



A STUDY ON MATERNITY BENEFITS ACTS IN CORPORATE SECTOR

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ABSTRACT

They Indian economy has seen an increase in the recent years due to the increase in the contribution of working women with in the economy. A decade ago, working women in India were much less in number due to which the laws in regard to maternity benefits were not as protective and safeguard as seen today. Thus amendment had to be brought fourth year of 2017 in order to protect enhance the position of working women within their organization. One of the crucial change that changed the dynamic of the protection provided to women under the maternity benefit act was that the duration of leave granted to them, which was brought forth in 2017 amendment was that the maternity leave was granted to women was increased, previously to the amendment had only 12 weeks of maternity benefits but with the passage of time it felt the need to enhance it so as to support the women and thus it was increased of 26weeks. After this increase India has become one of the few nations of the world to provide such support for the enhancement of women Employment. It is of outcome importance to have laws that safeguard the interest of women in today competitive and cut throat working environment by means of having laws such as maternity benefit act.

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INTRODUCTION

Maternity benefit act was legally introduced in India for the first time in Bombay Legislative council on 28th July 1928, Dr. B.R. Ambedhkar supported and defended it. The act was enacted by Parliament in the 12th year of Republic of India on 12th December 1961 as Act no.53 of 1961. The main objective of this act is to regulate the employment of the women for certain period of time before and after the child birth. To provide maternity benefit and certain other benefits, this act is applicable to the factories, mines, plantations, government establishments, shops and establishments under government Legislative or others recognised by the central government in which ten or more persons employed or were employed on any day of the preceding twelve months.

OBJECTIVES OF THE STUDY

-) To gain knowledge of Maternity benefit schemes.
-) To know how it differs from various countries.

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NEED OF THE STUDY

Good for baby growth this act helps the baby to grow in stress free environment and a better child care. A study shows that the depth of mortality rate of infants dropped by nearly ten percentages. Improved and better relationship between the mother and infant. Due to these benefits the mental health of women was improved. A study shows that the depression levels of mothers who are fifty years old or approximately after thirty years has decreased. It is a win-win strategy for both the employee and employer. After maternity leave so many mothers worked more hours. Good for economy of our country. Turnover of businesses was raised to good amount. No need to spend excess training cost. Women who preferred public assistance dropped to good amount.

REVIEW OF LITERATURE

KusumaNaik.M.V, VedavathyNayak, RenukaRamaiah, praneetha (2017) "Pregnancy outcome in Working women with work place stress" deals with pregnancy outcomes and risk factors faced by women at the time of pregnancy due to increase in working women and their continuity towards work during pregnancy period.

Anita Nath, Shubhashree Venkatesh, Sheeba Balan, Chandra S Metgud, Murali Krishna and Gudlavalleti Venkata Satyanarayana Murthy. (2019)“ The prevalence and determinants of pregnancy-rated anxiety amongst pregnant women at less than 24 week of pregnancy”, a paper deals with the psychological changes and anxiety of pregnant women living in low income countries and high cost of living countries. It explains how common the anxiety and depression during pregnancy.

Dr. Rajeshri Randive Admane.(2020), “A Study on Effectiveness and Impact of Maternity Benefit (Amendment) Act, 2017 on Employment in Unorganized Sector with Reference To Construction Company (West Nagpur, Maharashtra, India)”, this article aids to understand effectiveness of maternity benefits and also it creates an awareness among working women to know their rights.

WHAT IS MATERNITY?: Maternity in the simplest words may be defined as the process of attending motherhood is motherly feeling. It includes not only the time period during pregnancy but also the pre and post period. It includes that pre period so that the woman has the power to rejuvenate herself and need to take care and nourish the new born infant.

WHAT IS THE CORPORATE?: According to section 2(11) of companies act a body corporate or corporation includes a Company Incorporated outside India but does not include: Any other body corporate¹ which the Central government may, may a notification in the official Gazette, specify in his behalf.

AMENDMENTS TO THE MATERNITY BENEFIT ACT, 1961: In the year 2017, Government of India approved the bill of amendment to the Maternity Benefit act, 1961. Following were the Amendments approved. Maternity benefit leave duration has increased from twelve weeks to twenty six weeks and it is not applicable for the mother having children's more than two. Based on the constraints in the organization, women have the facility to work at home after the maternity leave, based on mutual understanding between employee and employer.

