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MATERNITY BENEFIT ACT, 1961: A SUCCESS OR FAILURE

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ABSTRACT

Maternity Benefit Act 1961 was introduced to provide a legal framework and beneficiary provisions to the working women seeking maternity leave. The Employees State Insurance Act does not cover all the Women workers for the maternity benefits and other advantages during their pre and post-delivery period, so after noticing this, the Government of India enacted a new Act known as The Maternity Benefits Act, 1961. It has been proved a milestone towards encouraging women. Although Section 5 of the Maternity Benefits Act has cleared the eligibility criteria for availing the maternity benefits for a woman and it is nowhere mentioned that the maternity benefits will not apply to the temporary as well as contractual workers still the cases are found of denying the maternity benefits on the ground of being employed on a contractual or temporary basis. It regulates work and working conditions provided to pregnant women considering the health of women and their unborn child. Many amendments had been made to this act considering the changing needs of working women class, social and economic changes. One of the most important amendments to this act was made in the year 2017, which introduced many new provisions and also altered various the old provisions very drastically.so, in this research we will be dealing about the feature, provisions, and drawbacks of maternity benefit act 1961 including some major amendments of the act.

Keywords - *Maternity benefit, Women working class, Health*

INTRODUCTION –

Working mothers are striving hard to balance their home and office work; and in this phenomenon, their mental health gets affected which causes anxiety, tension, and stress. Females reported a higher level of stress in work and career because of their sensitive behavior. Also, women mainly suffer from maternity guilt and some studies show out the existence of a gender bias towards the ‘huge iceberg of guilt’ and that working mothers take it as their responsibility to make their children happy. The guilt leads to depression among working mothers because according to them it is their fault that they are not nurturing their child during their early days of life.

A working woman has a lengthy schedule beginning from the early morning to late at night and after having a baby they face and interact with job-related problems like boycott from other colleagues, pressure from subordinates which build physical and mental stresses. Almost half of India's population is that of females and proper use of this large human resource is very important for the overall development of our country. It is thus important to have women-friendly policies during employment to promote and boost their active participation in the development process. Many developing countries, including India, are now alive to the needs of working women. In India, the enactment of the Maternity Benefits Act, 1961, was the big move in this regard. The enforcement of this Act reflects the broader societal responsibility because a mother is not giving birth to a child only for her sake. Philosophically addressing the issue makes it clear that she is also contributing to the national growth. The maternity benefits must thus be considered as a well-earned reward to a mother which will provide relief and justice to working women of our society.

The Maternity benefit act was introduced in India in 1961 to protect the rights of working women. This Act was implemented in factories, mines, plantations, and circuses. With time, the MBA was modified and amended various times because of women's fight for their rights against the employer and the government, as they became more aware and concerned about their rights and benefits provided by the Act. Awareness about different policies and schemes is influenced by beneficiaries' economic, demographic and cultural status. Thus caste, education, region, or location has been noticed to influence respondents' awareness about the Maternity Benefits Act and various other schemes, while checking out the awareness issue it was found that the majority of the women employees were not aware of different benefits (e. g. benefits under the JSY scheme in India), except for monetary benefits and benefit of maternity leave.

Different studies and surveys by various organizations and the government reflect that proper implementation of the maternity benefit act has not been done and it requires more attention as well as work on a different level of society that too very soon. So here in this research, we will deal with and explain the maternity benefit act with various amendments and will also point out the drawbacks of the maternity benefit act and its impact on working women and society.

CHAPTER 1: UNDERSTANDING THE MATERNITY BENEFIT ACT, 1961

According to Section 2 of the act, this act will apply to all the establishments whether factories, plantations, or mines¹. This also includes those establishments or shops where ten or more than 10 employees are working (shops within the meaning of law where 10 or more than 10 persons are or were working at any time within the preceding 12 months). A proviso is given that if the central government wants to apply this act to any institution or establishment then he can do so with the prior consent of the central government, it can add any establishment or class of establishments, agricultural, commercial, or otherwise within the boundaries of this act or any section thereof. It shall be done by giving two months prior notice in the official gazette. Also, this act will not contradict any provisions of the Employees' State Insurance Act, 1948.

