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An Analysis of Indian Maternity Benefits Act

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In this present paper, the researcher is going to discuss the important aspects of the statute named The Indian Maternity Benefits Act, 1961 and Indian Maternity Benefits (Amendment) Act, 2017 brought by the act no.06 of 2017 in the Parliament of India and presents a comparative study of these, by way of this paper. He manifests the important provisions that are incorporated into the Maternity Benefits Act to deal with the benefits of a woman when he attains the greatest joy of her life i.e., Feeling of motherhood, while she is an employee in any organization in any form. The researcher does a deep analysis of every section of the abovementioned law and also finds different concepts with respect to maternity benefits, problems faced in such situations, etc. Neither everything is best nor worst. So as applies with the laws, every law is brought when it is needed but it's never completely flawless. With the passage of time, every law gets amended due to changes in socio-legal scenarios. So, here this research is being presented for bringing the advantages of such law and finding loopholes in it if any. Comparative analysis has also been done in order to bring some better suggestions.

Keywords: *maternity, creche facility, commissioning mother, surrogacy.*

INTRODUCTION

We live in a civilization and every civilization is run by society is very dynamic and that's the reason why we need a lot of laws to run the society. No doubt, society runs endlessly because of the endless life cycle. A woman plays a crucial role in this respect and if she has a crucial

role over it then it must be recognized. Her problems must be addressed, if she needs any kind of help or benefits over there, they must be provided. Her role does not end just after giving birth to a child but more important is his or her nourishment and development which starts right after birth. In order to be brought up during his infancy, a higher degree of care is needed and when a mother is a working woman, it's not that easy to manage her work, her child, and herself as well. So, in this direction, she needs some time to give it to her child and herself. Maternity Benefits Act had been enforced for fulfilling this requirement of a mother while being a working woman. Initially, it was brought in the year 1961 but as and when time passes, every law needs amendment and so as happened here. In 2017, Maternity Benefits (Amendment) Act was enacted by the parliament. Rajya Sabha passed it on August 11, 2016, and Lok Sabha which is known as the lower house of Indian Parliament passed it on March 09, 2017, while The President of India signed it, by giving assent on March 27, 2017, and accordingly enforced by way of Gazette of India. The Indian Maternity Benefits Act is a codified statute that protects the rights of a woman while being a mother.

FROM WHERE DID THE MATERNITY BENEFIT'S CONCEPT COME?

When we talk about maternity benefits, it is now a statute from decades but what paves the path of such law. The answer to this question is article 42 of the Constitution of India which is one of the prime Directive Principles of State Policy that provides for framing provisions on good and suitable work conditions and atmosphere and maternity relief. It reads as 'The State shall make provision for securing just and humane conditions of work and for maternity relief.'¹ So, in consonance to this article, the abovementioned statute was framed and enforced.

WHAT IS THE MATERNITY BENEFITS ACT ALL ABOUT?

It is a statute enacted by the Indian Parliament to regulate women's employment in certain types of employment rather in all for a pre-determined time period before as well as after the

¹ Constitution of India, 1950, art 42

birth of the child and it also provides them some maternity benefits and some other additional benefits as well. It was brought into existence by act no. 53 of 1961 in the year 1961.²

APPLICATION OF MATERNITY BENEFITS ACT-

The provisions without any prejudice to any other law related to this subject matter apply to every establishment like the factory, mine, plantation, shops, or any other place where persons are employed for the exhibition of equestrian, acrobatic, and any other performance³. Any establishment where ten or more persons are employed.⁴

WHAT AMENDMENTS WERE MADE IN 2017?

In the year 2017, by act no.06 of 2017, some amendments were made in the principal act of the year 1961. The amendments were: -

1. In section 3, a clause was added which reads as 'commissioning mother means a biological mother who uses her egg to create an embryo implanted in any other woman.'⁵
2. In section 5(3), the maximum period of maternity benefit which any mother shall be entitled to, at her employment was increased to 26weeks from 12 weeks. The maximum period of such benefit preceding her delivery was increased to eight weeks from six weeks.
3. After section 5(3), a proviso was added stating 'provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery.'⁶
4. Section 5(4) was inserted which reads as 'A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to

² Maternity Benefit Act, 1961

³ Maternity Benefits Act, 1961, s 2(1) (a)

⁴ Maternity Benefits Act, 1961, s 2(1) (b)

⁵ Maternity Benefit (Amendment) Act, 2017, s 2

⁶ Maternity Benefit (Amendment) Act, 2017, s 5(3)

maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.⁷

5. Section 5(5) was also inserted which states 'In the case where the nature of the work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.⁸
6. Section 11(A) was inserted in two clauses which state as:
 - Every establishment which employs fifty or more than fifty employees in its office shall have to provide the facility of creche within such distance as may be prescribed, it may either be separate or with the common facilities as the case may be and not only this but the employer shall have to allow four visits per day to the creche by the woman, which will include the interval for rest allowed to her as well.
 - Every establishment shall explain in detail either in written form or digitally to every female at the time of hiring her means at the time of initial appointment with respect to every benefit available to her under this act.

AMENDMENT'S EXPLANATION IN A NUTSHELL

In the year 2017, the abovementioned amendments were made in the act. In those amendments, the very first amendment that was made was the insertion of the definition of a commissioning mother. Secondly, the paid maternity leaves were increased from twelve weeks to twenty-six weeks. Further, the paid maternity leaves for a mother having two or more than two children were also provided for twelve weeks and the same provision for an adoption i.e., if a woman adopts a child below the age of three months, she will be entitled to twelve weeks leave for which no salary shall be deducted. Another important aspect brought by way of this amendment which is a welcome move in this direction is the work from home facility. And, the last amendment that was made is about providing creche facility by an employer if fifty or

⁷ Maternity Benefit (Amendment) Act, 2017, s 5(4)

⁸ Maternity Benefit (Amendment) Act, 2017, s 5(5)

more than fifty employees are employed and prior intimation about the benefits to the woman at the time of his appointment on his post were the key amendments that were made by the act no. 06 of 2017.

