop or establishment within the meaning of any law for the time-being in force in relation to shops and establishment in a State in which 10 or more persons are employed or were employed on any day during the preceding 12 months. However state government is empowered to apply this Act, with the approval of the Central Government by months advance notice given through Official Gazette, to any other class of establishments, industrial, commercial or otherwise.

However, it is important to note that The Maternity Benefit Act 1961, does not apply. except as provided under Sections 5A and 5B to any to which the provisions of Employees' State Insurance act 1948 applies, it needs to be clarified here that since the E.S.I. Act, 1948 also provided for maternity benefit under Section 50 of that Act, in order to avoid any conflict or double benefit.

### **Section 4: Employment of, or work by, women prohibited during certain periods**

It may be noted that originally enacted in the year 1961, the Maternity Benefit. Act, 1961 made provisions for the protection of pregnant woman for the period of 6 weeks following the day of delivery, but subsequently by an amendment made in the year 1995 and w.e.f. 1.2.1996, the words 'miscarriage or medical termination of pregnancy' are added and the same benefit is extended to cover the miscarriage and medical termination of pregnancy also.

Therefore, under Section 4 of the Act, employer is prohibited to knowingly employ a woman during the 6, weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy [sub-section (1)]. Similarly the responsibility not to work during this period is also imposed on woman by requiring her to abstain from doing work during the specified periods [sub-section (2)],

Further no woman, even on her request being made in this behalf, shall be employed or required to work during such specified period on any work of 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 [sub-section (3)1].

The period during which the pregnant woman is prohibited from working is specified under sub-section (4)(a) and (b), as the period of one month immediately preceding the period of 6 weeks, before the date of her expected delivery. Similarly any period during the said period of 6 weeks for which the pregnant woman does not avail of leave of absence under Section 6 of the Act which requires her to give notice of claim for payment of maternity benefit. [Sub-section (4)].

### **Section 5. Right to payment of maternity benefits**

Under Section 5, the right of woman to maternity benefit and its quantum is mentioned and it is laid down that every woman shall be entitled 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 during the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. For the purpose of calculating average pay, the wages payable to her during the period of 3 months immediately preceding the date from which she absents herself on account of maternity shall be taken into account. The minimum rate of wages shall be such as are fixed or revised under the Minimum Wages Act, 1948 or Rs. 101- whichever is higher" [sub-section (1) and its explanation].

For the purpose of entitlement to the Maternity Benefit, a minimum eligibility period of actual working of women in such establishment is also prescribed and subsequently revised as 80 days, which was earlier 160 days, during a period of 12 months immediately preceding the date of her expected delivery. For the purpose of calculating the minimum of 80 days of work for the eligibility it is further mentioned that such period shall also include the days on which she was laid-off or it was a holiday declared under any law for the time being in force.

The maximum period of maternity benefit shall be 26 weeks, of which not more than 13 weeks shall precede the date of her expected delivery [sub-(3)1].

However if the woman dies during the abovementioned period, the maternity benefit shall be payable only for the days upto and including the day of her death. Further provided that where a woman, having been delivered of a child, dies during her delivery or during the period in which she was entitled to maternity benefit, leaving behind the child, the employer is liable to pay maternity benefit for the entire period, but if the child also dies during the said period, then, for the day upto and including the date of death of the child [Provisos to sub-section (3)1].

### **Section 6. Notice of claim for maternity benefits and payment thereof**

Under this section the procedure for making claim for and payment of maternity benefit is prescribed. It is laid down that any woman entitled to maternity benefit under this Act may give notice in writing, in such form as may be prescribed, to her employer stating that her maternity benefits and any other amount to which she is entitled may be paid to her or to such person as she may nominate in the notice. She shall also inform the employer that she will not work in any establishment during the period for which she receives the maternity benefit [sub-section (1)].

In such notice the date from which the pregnant woman will be absent from work shall be stated and that date shall not be earlier than 6 weeks from her expected delivery [sub-section (2)].

If any woman has not given such notice when she was pregnant, may give such notice as soon as possible after delivery sub-section (3)].

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 [sub-section (4)].

The payment of amount of maternity benefit shall be made by employer in advance to the woman on production of such proof as may be prescribed. The amount due for the subsequent period shall be paid by the employer to the woman within 48 hours of production of such proof as prescribed stating that she has been delivered of a child [sub-section (5)].

