

A Comprehensive Analysis of the Maternity Benefit Act, 2017

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Abstract

Since the time immemorial, women have been regarded as the weaker gender, both physically and intellectually. Even in the 21st century, women have had a difficult time gaining a foothold in society. Women's roles tended to be focused on the house and childrearing. However, women have gradually entered the workforce and have risen up the ranks to increasingly prestigious positions, shouldering the majority of family responsibilities. However, the problem emerges when she reaches the most vital stage of her life, maternity. Maternity is such a sensitive stage in a life of a mother and child that it necessitates the highest care. These days, one-third of women work during their pregnancy, and they are dealing with several challenges that are preventing them from overcoming health-related issues. As a result, governments around the world have developed maternity benefits programmers. The main focus of this research is on the maternity benefits offered in India. It seeks to safeguard both the woman and her child's health and provide support for her upkeep, such as leave, salary, and bonuses. The paper attempts to highlight the challenges and necessities leading to the implementation of maternity legislation. It analyze the evolution of maternity laws in India, with a focus on the Maternity Benefits Act, 2017, which was formed out of the necessity for safeguarding women in the workforce during pregnancy, so that they are not hounded in the name of work responsibilities. The focus then shifts towards effectiveness and impact of Maternity Benefit (Amendment) Act, 2017.

Keywords: Maternity Benefit, Pregnancy, women, maternity leave

INTRODUCTION

Inequality between the sexes is ingrained more and deep rooted into the cultural and social fabric of our country as compared to the traditions and practices of ancient India. The rich history of ancient India clearly depicted through Vedas, Smritis and Puranas. Rig Veda depicts 'Aditi' as not only 'Dev-Mata' but also a personification of the infinity, unconsciousness, sky and fertility, having mention not less than 80 times, [1] even the Manusmriti accorded women to have a greater strata by revering mothers equal to 1000 fathers. The Puranas were also in consonance with the Vedas, thereby reflecting a high stature of women as mothers.

Maternity is natural and divine and is also recognized under the Article 42 of the Indian Constitution guaranteeing provisions for securing just and humane conditions of work and maternity benefits. However, in India this very biological feature of a women is glorified up to such an extent that the concept of motherhood is used as a tool to enslave women into the gender assigned roles, thereby, making them a perfect fit for the patriarchal set-up for the societal construct. Despite the march to modernity, India still is driven by such notions of patriarchy that the constitutionally guaranteed equality is juxtaposed by treating maternity as an intrinsic linkage of

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women's identity to their role as mothers, thus reducing this very divinity of women to incapability to contribute in economy from the stage of pre to post stage of childbirth. To overcome these social barriers, the Maternity Benefit Act, 1961, (Herein after referred as the Act) was enacted to promote equal opportunity and recognize the reproductive rights of women. This Act extended up to the whole of India, applying to every factory, mine, plantation, and circus industry including all such establishments coming under the purview of government and excluded such establishments which were covered under the ambit of Employees State Insurance Act, 1948. It also applied to Shops and Commercial Establishments which 10 or more than employees working or were employed on any day of the preceding 12 months. This Act entitled women for the maternity benefits and the payments made for such purposes [2].

EQUATING SOCIAL JUSTICE WITH MATERNITY BENEFITS

As quoted by Kofi Anan, 'there is no tool for development more effective than the empowerment of women' which leads us to cast light upon the issue of social justice and the recognition of maternity protection rights as a sine quo non to women's right and gender equality. The very nature of law is dynamic and this very feature of it allows it to evolve into a new paradigm in order to cater the needs of the society and deliver the justice. The main objective of social justice is to provide access to resources of justice to the vulnerable and downtrodden class so as to fight off the evil of destitution, allowing the concepts of social existence and development to thrive in the society for a greater good. In a heavily populated country like India which known for its multi-mosaic model, it has taken a herculean task to eliminate the inequalities for the purpose of establishing a considerable degree of social, economic, political equality which qualifies as a legitimate expectations under the constitutional as well as moral terms [3].

The judiciary has always been at the helm of the resurrection of the democratic society, upholding the rule of law in its truest sense by adopting a flexible approach in interpreting sensitive concerns of the society pertaining to questions with regard to inequality [4], thus helping in institution of a coherent socioeconomic order. Considering the social fabric of the country like India, the makers of the Constitution have already done a commendable job by incorporating Article 14 which in itself establishes equality of sexes and in addition to that created a special provision for women under Article 15(3) [5]. The very objective of Article 15(3) was discussed in the case of Government of Andhra Pradesh v. P.B. Vijayakumar & Anr [6] which sought for improvement in the participation of women who once suffered at the hands of the society to such an extent that they were pushed into the pits of socioeconomic backwardness, thereby, hampering their growth and contribution to the society solely because of their physical and biological construct. In addition to what has been stated already, the nitty-gritty of our Constitution has to appreciated on various account and one such case which makes us treasure our Constitution is the classical case of Bandhua Mukti Morcha v. UOI [7], wherein the Directive Principle of the State Policy (Hereinafter referred as DPSP) was taken in due consideration to provide social justice to women and bridge the gap between the societal construct of gender as stated under the Articles 38, 39 and 42. The Court in the case of John Vallamattom v. UOI [8], held that DPSP were instrumental in changing the status quo of the women from a handicapped version to an uplifted one in terms of economic improvement.

