

**Minutes and Recommendations of the National Consultation on the Maternity Benefit Act**

**Held on July 2<sup>nd</sup> 2013, Vigyan Bhawan Annexe, New Delhi**

The Ministry of Women and Child Development, Govt. of India, organised a day long consultation on the Maternity Benefit Act, 1961 on Tuesday, 2<sup>nd</sup> July, 2013. The National Resource Centre for Women on behalf of National Mission for Empowerment of Women coordinated this consultation in the Committee Room 'A', Vigyan Bhawan Annexe, New Delhi.

The Inaugural Address was delivered by Smt. Krishna Tirath, Hon'ble Minister, Women & Child Development. It was attended by many senior officials of the Ministry, Planning Commission, State Governments, UN Women, ILO, representatives of many prominent civil society organizations, experts and academics.

This day long consultation deliberated on the following issues pertaining to implementation and operationalisation of this Act in all States. The agenda and participant list is attached at Annexure I.

In the Inaugural Session, Smt. K. Ratna Prabha, AS, WCD, rendered the welcome address. She spoke about the Constitutional Provisions (Fundamental Rights and Directive principles of State Policy) regarding Gender Equality. She stated that, there has been an increasing trend of working women. She then spoke about the Maternity Benefit Act, 1961 and about its execution. The deliberations would highlight issues pertaining to the Maternity Benefit Act (MBA) and seek universal standards for the entire country.

Smt. Rashmi Singh, ED, NRCW, NMEW moderated the session and introduced the context including the leadership role taken by Ministry, WCD on the issue and highlighted that the MoWCD is taking up a nodal role increasingly on issues such as safety of women.

Secretary, WCD, GOI stated that all women in India need to avail benefits of the Maternity Benefit Act. She further requested all participants to give practical suggestions for successful implementation.

The highlights of the speech rendered by Smt. Krishna Tirath, Hon'ble Minister, Ministry of Women & Child Development are as under:

- Requested all participants to provide suggestions regarding the Amendment of MBA paying special attention to women from rural areas and unorganized sectors. She clarified that the role of the Ministry is to identify the issues and make amendments accordingly.
- Breast feeding is hampered for working women in sectors like the media and unorganized sectors which in turn have led to malnourishment of children and a malnourished child cannot contribute well to the nation.

- Further for those women, who do get the benefit of MBA, earned leave is guaranteed but child care leave provisions are applicable only to Central Government women employees. Even the judiciary does not get the benefit of child care leave.
- Spoke about schemes such as Janani Suraksha Yojana (JSY), Indira Gandhi Matritva Sahyog Yojana (IGMSY) mentioning that we need to work on how working women from the unorganized sector can be ensured the benefits of this Act.
- Our aim should be to work towards reducing the Maternal Mortality Rate and the Infant Mortality Rate.
- She requested all to find a way out to this pressing issue so that it can be implemented and women can be healthy, so that they are able to cope with their responsibilities. She added that we need to ensure maternity benefits to house engineers also during the maternity and lactation period.

Prof. Kamala Sankaran, Senior Professor Law, Faculty of Law, University of Delhi agreed that suggestions should be of practical nature and that MBA is an employer liability Act and is beneficial to working women. In her presentation she highlighted several problem areas regarding MBA and made some innovative suggestions which can be summarized as follows –

- Quoting figures from the 68<sup>th</sup> NSS Round for the year 2010-11, she pointed out that the percentage of Self Employed women is 50% of the working population among women. This Act is hence, applicable only to a small segment of beneficiaries and we need to deliberate on how we can broaden the scope of the Act. She further pointed that from 2004 to 2009, there has been a steady decline of women in workforce. This is due to education and the overall increase in income which is leading to women withdrawing from the workforce, which is a discouraging trend.
- Drew attention to the Employees' State Insurance (ESI) which is a social insurance scheme and involves pooling of risk. National Commission for Rural Labour had raised the need for this scheme as an insurance scheme. This Act extends to plantations and other factories but is only applicable to permanent employees and establishments. The definition of those covered under this scheme includes labourers who have come through contractors but not contractual employees who are employed on a temporary basis. Home based workers in India are also out of the ambit and they amount to about 30 million people from all sectors.
- Pointed to the Beedi and Cigar Workers Act which has a robust Maternity Benefit Fund, under which Factories, Mines and Establishments are included.
- Pointed out that MBA gives leave with pay but it does not provide medical facilities. It does not give institutional delivery provisions that a women worker under ESI enjoys. MBA should allow medical benefits a cash benefits are not very substantial.
- Other schemes such as the JSY, IGMSY should become a part of the amendment for MBA as statutory rights. In this context she posed the pertinent question – can MBA be amended as a Social Security Scheme? It was suggested that, instead of campaigning state by state, an amendment can be made nationally. The Act needs to remove exclusive liability from the