However 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 and the woman concerned or the Inspector appointed under this Act may order the payment of such benefit [sub-section (6)]

### **Section 8. Payment of medical bonus**

It is provided that the woman entitled to maternity benefit under this Act, shall also be entitled to receive from her employer a medical bonus of Rs. 3500/-, if no Pre-natal or Post natal care is provided for by the employer free of charges.

As per the amendment S-36012/03/2015-SS-1 dated 12<sup>th</sup> April 2017.

1. Crèche facility would come into force from 01.07.2017
2. Provisions of the Act are applicable to the Contractual employees engaged through contractors.
3. Maternity benefit of 26 weeks are applicable to the Female employees who are on maternity Leave as on 1st April 2017.
4. Maternity benefit of 26 weeks are not applicable to the Female employees who have joined the establishment after availing 12 weeks of maternity leave before 1st April 2017.
5. Services of the Female employees can't be terminated during her period of Maternity Leave.

### **Effects of maternity benefits programs**

#### **1. Health benefits :**

Maternity protection for women workers contributes to the health and well-being of mothers and their infants. In order to make clear in what ways maternity benefits improve the health of mothers and children, the sections below present academic findings on the relations between maternity protection and maternal health, and maternal protection and child health.

#### **2. Maternal health:**

Concerning the health of mothers, public health literature shows that women who leave work too late before childbirth or return to work soon after childbirth experience more mental and physical health symptoms than other women. In regard to physical health, a study suggests that the risk for caesarean deliveries is 4 times lower for women who take maternity leave during the ninth month of their pregnancy than for those who do not (Guendelman et al 2009, p 30). In addition, studies show that employed postpartum women have higher rates of breast symptoms, respiratory infections and gynecologic problems compared to postpartum women who are not employed (Chatterji & Markowitz 2005:24).

In regard to mental health, the findings are mixed. Some scholars come to the conclusion that depressive symptoms increase for mothers who have a short maternal leave only if they also have marital or job concerns Others however conclude that returning to work within 24 weeks after childbirth is associated with poor mental health (Chatterji & Markowitz 2005:18).

In the economic literature, a study from March 2017 which uses a sample of 1762 women in the India shows that longer maternity leave is associated with lower probability of being a likely case of clinical depression and a lower likelihood of having frequent outpatient visits. More specifically, the study suggests that increasing maternity leave by one week is associated with a 6-7 % decline in depressive symptoms, and that returning back to work later changes the probability of having at least three outpatient visits in the six months after childbirth (Chatterji & Markowitz 2005:16).

### **3. Child health**

Moving on to child health, economic theory predicts that parental time is one of the direct inputs of child health capital. Besides decreasing infant death rates, research has also shown that maternity leave increases the period of breast-feeding. According to the WHO breast-feeding is the normal way of providing young infants with the nutrients they need for healthy growth and development, and exclusive breast-feeding is recommended for children up to six months of age.

By collecting data on the micro level, researchers have come to the conclusion that there is a positive correlation between maternity leave after childbirth and the period of breast-feeding.

Another study shows that children of mothers who return to work early after delivery are less likely to receive breastfeeding or regular medical check-ups in the first year of life. In addition, they are less likely to receive full polio immunization and more likely to have externalizing behavior problems at the age of four (Berger et al 2005:44-45).

### **4. Economic benefits:**

Economic participation According to feminist scholars, economic participation is necessary for women's autonomy and empowerment. Access to salaried employment is especially important in regards to economic participation. This is since salaried employment makes women less economic dependent of male kin and the spouse, and offers women exit options in i.e. cases of domestic violence. Labour force participation is however perceived to not be necessarily positive per se, since it can be a result of economic pressure, inequalities or poverty, and can place a double burden of work on women who are responsible for all domestic work in the household. Because of this, employment benefits, and especially maternity benefits, are claimed to be central complements to women's salaried employment. Maternity leave is believed to create an environment that improves a woman worker's capacity to balance work and family life.