MATERNITY BENEFITS (AMENDMENT) ACT, 2017 IN INDIA

Maternity benefit act implemented to protect and help female employees at the time of pregnancy by giving them maternity benefits such as being paid in her absence of pregnancy and bonus but it is only applicable for the establishment which has 10 and more employees.

This below-stated establishment comes under the act: Factories, Mines, Plantations, Government establishments, Shops, Establishments under the relevant applicable legislation, Establishment notified by the central government. As per the maternity benefit act, a woman who has been working as an employee in the above-mentioned sectors at least 80 days within the past 12 months. They will be paid a salary on their daily wage average base and actual absence. This act became enforced by law since April 1st, 2017.

THE MATERNITY LEAVE ACT APPLY: Establishments like factories, corporates, mines, plantations, shops & establishment act, and government establishments.

APPLICABILITY: The Act is applicable to all establishments which are factories, mines, plantations, Government establishments, shops and establishments under the relevant applicable legislations, or any other establishment as may be notified by the Central Government.

ELIGIBILITY: As per the Act, to be eligible for maternity benefit, a woman must have been working as an employee in an establishment for a period of at least 80 days in the past 12 months.

PAYMENT: Paid leave is calculated based on the average daily wage for the period of absence.

EXTENSION OF PERIOD: The Maternity (Amendment) Bill 2017 has extended the earlier 12 weeks' leave to 26 weeks. The pregnant employee can bifurcate the leave as post and pre-delivery. 8 weeks of leave can opt before the delivery and remaining post-childbirth. For women expecting the third child, the maternity leave allotted is 12 weeks.

MATERNITY LEAVE LAW FOR ADOPTIVE MOTHERS: The law states a 12 weeks leave for the adopting mother. This leave starts from the day of adoption and is applicable for the baby below three months of age.

MATERNITY LAW FOR COMMISSIONING MOTHERS IN INDIA: The advent of technology has brought relief and joy to many families who were unable to conceive naturally. The maternity leave law here states a 12 week leave to the biological mother who imparts her egg to create an embryo which is then planted in another woman.

CRITICAL ILLNESS POST-MATERNITY: Pregnancy is a complicated process and could be life-threatening too. The Maternity leave Amendment Bill 2017 allows a benefit of one month for women who are suffering from critical circumstances like Pre-mature delivery, miscarriage & medical termination of pregnancy.

LEAVE FOR GOVERNMENT CIVIL EMPLOYEES: Female civil employees benefit from a paid leave of 180 days for the first two live-born children.

EMPLOYERS' DILEMMA WITH THE MATERNITY LEAVE: The Maternity Leave in India has eased much discomfort for the working Women employees. However, the employers have their own set of concerns:

Having additional staff for the woman employee on leave. Training the temporary staff is an added expense for the employer. The clause of setting up a creche is another infrastructure investment for the employer in addition to recruiting a trained staff to handle the creche.

WHAT SHOULD HR INCORPORATE IN THE MATERNITY LEAVE ACT?: Every HR has to draft a detailed Maternity Leave Policy as an essential document. Every organization should communicate to a pregnant woman in written or e-mail about her rights and the details thereof. HR should revise the Maternity leave policy as per the government regulations. A pregnant employee is by default, exempted from the regular performance appraisal cycle. A provision to make the women employees work from home.

¹(not being a company as define in thus act)

ALTERNATE POLICY FOR MATERNITY: There are different maternity acts under India offering maternity benefits. An organization cannot incorporate two different maternity acts at once.

ESI: EMPLOYEES STATE INSURANCE:

ESI is a self-financed plan and applicable for women employees, drawing a salary of 15,000/month or less. According to this Act, the employer contributes 3.25 % to the insurance, and the employee contributes 0.75 %.

THE FACTORIES ACT 1948: The Factories Act ensures full wages for the 12 weeks of maternity leave.

HIGHLIGHTS OF THE AMENDMENT: The period of paid maternity leave² that a woman employee is entitled to has been increased to 26 weeks. Further, the Act previously allowed pregnant women to avail Maternity Benefit for only 6 weeks prior to the date of expected delivery. Now, this period is increased to 8 weeks. Maternity benefit of 26 weeks can be extended to women who are already under maternity leave at the time of enforcement of this Amendment.