employer so that self-employed women can avail maternity benefit from other social schemes.

- In schemes such as Rashtriya Swasthya Bima Yojana (RSBY), the mother gets medical benefits but does not receive leave with pay. Hence a National Maternity Benefit Fund needs to be allocated for a 12 week period for all women.
- The Unorganized Workers' Social Security Act (UWSSA) is restricted to only covering general illnesses among workers. It should be merged to RSBY which should be extended to street vendors, domestic workers and brick & kiln workers.
- The definition of employee has to be extended to the unorganized sector. The Sexual Harassment Act extends to all sectors and hence MBA should also extend to other sectors so that it could be in tandem with norms set forth by the ILO.
- Nursing breaks make sense only when crèches are nearby. Crèches can be scattered across the city which women from the unorganized sector can access to ensure breast feeding. There is a high disparity between MBA Act implementation and the establishment of Crèches. The latter has a much high minimum requirement of 20 women workers for a crèche to be established as compared to the minimum number of women necessary for the maternity benefit to be applicable, i.e., 10 women workers.
- There is need for a work life balance.
- Establishments like the NTPC, BSNL have a provision under which pregnant women from the second trimester onwards need not work on a computer.
- Suggested a framework of Collective Bargaining Schemes which have provisions of paternity leave, early care-giving for adoption and surrogacy.
- The Maternity Benefit Act is one of the oldest social security mechanisms. It needs to be strengthened by giving not just wages but also medical benefits as a right. These rights should be treated as workers' rights.
- Different ways to amend this law to reach a greater number and ensure both depth and breadth should be devised so that it can actually benefit the aggrieved.

Secretary, WCD, GOI commenting on Prof. Sankaran's presentation stated that the Fishermen's Benefit Scheme, which is facilitated by the Ministry of Agriculture should also be studied. It is a scheme running in 17 states covering fisherwomen in the unorganized sector. She added that the MGNREGA crèche is essential to our objective of covering such women, and to ensure breast feeding rights in case of daily-wage labourers.

Prof. Kamala Sankaran agreed to the secretary's suggestion of looking into the suggested scheme. She also pointed out that the Supreme Court had struck down a provision in Kerala with respect to Labour and Maternity Benefit laws which used to let traders in addition to employers be benefit providers.

Shri Animesh Bharti, Director, Ministry of Labour & Employment commented that the Act needs to be further expanded. Presently it is the liability of the employer and

only workers within permanent establishments with a minimum of 10 workers are covered.

He suggested that the ESI & MBA should be dovetailed and premium can be paid by the Government in the form of cash transfers to motivate employers to employ more women. He suggested that coverage of women under ESI act needs to be enhanced. He also proposed the idea of Lok Adalats for compounding of cases.

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### Session I – Challenges for the implementation of the Maternity Benefit Act

Dr. Shashi Bala, V.V. Giri National Labour Institute stated that their institute conducted two studies on implementation of MBA in the National Capital Region. The institute aims at protection of women during pregnancy and providing them within essential medical care. The findings from these studies which were presented by her can be summarized as follows –