IMPORTANT PROVISIONS AS PER THE ACT OF 1961

Apart from the recent amendments, some important provisions of the Maternity Benefits Act, 1961 are being discussed here: -

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

It talks about the restrictions on the employment of a woman for a certain period. It says that no employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage, or medical termination of pregnancy.⁹ Further, it states that no woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage, or medical termination of pregnancy.¹⁰ Later on, sub-section 3 of the abovementioned section reads as 'Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section (4) any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the fetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.'¹¹

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

(a) the one-month period immediately preceding the period of six weeks, before the date of her expected delivery;

(b) any period during this given period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.

⁹ Maternity Benefits Act, 1961, s 4(1)

¹⁰ Maternity Benefits Act, 1961, s 4(2)

¹¹ Maternity Benefits Act, 1961, s 4(3)

Section 5(2): Right to payment of maternity benefit

This section provides for the minimum period of work in an establishment in order to get payment of maternity leaves. It reads as '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.'¹²

Section 7¹³: Payment of Maternity Benefits in case of death of a woman

This section makes provision for the payment of maternity benefits if any woman dies before availing of such payment. If a woman entitled to maternity benefit or any other amount under this Act, dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to sub-section (3) of section 5¹⁴, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6¹⁵ and in case there is no such nominee, to her legal representative

Section 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 one thousand rupees if no pre-natal confinement and post-natal care are provided for by the employer free of charge.¹⁶ Moreover, section 9 provides for leave for miscarriage or medical termination of pregnancy. It says that if there occurs any miscarriage, then in such case, the woman needs to present the proof for the same to the employer and after doing so, she shall 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.¹⁷ Another provision in this direction has been given under Section 9A which provides for two weeks paid leave on the production of

¹² Maternity Benefits Act, 1961, s 5(2)

¹³ Maternity Benefits Act, 1961, s 7

¹⁴ Maternity Benefits Act, 1961, s 5(3)

¹⁵ Maternity Benefits Act, 1961, s 6

¹⁶ Maternity Benefits Act, 1961, s 8(1)

¹⁷ Maternity Benefits Act, 1961, s 9

proof regarding the same and such leave will be provided immediately following the day of her tubectomy operation as a maternity benefit.¹⁸ Nursing breaks have also been provided as per section 11 of the abovementioned act. Any woman who delivered a child and returns to duty after such delivery be provided two breaks of the prescribed duration for nourishing the child until the child attains the age of fifteen months. Moreover, this break is additional to the interval for rest allowed to her generally.¹⁹

CONSEQUENCES OF NON-COMPLIANCE WITH THE PROVISIONS OF THIS ACT

This act not only provides the benefits for a woman during her motherhood but also has provisions for the penalty against any employer whosoever contravenes of this act. Section 21 has been inserted under this act so as to punish any person as an employer who fails to pay any amount of such maternity benefit, etc. It reads as: 'If an employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees.'²⁰

PROVISIONS REGARDING SURROGACY

We have seen provisions with respect to natural motherhood, but still, as medical science is also a developing and dynamic field, many other techniques are being developed in this direction. And one of them is surrogacy, however, this act has not talked about surrogate mothers directly but some of such matters have been decided by the courts of our nation. Central Administrative Tribunal, in a case, held that even if a woman gets a surrogacy baby with the help of another woman, still she is entitled to maternity leave of 180 days.²¹ In another matter, Hon'ble Himachal Pradesh High court also held in this favour and said that if we distinguish between a surrogate and a natural mother then that will mean we are insulting

¹⁸ Maternity Benefits Act, 1961, s 9(A)

¹⁹ Maternity Benefits Act, 1961, s 11

²⁰ Maternity Benefits Act, 1961, s 21

²¹ *Sunita v M/O Law and Justice* [2018]

their womanhood, and stating this allowed an appeal for sanctioning maternity leave application. The Hon'ble court allowed sanction of leave under rule 43(1) of Central Civil Rules (Leave), 1972.²²

CONCLUSION AND SUGGESTIONS

The purpose of the research was to provide an analyzed report on the maternity benefits act and in this direction different provisions of the act have been analyzed and presented here in this paper. After deep research, it can be concluded that the maternity benefits act has a lot of provisions protecting the rights of a woman during her motherhood but it can also have some more clarifications for some provisions. Provisions for Creche facility have been made in the amendment but are silent on the period of such facility and moreover, some employers can also lag behind in this respect due to whatsoever reason and can also refrain themselves from giving employment to females. But, for attaining the desired goals of such changes, one another measure can be used i.e., providing creche facility by the government bodies however they can take some help from such employers also. It will help in establishing common creche centres for the same. Due to increased benefits, some persons can also prefer male employment over females and hence necessary provisions should also be made in this regard. Surrogacy provisions should also be brought in the same direction along with complete uniformity in-laws with respect to maternity benefits. The application procedure should also be made easy, smooth, and digital so prospective beneficiaries can apply and attain benefits easily without any hassle. Such benefits should not be dependent on any kind of duration of work and the number of children. However, in this regard, separate laws can be made for control of the number of children as per necessity.

²² *Sushma Devi v State of Himachal Pradesh* [2020] CWP 4509