NO INCREASED BENEFIT FOR THIRD CHILD: The increased Maternity Benefit is only available for the first two children. The Amendment provides that a woman having two or more surviving children shall only be entitled to 12 weeks of Maternity Benefit of which not more than 6 shall be taken prior to the date of the expected delivery.

ADOPTION/SURROGACY: A woman who adopts a child below the age of 3 months, or a commissioning mother³, will be entitled to Maternity Benefit for a period of 12 weeks from the date the child is handed over to the adopting mother or the commissioning mother.

CRECHE FACILITY: Every establishment having 50 or more employees are required to have a mandatory creche facility⁴, either separately or along with other common facilities. The woman is also to be allowed 4 visits a day to the creche, which will include the interval for rest allowed to her.

WORK FROM HOME: If the nature of work assigned to a woman is such that she can work from home, an employer may allow her to work from home post the period of Maternity Benefit. The conditions for working from home may be mutually agreed between the employer and the woman.

PRIOR INTIMATION: Every establishment will be required to provide woman at the time of her initial appointment, information about every benefit available under the Act.

COMPLIANCE REQUIREMENTS FOR EMPLOYERS: In light of the provisions laid down in the Act, the employer has certain duties and compliances to accord to, regarding the maintenance of the wellbeing of the establishment as well as of the women workers employed therein. The employer must follow the prescribed conditions in order to do so. These include:

SECTION 6(5): PROVISION: The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on the production of such proof, as may be prescribed, that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof, as may be prescribed, that the woman has been delivered of a child.'

COMPLIANCE: Maternity Benefit preceding delivery to be paid in advance on proof of pregnancy. Maternity Benefit after delivery to be paid within 48 hours of production of proof of the delivery.

SECTION 7: PROVISION:

Payment of maternity benefit in case of death of a woman 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 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6 and, in case, there is no such nominee, to her legal representative.

COMPLIANCE: In case of death of the woman – the employer has to pay the maternity benefits to the notified person or to her legal representative.

SECTION 8: PROVISION: 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 is provided for by the employer free of charge'

COMPLIANCE: In case no prenatal or postnatal care can be provided by the employer- payment of Rs. 1000/- as a medical bonus.

SECTION 9,9A,10:PROVISION:

Grant of leave

COMPLIANCE: In an event of a miscarriage or medical termination of pregnancy grant leave for a period of six weeks. In an event of a tubectomy grant leave for a period of two weeks. In an event, a woman suffers from illness arising out of pregnancy- grant leave for a maximum period of one month.

SECTION 11 A (2) : PROVISION: Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act.

COMPLIANCE: At the time of initial appointment intimate all women in writing or electronically of all benefits under this Act.

UPCOMING LABOUR LEGISLATION IN INDIA

FREE MEDICAL CARE: Last year (2020), the Indian Parliament combined 25 labour laws into three codes, the Social Security Code, the Code on Industrial Relations and the Code on Occupational Safety, Health and Working Conditions.

²("Maternity Benefit")

³(means a biological mother, who uses her egg to create an embryo implanted in any other woman)

⁴(within the prescribed distance from the establishment)

The Code on Wages, enacted in 2019, also amalgamated four relevant labour laws. The Four new Labour Codes were supposed to be effective from 01 April 2021 however considering the rise in COVID cases and the potential impact of the new Codes on per employee costs for enterprises, the Government has delayed implementation of new Codes to a future date. The Central and State Governments have yet to notify the rules. The new legal provisions will be effective only, once notified.

THE CHALLENGES: In spite of the mandated government policies, some women across the nation cannot avail of the rightful maternity leave. The employer is unwilling to pay from his/her pocket the entire expense of the women employees. The government should make provisions to aid the employers with covering part expenses that will make the employer recruit female employees without much inhibition. SME's and start-ups run on a tight budget and might wave-off recruiting female employees if the government does not share the expenses. Pregnancy is a natural process, and the intellect or working potential of women employees will not disappear to the phase. As a developing nation, where we promote education for the girl child, maternity benefits should be considered seriously and implemented in all organizations with total support from the government.