- Within the organized sector compounding is necessary and that it could play a very important role for those women who are covered under the MBA.
- Trade Unions play a very important role in the implementation of MBA.
- The implementation of the MBA in sectors such as IT is not very substantive. Although a mechanism exists for sharing of social insurance costs between the employer and the employee, in case of smaller firms they tend to avoid providing for maternity benefit and as soon as they get to know a woman employee is pregnant, they discriminate against her and ask her to leave the job.
- In the health sector, the implementation of MBA is also not very effective. Nurses face big challenges within this sector. They mostly get leave without pay but rarely are granted medical benefits and job security in some cases. The study found this in most of the big hospitals in NOIDA and Greater NOIDA where they conducted the interviews.
- After throwing light on the problem areas as outlined above, the key recommendations given by Dr. Shashi Bala are as follows –
  - The ESI scheme needs to be broadened in the wage category and awareness regarding MBA should be spread across different sectors.
  - It is important that Crèches are maintained in every establishment and the coverage is broadened for the unorganized sector.
  - To ensure proper and uniform implementation of MBA, proper training of officers implementing the Act in the establishment is necessary. NGOs will need proper information if they have been appointed as inspectors.
  - There is a need to device plans for breaking the glass ceiling and refigure the M Curve for women, an idea from a study from Japan which tells about the latent workforce participation rate. (It is an interesting idea where a woman's career is rising first until she becomes a mother after which, it takes a dip during the maternity and post-maternity phase, and later in life can regain its vigour, for many only as part-time).

- Flexible working hours for women should be ensured. Gender sensitization of different stakeholders like the judiciary, employers and trade unions is needed to include women from the unorganized sector and to ensure work life balance in the lives of all women.

Secretary, WCD wanted to know how many years it takes to avail the benefits of the Act. She made a case for the MBA to be like the Motor Vehicles Act in terms of compounding of cases and getting quick benefits. She called for establishing a legal proceeding where compounding is automatic.

Ms. Jashodhara Dasgupta, Coordinator SAHAYOG shared her findings from the Study of IGMSY Maternity Benefit Scheme, conducted by SAYAYOG. She highlighted that with respect to women, informal labourers in the unorganized sector account to 96% of the workforce. The purpose of the study which was conducted in 4 districts in 4 different states – Bankura in West Bengal, Bargarh in Odisha, Mahoba in Uttar Pradesh and East Singhbhum in Jharkhand, was to investigate who are the women who get excluded from the benefits of the scheme. Data Collection was carried out from December 2011 – March 2012. She then shared the findings of the study that looked at the pilot phase of IGMSY as follows –

- The IGMSY has noble objectives but often the rights of women as workers are not recognized. There is a need to understand rights of women as workers in all discussions of MBA.
- The benefits provided under the IGMSY are contingent upon the woman herself completing formalities on her own initiative at the Anganwadi Centre (AWC). Instead of being treated as pre-qualifying conditions to be entitled to maternity benefits, these should be provided as services to the women which are entitlements under the maternity benefit scheme.
- The enquiry into the nutritional status of women revealed that more than half of the pregnant women in the age group 15-49 years are anaemic with their BMI being below normal.
- Due to the delay in roll out, the benefits of IGMSY did not reach the beneficiaries in many cases. There has been exclusion of women with more than two children, who are also socially vulnerable.
- The nature of employment which most of the women have is insecure and there is an acute lack of crèches.
- The expenditure for child care services immediately after child birth which is Rs.1300 – 1400 at Government prices; which are supposed to be provided free of cost are being borne by the women as out of pocket expenditure. Due to lack of facilities they end up going to the private sector and spending Rs. 5000/- for transport and these services. The spiralling and unaffordable cost at which women undergo maternity makes maternity a period for crisis. In addition during the maternity period there is a noticeable dip in the family income as women are unable to draw their daily wages.
- Some of the other concerns raised by her were
  - The poorest classes have very high child mortality and there has been no way to ensure child survival. Insistence for only two children and penalizing women who have more than two children with no

programmes for old age support and social security is often seen in policy legislation.

- Often women not taking advantage of the IGMSY is perceived to be a demand problem which needs to be rectified at the policy design level. If no assistance is provided to women to fulfil the conditions, they will not be able to take benefit of the services.
  - In order to support women, the qualifying conditions to be treated as entitlements need to be changed.
- Amongst the recommendations offered, the following can be highlighted –
    - If we are looking at rest before pregnancy and six months of exclusive breastfeeding, compensation for wage loss should be given for a period of 9 months.
    - Separate budget for supporting breastfeeding like establishment of crèches must be sanctioned.
    - Out of pocket expenses need to be prevented by ensuring universal health coverage.
    - Accountability mechanisms have to be formulated at the health facilities.
    - According to legal provisions, the maternity benefit should be linked to wages foregone and need to be compiled on the basis of minimum wage at least.
    - IGMSY should be available to all women without any preconditions. The Age Eligibility and the Parity Criteria should be done away with as it excludes the most marginalized women who need the benefits the most.
    - Make PDS universal and strengthen the Supplementary Nutrition Programme of the ICDS.