In the case of **Municipal Corporation of Delhi v. Female Workers**² it was held that provisions of this act shall entitle maternity leave and benefit even to the women engaged on a casual basis or muter roll basis on daily wages and not only those in regular employment.

Section 3 of the act includes various definitions such as appropriate government, maternity benefit, establishment, wages, miscarriage, etc.

According to Section 4 of the act, neither any woman shall work nor shall any employer knowingly employ any woman into an establishment for work immediately 6 weeks after her delivery, medical termination of pregnancy, or miscarriage. Also, she will not work for 1 month preceding her delivery or the period of 6 weeks if the nature of the work is exhausting or requires long hours of standing.

Maternity benefit had been defined in Section 5 (1). It says that maternity benefit is the benefit to which every woman is entitled and every employer is liable. It is the amount payable to her at the rate of average daily wage for her absence period. For this purpose, the average daily wage is the wage which she received immediately three months before her absence which should come under the purview of wage settled by Minimum Wages Act, 1948 or Rupees 10 whichever is highest.

¹<http://www.bareactslive.com/ACA/ACT721.HTM>

² AIR 2000 SC 1274: (2000) 3 SCC 224

But she won't be entitled to this benefit if she had not worked for the employer in the establishment in the last 12 months for at least 80 days.

However, if the woman was laid off or there was any holiday declared under the law then those days will be included in the said period of 80 days. This benefit shall be given only for 26 weeks.³ But if the woman already has two or more surviving children then this period will be only 12 weeks. If she dies within this period then benefit will only be given for the period up to her death. If she dies immediately after giving birth and the child survives then the benefit will be given for the entire duration. If the child does not survive then the benefit will be for the period up to the death of the child.

A woman legally adopting a child below the age of three months or is a commissioning mother, then she will be entitled to a benefit of 12 weeks. It may be mutually agreed upon by both parties if the woman works from home.

In the case of **B. Shah vs. Presiding Officer**⁴, Labour Court Coimbatore in the context of this section, the term "week" will signify a cycle of seven days including Sundays.

In the case of **Ram Bahadur Thakur Pvt. Ltd. Vs. Chief Inspector of Plantations**⁵ the issue was while calculating the 160 days for determination of maternity benefit for any woman, the work on half days can be included or not. It was held that as explained in the explanation given to Section 5, the period of laid-off shall also be included. But she is not expected to work during lay off and therefore actual work for 160 days cannot be insisted as a condition precedent for claiming maternity benefit.

According to Section 6 of the Maternity Benefit Act, if a woman wants to claim maternity benefit under this act then she will have to give notice to her employer in writing stating the period for which she will be absent and also the amount for which she will be entitled to. She will have to

³ Earlier 12 weeks, amended by Amendment Act of 2017

⁴ AIR 1978 SC 12

⁵ <https://indiankanoon.org/doc/1374214/>

give the name of her nominee as well in the said notice and she will also have to state that she will not be working in any establishment for the said period.

She will have to give the notice when she is pregnant, if she did not do this, she will have to give notice after the delivery as soon as possible. If she fails to give notice, that will not disentitle her from this claim and will depend upon the discretion of the inspector.

The nominee mentioned under Section 6 (1) will be entitled to the benefit or any other amount. If there is no person nominated then the legal representative of the woman will be entitled to the benefit under this act as given under Section 7.

If there is no prenatal confinement or postnatal care is provided by the employer to the woman for free of charge, then she will also be entitled to a medical bonus apart from the maternity benefit of Rupees 1000, which may be increased by the Central government every three years by notifying it in the Official Gazette as mentioned in Section 8.