## **METHODOLOGY**

The sample in this study consist of 45 randomly selected women employees who work in an organization (private, Government & School ) in Mumbai that employs more than 50 people. The 50 people limit has been set since as per the amendment there are set guideline for the 50+ people at one location. Primary data has been collected by a structured questionnaire 12 with different sections:

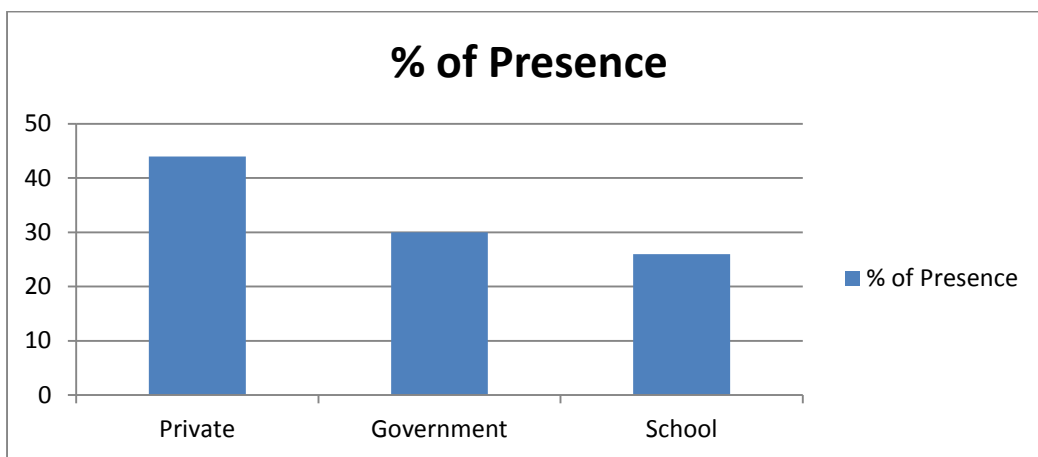
1. Personal Profile
2. Organisational Policy
3. Leave Application Procedure
4. Crèche
5. Medical Bonus

The questions in the different sections of the questionnaire has been designed to mainly focus on the rules and practices in organizations, and is therefore not limited to the experiences of individual women. Thanks to this design, both women with and without the experience of being pregnant have been possible to include in the study. Considering the way of answering the questionnaire, two methods have been used. Since the answers in the questionnaire has been in English, some of the respondents have read and answered the questionnaire by themselves; while others have had the questions read out loud to them in Hindi and then answered orally. All women who have answered the questionnaire have been assured that responses and employee details will be anonymised and not released to any other organisation.

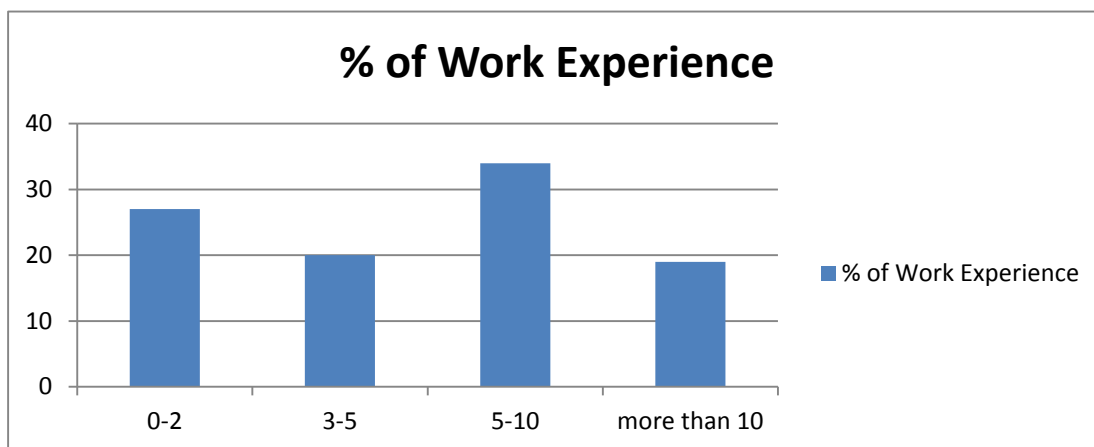
### **Personal profile:**

#### **Work locations (workplace) and experience:**

The personal profiles of the participants in this study vary a lot. To start with, the women who have answered the questionnaire have a variety of professions: teacher, manager, social worker, government officer, customer relation assistant, administrative assistant, nurse, assistant professor, therapist, clerk, engineer etc. This means that the study covers private, government and non-government organisations. As can be seen in figure below, 44 per cent of the women who participated in the study work in the private sector, 30 per cent in the public sector and 16 per cent at a School. Further, the women have a different amount of work experience at their workplace.