Ms. Dasgupta highlighted in conclusion that as a result of intensive advocacy efforts the Ministry of Health has passed a Government Order which mentions that the conditionality of the Two-Child Norm will not be imposed under the JSS and NMBS scheme w.e.f. 8<sup>th</sup> May 2013. Through these measures, she said we can hope to achieve our objective of providing Maternity Benefits to a wide range of women and aspire consequently for universal coverage.

Dr. N. Neetha, Senior Fellow, CWDS talked about the challenges in the unorganised sector. She expressed regret at the fact that MBA has never received the due attention from MoL&E. The key issues highlighted by her are as follows –

- Women's participation in workforce is reducing. The percentage of self employed women is about 55% and within rural areas it is more than 60%.
- The percentage of unpaid workers in rural areas is 70% and 40% in urban areas.
- One of the reasons for the increase in the ratio of working women is due to increase in the number of domestic workers.
- MBA should have a definition of organized workers, unorganized workers and sectors where women are employed like health, education etc. This should be categorised as well.

- The ESIA needs to include education sector and MBA needs to be extended to contractual workers as well.
- The Acts regarding maternity benefits and crèches which are multiple in numbers, need to be collectively studied so that we can come up with possible comprehensive solutions.
- The RSBY should look at benefits other than hospital benefits. The data regarding RSBY should be re-examined and maternity benefit should be provided to women who are covered under it as per minimum wages.
- Further there should be inclusion of various categories of work which are in the schedule of employment under the ambit of MBA.
- Leave as per international standards set by the ILO should be included in MBA which in addition should commensurate hospitalization, minimum wages, nursing breaks and crèche services. These benefits need to be extended to the unorganized sector as well.
- Maternity Benefits should not have an age bar, and moreover no conditionality should be attached for availing the benefits.
- By linking RSBY with MBA we would be able to ensure that the women receive essential health benefits. Crèches can be established in Anganwaadi Centres.
- There is a need to include unorganized sector workers in the minimum wage schedule.

She concluded by saying that it is important for all welfare boards at state levels to be uniform in terms of Maternity benefit provisions.

Ms. Mridula Bajaj, Mobile Crèches stated that one of the purposes of their organization is enactment of laws which allow mother and child to be close together especially during the exclusive breast feeding period. She shared insights about the innovative work regarding provision of mobile crèches which her organization is doing. They have been successfully running close to 40 Mobile Crèches in Gurgaon. The key points from her presentation can be highlighted as follows –

- Mobile crèches need to be an essential part of Maternity Benefits. During the first six months, the mother and child need to be together which MBA fails to provide as it does not cover crèche facility.
- A crèche facility is essential to Maternity Benefits hence the decision regarding, where should the crèche be located is important and needs to be looked into. It needs to be kept in view that the crèche is accessible to women from their work place.
- The MBA does not comply with international standards and there are huge gaps in its implementation as the entire responsibility of the Act rests with the employer.
- The crèches which exist now just provide for physical space and custodial care but what is happening to the child during these eight hours is beyond the mandate of any legislature. Hence training of crèche service providers is also essential.
- Most of the construction sites do not have crèches and hence doubling the use of AWC as crèches is essential.

- Suggested that light work can be assigned to the woman before and after the delivery. Employers are very hesitant to send women to nursing breaks arguing that the women take advantage of it and extend the break.
- Need for rethinking the provision that setting up of crèches is dependent on the number of women. Till such time that an amendment to the law is made the existing law needs to be at least implemented efficiently through convergence between the Labour and WCD Ministries.

She concluded by emphasising on the importance of universal maternity entitlements for nine months, which should be ensured to all women, and the need for provision of crèches for all working women.