Law and social justice are though supposed to follow a parallel path i.e. to be inclusive of all the principles of social justice in order to provide equal platform to all the sections of the society yet there have been situations stating otherwise; when the Courts have been shown sticking to the narrow interpretations of law in relation to the prejudicial social customs, personal laws and so on [9]. Women have always been accorded a separate status and the legislative history is brimming in support of the same. However, it is pertinent to note that this does not calls for dilution of Article 14 rather it aims at justice through equality for unequal [10]. Therefore, it can rightly be said that the triad of the Act, Principles of Social Justice and the DPSPs are the tolls which can help fix the problems pertaining to the social status of women in the society.

THE JURIDICAL MARCH TOWARDS THE MATERNITY BENEFIT ACT, 2017

The Courts in India have witnessed a remarkable expansion and scope of the Act with the judgments that waved positive impact for women at workplace and various judicial pronouncements have made cast light on the amendments made in the Act, to make it as the Maternity Benefit (Amendment) Act, 2017 (Hereinafter referred as the Amendment Act). This journey was important to eliminate the social stereotypes harbored against women since patriarchy held its root firm into the mindset of the general mindset of the people. The following case law analysis helps us appreciate and understand the journey being termed as so important and essential for women in terms of work culture.

Case: Municipal Corporation of Delhi v. Female Workers' (Muster Rolls) & Another [11]

Issue: The major problem that came across the S.C Court was the grant of maternity leave only to the regular female workers and not to the daily wage female workers on muster rolls. Also, the work done by the regular female workers and the daily wage female workers had negligible difference.

Held: The discriminatory treatment as practised by the Delhi Municipal Corporation against the daily wage female workers were held to be unjust and unfair, thereby, granting the maternity leave and extending the benefit of the Act to the daily wage earning class as well.

Case: Anuradha Arya v. The Principal, Government Girls' Senior Secondary School [12]

Issue: The issue that came into light with respect to this case was the denial of the maternity leave to a guest lecturer, the petitioner, thereby drawing a discriminatory line towards the benefits of the Act only towards the favour of regular employees.

Held: The judgment was given in the favour of the petitioner by the Central Administrative Tribunal and extended the benefits of the Act towards the temporary, ad-hoc as well as the contract staff, thereby ensuring the petitioner her reinstatement and her pay back.

Dr Artiben R. Thakkar v. Delhi Pharmaceutical, Sciences and Research University & Anr

Issue: The major issue with regard to this case was with the Petitioner seeking for a grant in the maternity leave under the Amendment Act, even though her contractual status of employment had already come to an end with the Respondent, Delhi Pharmaceutical, Sciences and Research University & Anr.

Held: The petition was dismissed the Petition reasoning that the benefit associated with the service comes to an end post its completion [13].

Dr. Pooja Jignesh Doshi v. The State of Maharashtra & Anr [14]

Issue: The issue in question with regard to this case was with the Petitioner, embraced the title of mother through surrogacy, was seeking maternity leave under the Act.

Held: The Court granted the maternity leave relying on cases like Hema Vijay Menon v. State of Maharashtra [15] and Rama Pandey v. Union of India [16] and further held that the word 'mother' is inclusive of commissioning mother or embracing motherhood via surrogacy.

KEY HIGHLIGHTS TO THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017

The Act played a quintessential role in safeguarding the maternal interests of women in workforce which leveraged a greater number of women in joining the workforce and embrace the title of motherhood as well. However, with changing times, the Act seemed not that useful in accommodating all the interests of women and over the time these loopholes became a challenge towards the workforce comprising women. The following key highlights of the Amendment Act are as follows:

- **Paid Maternity Leave** up to- 26 Weeks. Allows women to avail maternity benefit for 8 weeks before the delivery of the child and 18 weeks post delivery [17].

- **The increased benefit is only available for first 2 child.** As per the Amendment Act, a women having 2 surviving child can only avail the maternity leave for 12 weeks (6 Weeks Prior to deliver & 6 Weeks post delivery).
- **Adoption/ Surrogacy:** A woman can avail the maternity benefit for a period of 12 Weeks from the date of adopting mother or commissioning mother, if the woman:
 - i. Adopts a child below the age of 3 months
 - ii. Commissioning mother; biological mother uses her eggs to create an embryo implanted in any other women.
- **Crèche Facility**
 - i. This facility is a mandate only in establishments having 50 or more employees working.
 - ii. This facility should be within the prescribed distance with the establishment; separately or along with other common facilities.
 - iii. A woman is permitted only 4 visits a day including the time period of her rest.
- **Prior Intimation**
 - i. A woman participating in the establishment and contributing towards the workforce has to be enlightened about all the benefits which would be available to her.

CONCLUSION AND SUGGESTION

This is well established fact that women have been suffering at the hands of society in almost every respect but one of the pivotal topics to be stress focus upon is the divinity of motherhood. The process of child bearing makes women vulnerable and requires attention and light to be shed upon for protection during this transient phase. The Act was aimed at providing equal opportunity to women of working class irrespective of formal and informal sector. However, it could not accommodate the best interests of women in working sector which called for the Amended Act to role play in the society and fill the lacuna's left behind by the former Act. The earlier Act was not taken seriously by the employers due to lack of implementation problems leading women to compromise between her role as a 'Mother' and as a 'Breadwinner'. One of the major issue with the former Act was with the question of maternity leave. It is pertinent to note that the rigidity of the former Act was also one of the factors which paved way for the Amended Act. The Amended Act though helped in overcoming the resistance of women workforce in the market also created certain problems for them in a way. The increase in the paid maternity leave actually led companies to think of alternatives in order to avoid complying with the Amended Act, by hiring their male counter parts to cut their costs and increase their margin of profits. In addition to the above, Paternity Leave is also the need for the hour, to acknowledge the problems faced by the single fathers/ fathers facing the same dilemma as women and to benefit the women counter part to join the workforce as and when they see fit themselves to resume their contribution in the economy.

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