

Analysis on the Development of Maternity Benefit Act 1961 and its Implementation in India

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Abstract: *The persistent global gender gap in the workforce has necessitated the development of inclusive policies to increase women's labour force participation, and as a result, several countries around the world have formulated liberal maternity benefit provisions to ensure that motherhood does not become a reason for women to leave the workforce. In modern day society, economic pressures have increased the need for families to have dual incomes. A women's participation in economic activity is contingent upon various factors, via, biological, economic, social or cultural. Women's ties with pregnancy and child rearing and the failure of employers and policymakers to deal consistently with this issue amplify the difficulties women face in the economy. The present economic arrangements require women to compromise their career and family goals. Maternity leave is a crucial and compassionate aspect of employment policies that acknowledges the unique needs of working women during pregnancy, childbirth, and childcare. Recognizing this, India has implemented specific legal provisions to safeguard their rights and well-being in the workplace. The Maternity Benefit Act, 1961 is a legislation to protect the employment of women at the time of her maternity. It entitles a women employees of an organization 'maternity benefit' which is fully paid wages during the absence from work and to take care of her child.*

Keywords: Maternity benefit, wages, women, employer, industry, childcare, ILO

I. INTRODUCTION

Article 42 of Indian Constitution contains the directive that the State shall make provision for securing just and humane conditions of work and maternity benefits. In order to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for Maternity benefits and certain other benefits, the Indian Parliament enacted the Maternity Benefit Act, 1961 keeping in view not only all the legislations related to maternity that existed from the pre-Constitution days, but also the mandate of the International Labour Organisation ("ILO") regarding maternity protection (ILO Maternity Protection Convention 103, 1952). In India, the Maternity Benefit Act of 1961 is not the only piece of legislation that provides for maternity protection or benefit. The Employees' State Insurance Act, 1948 and the Central Civil Services Rules, 1972 are other legislations which also cover maternity protection. In 2017, an Amendment Bill to amend the Act was approved and the amended provisions of the Act came into effect on April 1, 2017. The contents of the Maternity Benefit Act and numerous other acts are combined in the Code on Social Security, 2020, which will repeal the Act by subsuming it when it becomes effective.

II. HISTORICAL BACKGROUND

Maternity benefit act was legally introduced in India for the first time in Bombay Legislative council on 28th July 1928, The Bill received support from leaders like Dr.B.R. Ambedkar and the Bombay Maternity Act, 1929 was passed. The provinces, Madras and Ajmer passed this legislation in 1934, Delhi in 1937, U.P. in 1938, Bengal and Sind in 1939, Hyderabad in 1942, Punjab in 1943, Assam in 1944 and Bihar in 1945. In Bihar the Maternity Benefit Act, was re-enacted in 1947 with certain changes. The Maternity Benefit Act, 1961, was passed by the Union of India on December 12, 1961, following the country's independence. The statute included conditional benefits for pregnancy, childbirth, and complications related to those, in conformity with the then-current international standards. The Act covered a lot of areas with meticulous precision and care despite the fact that India was still a newly independent developing nation.

III. METHODS

The study has been conducted based on data from secondary sources such as books, relevant Acts, websites, news reports, research material available online.

IV. DISCUSSION

As mentioned above, in 2017, an Amendment Bill was approved to amend the Act of 1961. The Maternity Benefit (Amendment) Act, 2017, applies to all enterprises that employ 10 or more people in Factories, Mines, Plantations, Shops & Establishments, and other entities. The notable amendments as per the Maternity Benefit (Amendment) Act 2017 is that it increased the maternity benefit to 26 weeks from the existing 12 weeks under the Act of 1961, extended the application of the Act to contractual employees, extended the pre-natal leave to 8 weeks from the existing 6 weeks, required employers to provide creche facility in establishments employing more than 50 persons, work from home options and provided adopting or commissioning (surrogacy) mothers the right to maternity benefit. Under the amended Act, every woman is entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. Every establishment is required to intimate a woman at the time of her appointment of the maternity benefits available to her in writing or electronically. Any employer who 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 or her pregnancy, shall be punishable with imprisonment which is not less than 3 months but which may extend to one year and with a fine of no less than Rs. 2000/- which may extend to Rs. 6000/-. A complaint may be made by the women concerned to the Inspector prescribed under the Act.