Secretary WCD, requested Haryana Government to tie up with Mobile Crèches for a pilot project for which MoWCD in collaboration with the Planning Commission can allocate some funds. Mobile Crèches could get in touch with NSS coordinators and look into the MGNREGA sites in nearby villages to Gurgaon for facilitating setting up of mobile crèches.

Ms. Aya Matsuura, ILO, Gender Specialist stated that the International Conventions of Maternity Protection recognize all women workers including part-time, casual, seasonal and home-based workers. Unlike the International conventions many women are excluded from Maternity Benefits in India. Despite this all over world many women remain vulnerable. They are excluded from mainly 3 reasons –

- Excluded from the scope of the national labour legislations and other related legislations.
- Additional eligibility requirements at the national level. In the International Conventions there are no such requirements.
- Lack of access to social security schemes.

She suggested that revisions need to be done to increase the scope of Maternity Benefits and recommended some immediate changes for MBA –

- The eligibility requirement must be relaxed so that the Act benefits a wider range of women.
- Implementation gaps should be addressed.
- Maternity leave should be extended to six months to ensure breast feeding takes place and nursing facilities with adequate equipment near working sites should be established. It is important to look at existing provisions for breastfeeding and in most work sites there is no reduction of working hours, and adequate nursing breaks are not given.
- Improving the coverage of the Act to the unorganized sector is more difficult however amendments to the existing Act can be made keeping this in mind.
- We need to find a way to have a contributory model rather than an employer liability model.
- Migrant workers should also be included and a registration system of the migrant workers should be formulated, so as to determine the actual number of women who required maternity benefits.

*Open Discussion:*

Smt. Rashmi Singh commented on the RSBY scheme which has seen the number of women beneficiaries increasing. However she raised the issue that it covers only hospitalization, and there is a need to look into other areas as well which relates to maternal health but not necessarily hospitalization.

Ms. Amarjeet Kaur, National Secretary AITUC, discussed the issues raised in the concept note on Maternity Benefit and pointed out that implementation of the MBA is poor. She added that coverage is highly limited and both the problems compounded together allow only 0.4 % women to avail the benefits of MBA. She made the following recommendations –

- The need of the hour is universal application and we need to work towards universal entitlement and coverage of Maternity Fund.
- Women from all sectors, organized, unorganized, formal and informal/casual labourers and housewives need to be covered.
- The 180 days Maternity leave should be extended to all the women workers in terms of health coverage, services and wage component.
- The registration of migrants, especially in the construction areas is very important and a welfare board of workers must be constructed. The visibility of the workers has to be ensured and the process of registering these workers needs to be taken very seriously and ID Cards need to be maintained. Those workers who are already registered with schemes like ASHA and Mid-Day Meal for workers can be given the benefits directly on the basis of these existing lists, so that the delay due to the fresh process of registration can be avoided wherever possible.
- A National Maternity Fund needs to be created to ensure workers' rights in the unorganized sector and outsourced contractual workers also need to be included.

Ms. Smita Bharti, Executive Director, Sakshi, pointed out the lack of awareness regarding rights. She suggested that awareness about MBA can be carried out in the form of a simple campaign which can use technology to send information about important rights on mobile phones. The campaign can run advertisements which propagate a particular helpline on which people can contact to get the desired information. She drew attention to the Telethon Competition with respect to end Violence against Women which happened in Kathmandu in June 2013, which was a step taken for attempting to deal with violence against women through the use of technology.

Dr. N. Hamsa, WPC, commented that a National Maternity Fund is very important for ensuring maximum possible coverage. With respect to crèche facilities she said that it is very crucial they are provided in a nearby location in order to be accessible. Small scale industries can collectively pool in funds to provide crèches which has a central location nearby to contributing firms.

Dr. Mira Shiva, Right to Food Campaign and Jan Swasthya Abhiyan, drew attention to the motto of the World Alliance for Breastfeeding, 'Mother's Right to Work and Workers' Right to Motherhood'. She made the following suggestions –

- Emphasis needed on the need to start mother friendly work place initiatives.
- In cases where there are several miscarriages one has to look into the status of the workers, whether it is casual or permanent status and ensure that they receive medical benefits and essential medicines for their safe pregnancies.
- Regarding medical care, we need to have stronger focus on the quality of PHC. There needs to be monitoring of what kinds of medicines need to be administered for different problems. When women need to undertake out of pocket expenditure to buy these medicines it is a problem, as they are supposed to be provided for.
- The victim blaming attitude which often blames women for getting pregnant and exclusion of women who have more than 2 children from benefits consequently is very problematic.
- Linking up of medical care during pregnancy and child birth is very important. Common causes of maternal death and mortality are known so medicines also have to be provided accordingly.
- Work towards bringing casual workers under the ambit of MBA.
- An overall gender sensitisation process is very crucial.