CASE: B. Shah vs. Presiding Officer Labour Court, Coimbatore, and Ors.⁵

FACTS: The issue that arose in court was whether Sundays, being wage less holidays, should be included in the calculation of the maternity benefit period. It was held by the Supreme Court that the benefit that was conferred by the Maternity Benefit Act, read with Article 42 of the Indian Constitution, was directed to help women to not only safeguard her maternity rights but also preserve her effectiveness as an employee and keep her efficiency level stable. She, therefore, requires any amount that may become payable to her, in lieu of the medical expenses and wellbeing of the child. The law makes maternity benefit compulsory so as to help women balance their employment and reproductive roles efficiently. Thus, the court, in accordance with the rule of beneficial construction, stated that Sundays would be included in the said period.

IN CASE OF DEATH: If a woman dies in the duration of the period of maternity leave as mentioned hereinabove, the maternity benefit applicable to her shall only be calculated till the date of her death. If the woman dies after giving birth to the child, and thus resulting in the survival of the child, then the entirety of the maternity benefit would be payable. If the child dies during the period when maternity benefit is applicable to the mother, then the employer is expected to pay such maternity benefit applicable up to the date of the child's death. Such payments after the death of the woman shall be made to the person nominated by the woman in the notice given under Section 6 (1) of the Act, and, in case there is no such nominee, to her legal representative.

METHOD TO CLAIM MATERNITY BENEFIT: In order to be applicable to claim such maternity benefit as provided for under this Act, any woman looking to access this right has to submit a notice to her employer in accordance with the form

prescribed by the establishment she is employed with. Such notice should consist of the following:

- J The maternity benefit and any other amount she might be entitled to under this Act
- J The name of the person to whom such amounts should be paid
- J A confirmation that she will not work in the establishment in the duration of receiving such maternity benefits
- J The date of commencement of her absence from employment.

The employer is to pay such maternity benefit to the woman in advance, after the production of evidence from the woman stating she is pregnant.

FAILURE TO PROVIDE NOTICE: The Act gives another right to women that condones the failure to provide such aforesaid notice. Such failure does not exempt a woman from receiving the benefit but provides that the order by an inspector after reviewing an application for the payment of the benefit can make the woman eligible for the payment of maternity benefit.

JUDGMENT: We are of opinion that computation of maternity benefit has to be made for all the days including Sundays and rest days which may be wage less holidays comprised in the actual period of absence of the woman extending up to six weeks preceding and including the day of delivery as also for all the days falling within the six weeks immediately following the day of delivery thereby ensuring that the woman worker gets for the said period not only the amount equalling 100 per cent of the wages which she was previously earning in terms of section 3 (n) of the Act but also the benefit of the wages for all the Sundays and rest days falling within the aforesaid two periods which would ultimately be conducive to the interests of both the woman worker and her employer.

CASE: Dr. Rachna Chaurasiya Vs. State of U.P. and others passed⁶

Division Bench of this Court directed the State Government to grant maternity leave to all female with full pay of 180 days, irrespective of nature of employment, permanent, temporary/ad hoc or contractual basis. State respondent was further directed to grant Child Care Leave of 730 days to *all female employees, who are appointed on regular basis, contractual basis, ad hoc or temporary basis* having minor children with the rider that the child should not be more than 18 years of age or older. Maternity leave should not be kept apart or excluded from service period of woman employee :The High Court of Madras.

CONCLUSION

Every working women should have crossed the question during her pregnancy period is whether she can continue her job or to leave. There, the trouble is to choose either her profession or personal life. So the maternity schemes came into picture to help women and her child during their pregnancy period that reduces the stress and negative thoughts of the

⁵Civil Appeal No. 1649 of 1975

⁶Civil Misc. Writ Petition No.24627 of 2017.

mother and get improved health. Allowing father to take leave for few days may get a chance to take good parental care of the baby and gives the mother a proper environment to feed the child. The maternity benefits save the mother from leaving her profession and avoids the child goes on having dark side feeling which means a negative feeling that a child can get if it doesn't get parental care on initial stage.

RECOMMENDATIONS

-) There needs to be convergence of Ministries of Women and Child, Health, Rural Development, Labour on entitlement of benefits as enumerated under the Act.
-) Awareness about the law has to be raised
-) There is great need to improve the implementation of the Act with regard to access to medical bonus and nursing breaks.

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