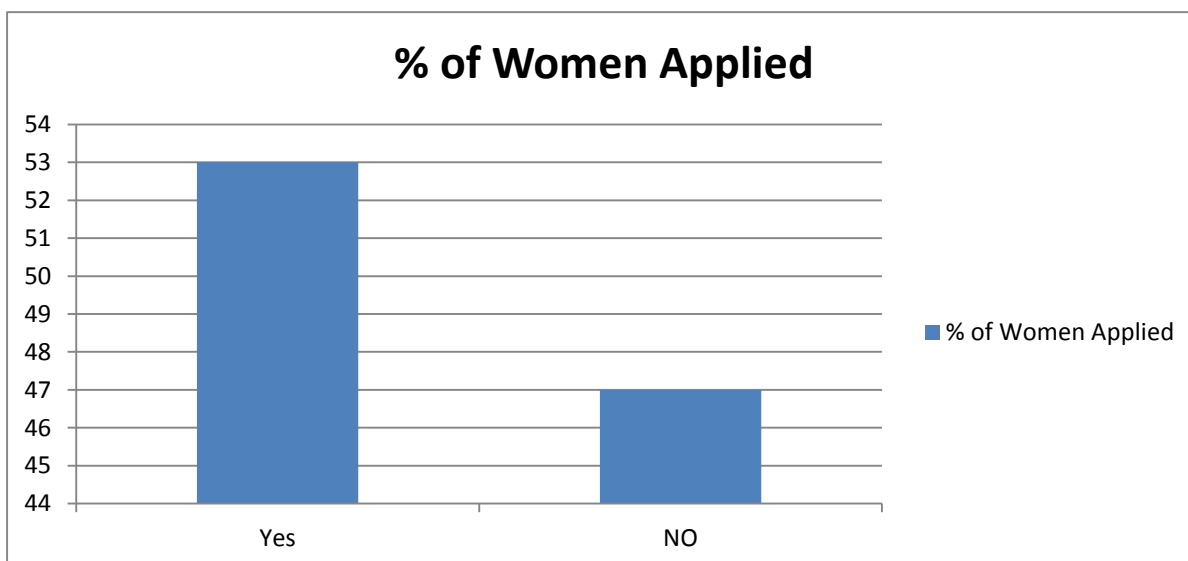


As figure below, about one fourth of the participants have worked at their organisation for 0-2 years and about one third for 5-10 years. The groups who worked 3-5 years and more than 10 years in their organisation, each make up about one fifth of the participants.



**Experience of leave**

Among the women who answered the questionnaire, only one is currently pregnant. However, a little more than half of the participants in the study have at least once applied for maternity leave (Figure). This group is especially important when it comes to analysing the length of maternity leave in practise and the experience of filing a complaint. As mentioned above, answers from both women with and without the experience of being pregnant are valuable. This is since the focus of the study is organizational policies, but also since the two groups can be compared in regards to i.e. awareness of the Maternity Benefit Act.