Ms. Deepika Srivastava, OSD, Planning Commission, in her comments drew attention to the following two points –

- The Draft National Food Security Bill provides for food and maternity benefits to every pregnant woman and lactating mother subject to existing Central Government legislations. If we can get this Act right before it is passed it has the element of universal compensation.
- With respect to the crèche system in MGNREGA, she suggested that NMEW can work for a pilot which can investigate problems with the existing system and help with further directions for improvement.

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## Session- II: *Sharing from state government and other challenges in Implementation*

Ms. Subhalakshmi Nandi, WEE Specialist, UN Women commented that a Conceptual overview of gender-responsive social security and social protection in the context of maternity should be generated. She invoked the rights based approach to understanding social protection and the specific context of maternity rights. She suggested that we can look towards the Human Rights, Workers Rights and the Gender Equality and Women's Empowerment Frameworks for analysing the issue of maternity rights. The core principles of the rights based framework for women in India are largely drawn upon from CEDAW. Equality is a combination of equality of opportunities as well as outcomes and equality in term of outcomes for any social protection is needed.

She discussed empowerment in terms of transforming power relations at the level of ideologies (gender and caste), access to resources and institutions and structures like family, state, market, education and the media. She raised the question of women's identity and citizenship when they are undergoing maternity. She stated that one needs to look into practical or strategic gender needs, the definition of worker and that of women's work and pointed out the gaps

- The gaps which hinder women's access are the following:
  - The notion of maternity being looked at as 'contingency'
  - Weak nature of employer – employee relations.
  - A lot of issues of maternity being looked at from child rights perspective which has been guiding many policies.
  - Women's rights have in the process been consistently neglected.

Ms. Nandi made the following recommendations in this context –

- There is a need to look at the maternity leave of the period of 6 months from the perspective of the woman, her health, her workload and her needs.
- We need to reconsider employer – employee relationship as the basis for maternity benefits. All women are workers, whether paid or unpaid. Universal entitlements for all women workers, is a must. A question raised in this context was can we redefine maternity as women's work which is contributing to economic growth? Such a feminist redefinition can be instrumental in changing mindsets and relationships.
- Adequate funding needs to be provided for coverage and it needs to be determined who contributes to the Maternity Fund.
- Emphasised the need to ensure women's rights to health, food security and wellbeing and addressing violence against women.
- To ensure that the Act actually benefits the women we need to remove the two child norm and other eligibility conditions attached to MBA.
- Social protection during maternity should be treated as investment in human capital and we need to consider problems with the primary (male) breadwinner model.
- We further need to work on implementation and governance issues and promote awareness on policies and schemes pertaining to maternity amongst women. Focusing on reducing procedural complications and ensuring easy access of information to women is absolutely vital.
- Envisaging an active role of women's collectives and organizations in monitoring grievances will help ensure transparency in processes.
- The most important step towards women empowerment is to treat women as equal citizens.

Presentations from the States

Shri A. D. Kakatkar, Deputy Commissioner of Labour, Government of Maharashtra pointed out that MBA is a much neglected law. One of the reasons for the same is that there are 142 Labour Laws that have been formulated in India and MBA is just one of them. The Ministry of Women and Child Development is focused on the welfare of women and with regard to this issue specifically as it is a national issue, but ironically

still even after so many years this Act hasn't been implemented well due to reasons such as under staffing and lack of political will.

