

## STANDARD OF MATERNITY BENEFIT ACT IN INDIA – AN OVERVIEW

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### ABSTRACT

*In developing country like India, normalizing the standards laid down for men and women in terms of their work nature and work environment has become quite difficult. Also, this act as a key in lifting the standards that the society has laid down for the working women regardless of the hardships they have to face in surviving this environment that the society has made up with the default social standards introduced anciently depicting the suppressing nature of women - dominated by men; restricted to take care of the household; financial dependency; unfair treatment.*

*Therefore, maternity benefit is a provision made available for women to take care of herself and her child during the pregnancy period without any dependency; which acts as a stepping stone in the establishment of the empowerment of women. Numerous acts and provisions have been introduced in India regarding employment benefits out of which Maternity Benefit Act, 1951 is one of them primarily dealing with the benefits that women exerts during her pregnancy period to manage her needs and to maintain a financial balance of her family. The phenomenon of providing maternity benefits motivates women in holding the responsibility of managing and balancing the work and family environment to be standard. This paper aims at the precise and easily understandable norms and provisions made available to women under the act; revolves around the efficiency to be brought out in the enhancement of women under employment.*

**KEYWORDS:** Society, Maternity benefit, Welfare, Financial balance, Social standards.

### I. INTRODUCTION:

Maternity benefit plays a primary role in encouraging married women and most of the single mothers who are being the backbone of the family without the dependency of men in the family. The act contains various provisions for women as mentioned as “state of motherhood honorably, peacefully, undeterred by the fear of being victimized for forced absence during the pre or postnatal period”, as stated by Supreme Court.<sup>23</sup>

In India, 23.6% of women with the age of 18 and above that <sup>24</sup> are occupied in the working environment of the country. Therefore, it is evident that women with new-born infants and children are the majority to be covered under the category of women which makes the government mandatory to introduce this Maternity Benefit Act, in order to provide certain remunerations and various other provisions to reduce the burden of responsibilities they hold to manage the employment and the family balanced.

The act is defined as “A beneficial piece of legislation and its object is to ensure the security of tenure for the working woman” in Kumari Deepa Narayan Jadhav case.<sup>25</sup> Over the years, maternity has been considered as a disability for working women as they don't prefer them in providing employment

<sup>23</sup> Municipal Corporation of Delhi Vs. Female Workers (Muster Roll)(AIR 2000 SC 1274: (2000) 3 SCC 224)

<sup>24</sup> According to data collected during 2018.

<sup>25</sup> Shri Swami Vivekanand Shikshan Sansthechya Sevakanchi Sahakari Patsanstha Maryadit Vs. Kumari Deepa Narayan Jadhan in the year of 2016.

opportunities as it is followed by the leave to be taken as maternity period followed by the birth of the child.<sup>26</sup> To manage all these hardships faced by the working women, this act was introduced with various forms of provisions with leave with pay along with various other remunerations.

## II. HISTORICAL PERSPECTIVE AND AMENDMENTS:

In 1929, Bombay Maternity Benefit Bill was introduced in the Bombay's Legislative council which was the very first law for working women in India.<sup>27</sup> Various suggestions were taken into consideration and the bill was amended completely favoring the employees after the recommendation of Royal Commission on labor in 1929.

The Maternity Benefit Act, 1961 was enacted by the Central Government under the provisions of Article 42 of the Indian Constitution which deals about the employment conditions for working women and securing the maternity benefits; referred to all the existing legislations and also the revised ILO Maternity Protection Convention, 1952, repealing all the maternity provisions provisions of Maternity Benefit Act, 1941 and Plantations Labor Act, 1951.

The Amendment act received President's assent on 27<sup>th</sup> March 2017 and the Maternity Benefit (Amendment) Act came to force on April 1, 2017 with many modifications regarding crèche facilities, etc.,

## III. ANALYSIS OF PROVISIONS:

The act applies for any industry or establishments employed or were employed with 10 or more persons.<sup>28</sup>

### A. Benefits and conditions:

This act contains provisions to avail leave for any women employee working under the establishment during the six weeks following the

day after her deliver or miscarriage or medical termination of pregnancy on the request made by such women.<sup>29</sup> Any women who works for a period not less than eighty days in the twelve months immediately preceding the date of her very is only eligible for claiming maternity benefit.<sup>30</sup> It was held that the daily wage workers are also entitled to Maternity benefits under the act.<sup>31</sup>

### B. Provisions with regard to the amendments made:

The maximum period that a working woman can claim maternity benefit is twenty-six week of which not more than eight weeks shall precede the date of her expected delivery.<sup>32</sup> Also, if a women dies during this period, maternity benefit shall be paid till the day up to the day of her death and if the child dies during the delivery or during the period, she receives maternity benefit including the date of the death of the child. In case of the nature of work assigned to a women us of that she may avail maternity benefit for that period and continue the work in home if both the employer and the worker mutually agrees.<sup>33</sup>

The Maternity Benefit Act 1961 initiated the payment of medical bonus to the worker up to 1000 rupees, which was increased to 20,000 rupees by central government if no pre-natal and post-natal care is provided free of cost.<sup>34</sup> In case of illness arising due to pregnancy, a leave with wage is available for 30 days to the worker.<sup>35</sup>

After the maternity leave, the mother is obliged to get intervals and breaks to feed the child till the 15 months of the child.<sup>36</sup> The establishment with 50 or more than 50 workers shall have Crèche facility in the surrounding.<sup>37</sup>

<sup>26</sup> Bala Shashi, Implementation of Maternity Benefit Act, V.V. Giri National Labour Institute, 2012, p. 2.