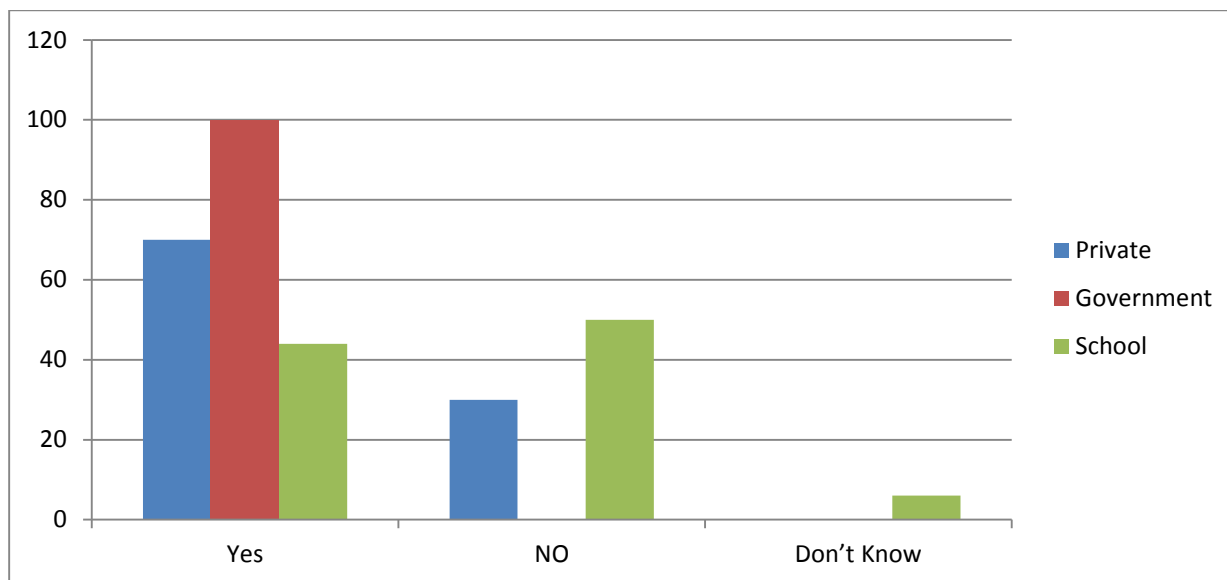


**Organisational policy**

**Existence of policy in the organization**

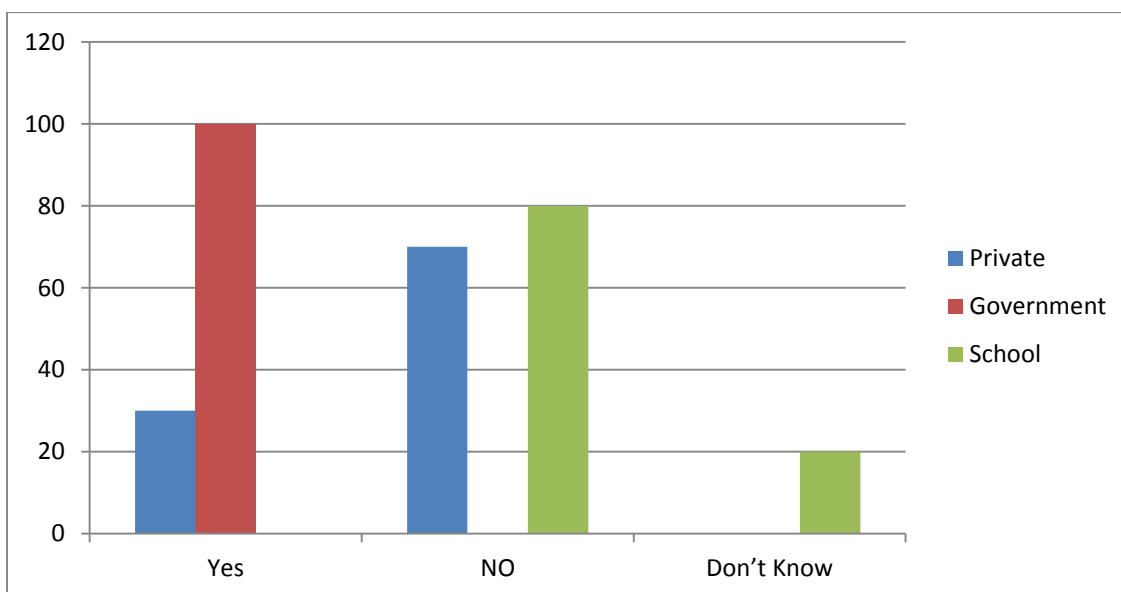
Of all participants, about 73 per cent answered that there exists a maternity policy in their organization. If one looks at each sector separately 70 per cent of the women in the private sector answered that there exists a maternity policy in their organization.

Further, all women in the public sector answered that there exists a maternity policy in their organisation, which is a very positive result. In regards to the School sector, 44 per cent of the women answered that there is a maternity policy in their organisation, while half of the women answered that they miss such a policy.