According to Section 9, if a woman gives proof of her miscarriage or medical termination of pregnancy, she will be entitled to leave and the maternity benefit for 6 weeks effective immediately after as the case may be. In the case of tubectomy, the duration will be of 2 weeks.

According to Section 10, the woman will also be entitled to leave with maternity benefit of a period of one month in addition to previously mentioned periods (12 weeks or as the case may be) if she is suffering from an illness caused by pregnancy, delivery, miscarriage, tubectomy, premature birth of a child, etc.

Section 11A was added to the act by Amendment Act of 2017. It talks about crèche facility which means a nursery for the supervision of preschool children while the parents work. According to this section, there must be a facility of crèche where the establishment has 50 or more than 50 employees within the prescribed distance and for which the woman shall be entitled to visit 4 times a day including her rest interval.

According to Section 12, no employer shall dismiss or discharge a woman taking benefit under this act or give her any notice for such matters, and if done she shall be entitled to medical bonus

and maternity benefit both. These benefits can be curtailed only in the case of her gross misconduct which shall be noticed to her in writing. If she is deprived of any of the benefits or if she is discharged or dismissed then she may appeal before the prescribed authority within 60 days.

An inspector may be appointed by the appropriate government under Section 14 who shall be a public servant under Section 16 and who shall have the power to enter the premises at reasonable times where the woman is working; to examine any person or any register or records or may require the employer to give information about the address of woman or payment made to her etc. A proviso has also been given that no person shall be compelled to give the answer to any question or give any evidence.

Under Section 17 the power of the inspector to direct payments to be made is discussed. And further sections discuss the maintenance of registers and records by the employer, abstract of the act to be exhibited by the employer, etc. If the employer fails to comply with any sections of this act without reasonable grounds then he shall be liable for imprisonment up to 1 year and a fine up to Rupees 5000.

A landmark case in this aspect is **Air India vs. Nargesh Mirza**⁶. In this case, there was the discrimination being made between the Air Hostesses and the Male Pursers who were part of the same cabin and crew. One of the 3 issues was the pregnancy clause of the Air India Corporation Act which said that if any of the air hostesses is pregnant then she will be forced to retire. The constitutional validity of this clause was challenged for which Supreme Court held that it was grossly unethical and a violation of Articles 14 and 15. The ability to work after pregnancy is the personal matter of the concerned air hostess for which she should not be forced

CHAPTER 2: AMENDMENTS IN MATERNITY BENEFIT ACT

The Act has been amended from time to time. The Amendment of 1972 provides that in the event of the application of the Employee's State Insurance Act, 1948 to any factory or establishment,

⁶ 1981 AIR 1829, 1982 SCR (1) 438

maternity benefit under the Maternity Benefit Act would continue to be available to women workers until they become qualified to claim similar benefit under Employee's State Insurance Act.

Again, in 1973 the Act was amended to bring within its ambit establishments in the circus industry. A 1976 amendment further extends the scope of the Act to the women employed in factories or establishments covered by the ESI Act, 1948 and in receipt of wages exceeding entitlement specified in that Act.

The Act was again amended in 1988 to incorporate the recommendations of a working group of Economic Administration Reforms Commission. The Act was extended to shops or establishments employing 10 or more persons. Key Aspects of Maternity Benefit Act, 1961. The rate of maternity benefits was enhanced and some other changes were introduced.

The Amendment of 1995 further expanded the coverage of the Act and recognized the medical termination of pregnancy and provided incentives for family planning. Maternity Benefit (Amendment) Act, 1995 provides that there shall be six weeks leave with wages in case of medical termination of pregnancy, two weeks leave with wages to women employees who undergo tubectomy operation and one month leaves with wages in cases of illness arising out these two.

By an amendment in 2008, the existing ceiling of maternity benefit was increased from Rs. 250 to Rs. 1000. The Central Government is empowered to increase the medical bonus from time to time subject to a maximum of Rs. 20, 000/-.