<sup>27</sup> Aparajitha's blog – Let's Talk Compliance – Maternity Benefit Act – Tracing the History.

<sup>28</sup> Section 2 of Maternity Benefit Act, 1961

<sup>29</sup> Section 4 of Maternity Benefit Act, 1961

<sup>30</sup> Section 5(2) of Maternity Benefit Act, 1961

<sup>31</sup> Glem Brook Estate Vs. Plantation Office (2002) W.P.No. 5715 of 2009 and M.P. No. 1 of 2009

<sup>32</sup> Section 5(3) of Maternity Benefit (Amendment) Act 2017.

<sup>33</sup> Under Maternity Benefit (Amendment) Act, 2017

<sup>34</sup> Section 8 of the Maternity Benefit (Amendment) Act,2017

<sup>35</sup> Section 10 of Maternity Benefit Act, 1961.

<sup>36</sup> Section 11 of Maternity Benefit Act, 1961.

<sup>37</sup> Section 11A of Maternity Benefit (Amendment) Act, 2017.

The women may also get leave with wages for her Tubectomy operation.<sup>38</sup> No employer is entitled to dismiss any pregnant women stating this as a reason for termination.<sup>39</sup>

#### IV. CONSTITUTIONAL VALIDITY:

The articles of Indian Constitution revolving around the welfare for women are,

- Article 14 (Right to equality)
- Article 15 (Right to social equality)
- Article 16 (Right to equal opportunity in employment)
  - Article 39(d) (Equal pay for equal amount of work)
  - Article 42 (Right to just and humane working conditions and maternity leave)
  - Article 46 (Right to enhance working women's employment conditions)

Here, under Article 15(3)' government is obliged to make any provisions concerning the welfare of the women and to safeguard the maternity life of a women, under Article 42 of Directive Principles of State Policy. Concluding, the State entitles to make provisions safeguarding the rights and privileges of working women to enhance her employment and also to benefit the child care.<sup>40</sup>

#### V. JUDICIAL RESPONSE:

Many interpretations have been made by the judiciary for the efficient working of the act, few which are listed below,

**A. K.C. Chandrika Vs. Indian Red Cross Society<sup>41</sup>** - The petitioner working in the Red Cross society was terminated when she was on a maternity leave stating that she showed no interest in rejoining. The Hon'ble court held to reinstate the petitioner to continue the service and the choice in held over the workman by her interest to continue so the wages was said to be paid.

**C. Smt. Neetu Choudary Vs. State of Rajasthan and Others<sup>42</sup>** - Mode of payment of wages doesn't influence the female employees receiving maternity benefit.

**D. Smt. Archana Pandey Vs. State of M.P & Others<sup>43</sup>** - Petitioner being the contractual employee was questioned to get the maternity benefit, High court after referring various concluded the respondents to provide benefit for the petitioner and her child's care.

**E. Mrs. Savita Ahuja Vs. State of Haryana & others<sup>44</sup>** - The holding made by the Hon'ble court was that the employees recruited on temporary basis or Ad-hoc basis should not be terminated for receiving maternity benefit and should be paid with full pay with leave.

#### VI. SUGGESTIONS:

The suggestions which raised in me in researching over the act is that paternity is also as much important as maternity, although it doesn't get as much attention as maternity, a child needs both father and mother for nourishment and various other foreign countries has also started making provisions for the paternity benefits which could be considered in India also. Secondly, under this act maternity benefit is mostly availed by women working in formal and organized sector;<sup>45</sup> in a developing country like India, majority of the women are employed in the informal sector only. Therefore, it could be considered to make provision for spreading awareness among the informal sector regarding the importance and necessity of the maternity benefit.

#### VII. CONCLUSION:

Mostly, every woman is put under a situation to choose between family and profession during the time period of her pregnancy; which The Maternity Benefit Act has made much easier by their provisions of availing leave with

<sup>38</sup> Section 9A of Maternity Benefit Act, 1961.

<sup>39</sup> Section 12 of Maternity Benefit Act, 1961.

<sup>40</sup> Rights of the working mother - An analysis Aditi Jogvanshi.

<sup>41</sup> 131 (2006) DLT 585, 2007 (3) SLJ 479 Delhi.

<https://indiankanoon.org/doc/1746317/>

<sup>42</sup> 2007 (3) ILR 339

<https://indiankanoon.org/doc/430534/#:~:text=1955%20declared%20the%20temporary%20female,oP%20the%20Rules%20oP%201951.>

<sup>43</sup> W. P. No. 15523 of 2016 <https://indiankanoon.org/doc/62900808/>

<sup>44</sup> Civil W. P. No. 2674 of 1987

<https://indiankanoon.org/doc/18310717/>

<sup>45</sup> 2020 IJCRT Volume 8, Raman Sharma



wages so that the majority will not think of quitting and there could be no termination incurred in the employment. At this juncture, the child seeks full attention so that he/she rises in a safer environment with the presence of the mother's love and affection. Also, regarding the legality, many provisions after amendment where considered to be efficient in amendment act of 2017 than the Maternity Benefit Act, 1961. So, in the mere future we are greatly looking forward for the improvisation of the act in any possible way to attain social justice and for the welfare of working women.

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