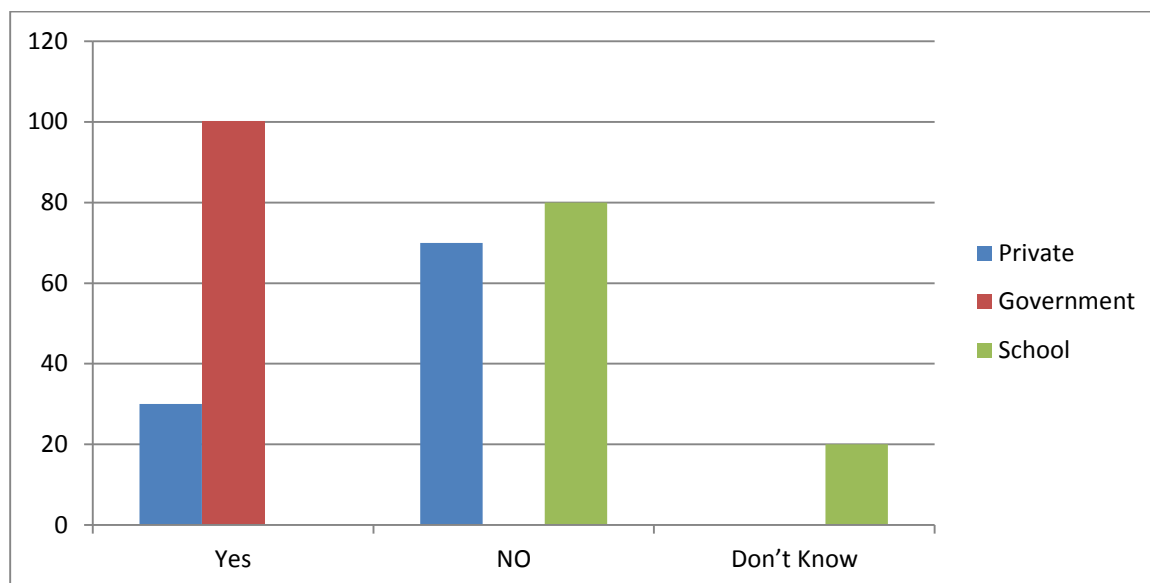
**Leaves taken**

In Private and Government sector 100 % women are know the leave policy and they have applied for the leave as per new amendment, however, In school only 52 % women know the leave policy.



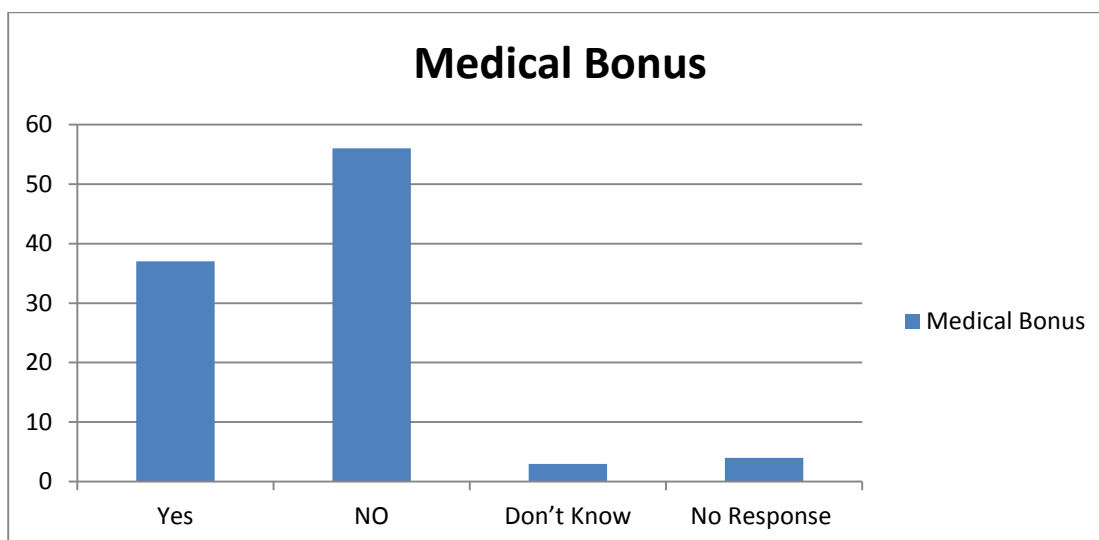
**Crèche:**

As per new policy in private sector only 30% employees are known about the crèche policy, in government sector 100 crèche facilities available.



**Medical bonus:**

According to the Maternity Benefit Act, a pregnant woman has the right to 3500 rupees in medical bonus. In order to find out to what extent this part of the Act is implemented, one has to first find out whether some of the participants are entitled to free medical care during their pregnancy. A medical bonus would be unnecessary for these women, since their employer covers all medical costs.