So, for the most important amendment in the maternity benefit act is the amendment act of 2017, which we have discussed below-

2.1 Maternity benefit amendment act 2017-

The Maternity Benefit (Amendment) Act 2016, passed by the Rajya Sabha in August 2016, has also been passed by the Lok Sabha in March 2017.

The Maternity Benefit Amendment Act regulates paid maternity leave entitlement and other related benefits for women employed in factories, mines, and shops or commercial establishments

employing 10 or more employees.it has also provided many more advantages to working women. The summary of amendments is as follows:

2.1.1 Increased Paid Maternity Leave

- The MB Amendment Act has increased the period of paid maternity leave available for women employees from the existing twelve weeks to twenty-six weeks.
- Under the MB Amendment Act, this benefit could be claimed in two phases i.e. eight weeks before the expected date of delivery and eighteen weeks can be taken after the childbirth.
- For women who are expecting for third or more than three children, the duration of paid maternity leave shall be twelve weeks i.e., six weeks pre and six weeks post expected date of delivery.
- The Act also provides for adoption leave of twelve weeks for a woman who adopts a child under the age of three months. A commissioning mother in case of surrogacy is also entitled to a twelve-week leave from the date the child is handed over to her.
- A commissioning mother is defined as a "biological mother who uses her egg to create an embryo implanted in any other woman" (the woman who gives birth to the child is called the host or surrogate mother).

2.1.2 Work from Home option

- The Amendment Act has also introduced the "work from home" option for women, which may be exercised after the expiry of the 26 weeks leave period.
- Depending upon the nature of work, women employees may be able to claim this benefit on terms that should be mutually agreed upon by both employer and employees.

2.1.3 Crèche facility

- The Amendment Act makes crèche facility mandatory for every establishment employing 50 or more employees. Women employees would be permitted to visit the crèche 4 times during

the day and a maid or assistant should be appointed by the company or establishment to take the proper care of children.

2.1.4 Free Medical Care

- A pregnant women worker is entitled to a maternity benefit (in the form of a medical bonus) of one thousand rupees if no prenatal confinement and post-natal care are provided by the employer free of charge. It can be increased to a maximum limit of twenty thousand rupees.
- The Central Government is authorized to increase the basic amount every three years. In August 2008, the amount of medical bonus was 2500 Indian rupees which have been later raised in 2011 to 3500 Indian rupees.

2.1.5 Income

- The maternity leave is awarded full pay on completion of at least 80 days in an establishment in the 12 months before her expected date of delivery. The maternity benefit is awarded at the rate of the average daily wage for the period of a worker's actual absence from work. Apart from 12 weeks of salary, a female worker is entitled to a medical bonus of 3,500 Indian rupees.
- The amendments would ensure that full maternal care is provided during the full bloom period and will encourage more women to join the workforce in the organized sector.

CHAPTER 3: PROBLEMS WITH THE BILL

It could lead to an adverse impact on employment opportunities for women. Companies will be disincentivized to hire more women workers due to the additional cost of maternity benefits and crèche involved.

- The bill will impact only the women employed in the organized sector. Whereas, around 90 % of working women are working in the unorganized sector.

- It reinforces stereotypes about women's role in child-care by not even mentioning paternity leave.
- The coverage is limited to two children. It could affect the health and well-being of the third child.
- It applies only to adoptive 'mothers' and not to fathers and transgender who might want to adopt a child.