He emphasised that MBA needed certain amendments and suggested the following –

- Every women worker, whether working in the organized or unorganized sector should be covered under this Act, six weeks prior and eighteen weeks after delivery, maternity leave should be authorised with full salary and her services should not be terminated.
- Periodical revision of benefits should take place so that we can cope up with the rising cost of inflation and provide women with adequate compensation. The medical bonus which was earlier Rs 250 has been raised to only Rs 500. It should be raised to Rs 10,000. Hospitalization coverage provided for those not covered by insurance should be Rs 15,000.
- The ESIA should be made applicable to all women. At present it is only applicable for employees where there is contribution of both employer and employee. The State should create a corpus fund where state should contribute for maternity benefits.
- Pointed out that Maharashtra has a Domestic Workers Welfare Board, where domestic workers are registered and Rs. 2000/- is provided to them as contribution for each delivery. Close to two lakh workers have been registered till now.
- Gender Sensitization and raising awareness is critical to better implementation of MBA. He requested NGOs to take up this task.
- In MBA, there are 3 authorities with the power to take action and decide over claims – inspectors, claim authorities and Government Labour Commissioners. The state can notify the authorities to properly exercise their powers to cut the delays and prevent going to court.

He concluded by saying that collectively we can focus more strongly on this Act, something similar to the Child Labour Law which was highly neglected also and after a sustained campaign was quite a success. Similarly if we start a campaign which will make the MBA work, after about 10 years much needed change will be seen. He made a request to the Central Government to make available adequate funds for this huge task.

Shri Pandu Rangaraju, Joint Commissioner of Andhra Pradesh, MoL&E regretted that rules regarding MBA have not yet been framed in Andhra Pradesh since 1961, but in future the state will work towards the implementation of these rules. He further pointed out that, according to the State Act, two sections namely section 24, and 25 provide for Maternity Leave. Under the Andhra Pradesh Shops and Establishment Act, Rs. 9000 is given as compensation. So far 131 women workers have availed the benefit. Further a proposal to enhance this compensation to Rs.10, 000 has been made.

Shri Dhanraj Sharma, Additional Labour Commissioner, Rajasthan stated the importance of generating awareness among people regarding the Act adding that, political will, publicity and economic capacity is essential for the successful implementation of MBA. According to him, out of all Labour Laws, Building and Other Construction Worker's Act (BOCW Act, 1996) can be considered the best as it has the component of cess. He shared the view that all departments of Labour in the

states are in a deplorable condition as they are neither linked with the Revenue Department nor the Expenditure department and therefore have been much neglected. To implement MBA, we have to examine who is the implementing agency of the Act. With ICDS and Health Department's coordination, this Act can be implemented in an effective manner

Ms. Tara Narula, Advocate: briefly made some recommendations to be considered with respect to the MBA –

- One of the ways to ensure compliance can be to provide maternity benefit with interest in case of delay.
- A provision for Paternity benefit can be introduced which could be optional to be begin with, and then compulsory for single fathers.

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### Concluding Session & Recommendations

Ms. Deepika Srivastava, presided over the concluding session, and summarized the broad structure of recommendations collating the specific recommendations made through the course of the consultation.

### RECOMMENDATIONS:

Many invaluable recommendations emerged from this consultation to enhance its scope and better implementation of this important Act.

- The disposal of maternity cases needs to be faster to ensure that the aggrieved woman receive the due **benefits in time**. **Compounding** can be an important instrument for the same as it can be useful to all those who are covered under the MBA (Maternity Benefit Act). The MBA should be amended to include the provision of summary trials as they take place under the Motor Vehicle Act.
- The **scope of this legislation should be extended** to the unorganised sector, as well as the Judiciary, Media ,domestic workers, those working in small enterprises, those with less than one year with the employer, agricultural workers, casual workers, as well as part-time, temporary, sub-contract, home-based workers and Contractual workers in all sectors. This should be made into a universal right. The coverage of the MB Act should not be establishment specific and should also not depend on the size of the establishment. All provision of maternity protection should be universally applicable to all working women (regardless of the nature of their employment). As per the Maternity Protection Convention 2000 which expands the scope of coverage the same should be incorporated in the present legislation.
- The qualifying **conditions to entitlements** have resulted in exclusion of a huge number of women; these conditions need to be **relaxed** so that they benefit all women engaged in paid and unpaid work.