**FINDINGS**

In this section, different findings from the study are presented. With the effort to not neglect important data, certain key topics have been chosen from the questionnaire and personal interviews. All numbers in this chapter are rounded to the nearest integer

**CONCLUSION**

After studying above mentioned parameter through interview and questionnaire the study consists of 45 working women from different sectors of the labour market. They have a variety of years of experience in their respective organisation, and there is a mix of women with and without the experience of having applied for maternity leave.

The study has found that a majority of the women that have the experience of having applied for maternity leave have taken 6 months of leave. Those women in study who have taken less than 6 months of leave work in the private sector. These findings show that the Maternity Benefit Act has been implemented to some extent, but that there is room for improvement.

Regards to organizational maternity leave policy, three fourth of the participants in this study have answered that such a policy exists in their organisation. Among these women, 80 per cent are entitled to at least 6 months maternity leave. Once again, those policies that provide less than three months leave belong to private organisations. Although 80 per cent of the organisations provide at least three months maternity leave in their maternity policy, it has been noted that one fourth of the policies do not grant full payment for women on maternity leave. Further, another important finding is that only about one fifth of the women in this study have unlimited accesses to maternity leave, while most are limited to only take leave twice.



In regards to access to medical bonus and nursing breaks, the implementation of the Maternity Benefit Act is more flawed. In this study, only one tenth of the participants have answered that pregnant women in their organisation are entitled to medical bonus (those with free medical care excluded).

As always when it comes to implementation of a law, high awareness among those the law concerns can be very helpful in order to push for the implementation. In the case of the Maternity Benefit Act, this study has found that a little more than half of the working women are aware of the existence of the law. The same number appears when the participants are divided and analysed in two groups: those who have ever applied for maternity leave and those who have not. These findings show that awareness about the law has to be raised, and that this conclusion is valid among both women who never have been pregnant and those who have had the experience of pregnancy.

### **RECOMMENDATIONS**

As can be understood from above, the Maternity Benefit Act has merits. However, there are some shortcomings that should be noted. First of all, the Maternity Benefit Act is restricted to female workers who are registered by their employer. Although casual and daily wage workers are covered by the Act, there is a risk that these employees are registered to a lesser extent. This is since they are present at the workplace less often/less regularly or do not have an identifiable employer or a designated place of work. This situation could create a bias of maternity benefits in favour of permanent full-time workers. In addition it should be noted that according to a report on maternity protection in India written by the Ministry of Labour and Employment of India and International Labour Organization, only 6 million of 138 million (4.4 per cent) female workers aged 15 to 49 in India work in the formal sector.<sup>1</sup>

In other words, the Maternity Benefit Act is not applicable to 95.6 per cent of female workers in the reproductive cohort in India. Secondly, the Maternity Benefit Act is one of four laws<sup>1</sup> of social security in India which is based on the principle of employer's liability. This principle means that workers are protected through labour codes whereby affected employers are required to provide payments or services to their employees. In the case of the Maternity Benefit Act, this means that the liability for payment of maternity benefits is placed directly on each employer. Because of this, the Act is likely to decrease the amount of women who want to or are able to make use of their maternity rights. Pregnant women might be afraid of losing their job or to get a decreased salary if they apply for maternity benefits, while employers might be worried that they will face a financial loss if they allow for maternity benefits. Due to the balance of power in favour of the employers, which exists since workers are dependent on their employers for their employment and salary, it is likely that the interests of employers override the interests of working women. In connection with this discussion, it is worth noting that the principle of employer's liability actually contradicts one of the general guiding principles in the ILO recommendation no. 67, which states that income security as far as possible should be organized on the basis of compulsory social insurance.

Thirdly, the Maternity Benefit Act disregards fathers as caregivers when a child is born. This is in spite of the fact that paternity leave could be an important opportunity for men to nurture their children and support new mothers with the physical and emotional demands relating to childbirth. It should also be noted that the right to paternity leave could be crucial for changes in the relationships and perceptions of parenting roles in the long run. The Maternity Benefit Act however does not entitle working men such leave, and thereby does not make an adequate effort in the struggle towards a gender-balanced approach to care-giving and unpaid domestic work.