1. SME and start-ups cannot afford long leaves for employees:

The modification can also additionally by chance reason substitute of girls with the aid of using male labor, discount in women wages and labor pressure participation. Employers were made completely answerable for imparting maternity blessings. This is possible for huge organizations however start-ups, and micro, small and medium enterprises (MSMEs) that hire around 40% of India's workforce, grapple with running costs. Maternity blessings might impose value pressures, a hazard of litigation, consequences for non-compliance, and perilous viability. This should bring about recruiting guys rather or decreasing productiveness in girls-orientated jobs. If decreased wages contribute negligibly or negatively to family incomes, girls can also additionally go out of employment, also decreasing their labor pressure participation prices and growing gender inequalities in employment

2. Male-dominated job industry will not consider women for key positions:

The job industry is still male-dominated and has a patriarchal approach to managing the workplace. Hence, women of marriageable age, as well as women who are just married, will not be considered in the serious reckoning for key positions and promotions. Women who are not yet married or women who already have two children may have better chances of employment and growth.

3. Accentuates resource unavailability:

With an acute shortage of a skilled and mobile workforce, the maternity bill just accentuates the problem of resource availability.

4. Male employees will consider the bill a disadvantage:

Most male employees would consider this bill as an unfair advantage for women unless there are persistent education and awareness created around the need for the bill and its benefits to society at a larger scale.

5. Women might misuse the maternity bill benefits:

There are chances that some women may misuse this benefit by being in employment till they conceive, getting the benefit of maternity, and not rejoining after that. This will be a big blow to the employability quotient of the women workforce. Alternately, to avoid backlash at the workplace or for fear of being left behind, women also may not avail of the full leave of six months and resume working from home or work flexible hours.

6. Women might postpone starting a family:

Another social impact could be that women may postpone starting a family. This will have a long-term impact as children borne by middle age of parents may have difficulties in relating to their parents. Moreover, it may affect energy levels and cause health issues. Although the firsts 5-6 months of bonding between mother and child is critical, lifelong relations are also vital.

7. Applicability to the unorganized sector:

Contrary to the recommendations of the Sixth Pay Commission, 2008 and the Law Commission of India, 2015, the amendment excludes informal sector women workers, who constitute 93% of India's workforce.

- The provisions related to the applicability of the Act to the unorganized sector also remain unclear.
- Though, on one hand, the act states that it covers all women working in mines, plantations, shops, and establishments as well as factories in both organized and unorganized sectors.

- But on the other hand, the Unorganised Workers' Social Security Act, 2008 defines unorganized sector workers as those who are home-based, self-employed, or wage workers working in an entity having less than 10 employees.
- Thus the provisions did not clarify whether the act applies to the women employees in those enterprises having less than 10 employees.
- This is disturbing because 90% of the working women are employed in the unorganized sector in India.
- Although the women working in the unorganized sector can avail of benefits from the schemes such as the Janani Suraksha Yojana and the Indira Gandhi Matritva Sahyog Yojana, they get their benefit only in terms of cash assistance and lack other institutional support provided in the maternity benefit act.

8. Gender biased

It is framed within the hetero normative paradigm, overlooking the Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) community, and their motherhood or parenting. This reinforces conventional gender-based divisions of labour, identities, and relations.

10. Unclear provisions on crèche facility

It also does not define common facilities or have guidelines governing crèche accessibility, infrastructure design standards, child enrolment and retention ages, competence standards for personnel and care. Its crèche provisions overlook childcare in middle-class Indian families where working women may receive childcare support from extended families and/or domestic workers in the comfort of home. It also overlooks the physical and monetary costs of transporting children to and from worksites and does not provide for crèches in residential areas or subsidies for childcare support by domestic workers. This can negatively impact women's uptake.

CONCLUSION

It can be concluded that the women of our society need more encouragement to get involved in the economic development of the country as they get involved in the social development of our country. One of the major steps towards this was taken by implementing the maternity benefit act in 1961. The objective of maternity benefits is to protect the dignity of motherhood by providing the proper care to the woman & her child when she is not able to perform her duty due to her health condition. There is a need for maternity benefits so that a woman is to be able to give quality time to her child without having to worry about whether she will lose her job and her source of income and should not feel compelled to do anything which can be harmful to her or her child's future. Though like any other act this act also has some drawbacks which should be considered by the lawmakers and should be changed.