- Maternity Benefit should be a **right based entitlement** and the conditionality attached to the existing legislature should be removed.
1. As already in process in policy, the **Anganwadi Centres** should be expanded in scope to include the services of **Crèche**.
  2. Specific to the state of Haryana, the colleges which are engaged in NSS work to collaborate with NGO's and state governments may apply for pilots related to **mobile crèche's**.
  3. Devise a model which formulates a **contributory fund for the maternity benefits** rather than an employer liability model. This contributory model would include contributions from the employers and the employees and if the employee is on contract then the principal owner is the contributor.
  4. Since the bearing and rearing of children is a social responsibility that women undertake in society, it is only fair that the entire society supports women in this task. The state should, therefore, devise means by which this support can be given to all women through the formation of a **national maternity fund** which the government, employers, and maybe employees (regardless of sex) can contribute to. Employers and employees may be given incentives in the form of tax exemptions for their contribution.
- The coverage of maternity protection should include **health coverage and wage payment**.
  - All **states should propose rules** for the Maternity Benefit Act 1961, if not yet done.
  - The MB Act should provide that any **termination of employment during the pregnancy of a woman would be illegal** (except where gross misconduct is proven) and an assumption would be made that the employer has done so to evade providing maternity protection and will be penalized.
  - **Maternity leave should be increased from the present 84 days (12 weeks) to 180 days (6 months)** and made equivalent with what the Central Government provides to central government employees. This would be supportive of exclusive breast-feeding as recommended by WHO.
  - The time provided for **nursing breaks** should be enhanced. As a replicable standard it may be considered that at present, more than 90 countries provide legislation for nursing breaks of at least an hour a day.
  - As per the MB Act a woman has to work for minimum of 80 days with an employer to be **eligible** for Maternity benefit but, under the ESIC Act the employee has to be at work for 70 days. So the suggestion is to amend the number of days a woman is employed with an employer to 70days for her to claim entitlement under MB Act.

- As per MB Act the definition of women has been defined and it was suggested that the **definition of employee** should also be defined.
- Under the ESIC Act the **criteria** for entitlement of maternity benefit is an income up to Rs 15000/- which has to be increased.
- The responsibility of child care is often singularly put upon women. This reinforces patriarchal notions and stereotypes and also enhances the discrimination they face from employers. In order to reduce these factors, the Act should also make a **provision for paternity leave** and follow a more egalitarian approach. Also, protection should be available to persons who adopt children.
- Suggested - **use of technology** like mobile phones to ensure awareness among the women in all sectors regarding benefits of maternity protection
- It is important that the Ministry of Labour, Health and Women and Child Development engage with maternity protection and maternal health holistically. A mechanism needs to be developed for defraying expenditure towards maternity benefit from the proposed maternity benefit fund irrespective of nature of employment
- Clarity regarding how the MB Act, is expected to interface with other labour legislations especially the Factories Act and/or Service Rules of different establishments governing conditions of employment.
- There should be **uniformity in Labour laws** in all sectors in India (Attached as **Annexure 'A'** is a comparative analysis of the existing provisions under Maternity Benefit Act in different sectors)

हम सुनेंगे नारी की बात

**ANNEXURE 'A'**

**MATERNITY LEAVE PROVISIONS IN DIFFERENT SECTORS IN INDIA**

<b>Different Provisions under Maternity Benefit</b>	<b>Central Government Employees</b>	<b>Private Sector</b>	<b>Public Sector Undertakings</b>
<b>Maternity Leave</b>	180 days	<b>7th Bipartite Settlement (2000) covering bank employees-</b> six months on any one occasion, and not exceeding 12 months during the entire period of service <b>Standard Chartered-</b> 6 months <b>Health sector-</b> for doctors - varying from 90-180 days, paramedical staff like technician, nurses, receptionist, group IV, guards etc. are deprived of it <b>IT /ITES companies-</b> adjust in some form of insurance wherein the employee too has contributed.	Varies from 90 days to 180 days
<b>Child Care Leave/Adoption Leave</b>	Maximum period of <b>2 years (730 days)</b> during their entire service for taking care of up to 2 children whether for rearing or to look after nay of their needs like examination, sickness etc. It maybe availed in more than one spell.	Allows Leave for Adoption for a child below 1 year of age. Can only be availed once during an employees service.	Not applicable
<b>No of Children</b>	2 surviving children	No limit	No limit