While the Maternity Benefit Act, 1961, as amended by the Maternity Benefit (Amendment) Act, 2017 has increased the maternity benefits for Indian working women in line with the ILO standards, it is important to consider how the industry in general has perceived these changes and whether the same has had the necessary effect of improving the gender participation of women in the workforce. Periodic Labour Force Survey Report 2022-23 released by the Ministry of Statistics and Programme Implementation on 9th October 2023 shows that the Female Labour Force Participation Rate in the country has improved significantly by 4.2 percentage points to 37.0% in 2023, as per 'usual status' concept of measuring labour force participation. Though the Act has been in place since 1961, the implementation has not been smooth as seen in the plethora of litigation in respect of the Act. Some landmark cases include *Municipal Corporation of Delhi vs. Muster Roll Workers*, AIR 2000 SC 1274, dealing with rights of muster roll employees for maternity benefits, *Preeti Singh v. State of Uttar Pradesh and ors.* (2021) wherein the service rules contradicted the Act provisions, *Laxmi Devi Vs State of Rajasthan and ors.* 2017 Lab IC 3188(Raj-DB) dealing with the issue of fitness of women during pregnancy for appointment, *Pooja Jignesh Doshi Vs. The State of Maharashtra and Othrs., MANU/MH/2480/2019* wherein the right of maternity benefit to adopting mothers was dealt with, and numerous other cases, wherein the Courts have had to step in to ensure the implementation of the Act. One of the major drawbacks seen in the implementation of the Maternity Benefit Act, 1961 is discussed herein below include the non-covering of working women in the unorganized sector despite the Sixth Pay Commission, 2008 and the Law Commission of India, 2015, recommending extending the same. The other drawback is the lack of commitment in implementation by the States. Except for states like Maharashtra, Karnataka, Haryana, and Kerala, many Indian states have not yet formulated specific creche guidelines or rules.

The most challenging aspect of the implementation of the Maternity Benefit Act 1961 and its 2017 amendment however is that it has not increased participation by women in the workforce as expected which is largely attributable to a negative perception of the Act by a section of employers as the employers has to bear the full cost for providing maternity benefits under the Act. This is feasible for large corporations but start-ups, and micro, small and medium enterprises (MSMEs) that employ around 40% of India's workforce, may not be able to bear the additional operating costs. Another criticism of the Act is that it reinforces the notion that responsibility of childcare lies solely on women rather than making childcare the responsibility of both parents.

V. FINDING AND RESULTS

In essence, the Maternity Benefit Act in India has played crucial role in supporting and protecting interest of women employees both before and after childbirth by ensuring financial security during the maternity leave period. The Act has tried to do its bit to provide a more level playing field to women and tried to address the gender biases existing in society. Providing a conducive environment for the empowerment of women employees to nurture their new-borns while taking care of their own well-being is not a requirement of the woman alone, but also is a requirement of a healthy society wherein the health of women and the new born children receive the priority it deserves. The relationship between the length of paid maternity leave and increased participation of female workers in the organised sector is correlated and the Act has had a positive effect on female participation in the workforce. The study especially the judgements discussed herein throws light on the loopholes, ambiguities and reasons which employers at times use to not give effect to the Act. The judgements quoted also indicate that the apathy towards the implementation of the Act is not just limited to the private sector, but also in Government institutions which are expected to give better effect to beneficial welfare legislations.

Paid maternity leave policy does improve maternal health and there are sufficient reference studies which have indicated the positive correlation between paid maternity leave and maternal health. It has also ensured better health of the new-born infant, however the involvement of both parents in this phase of life equally is presently not a reality. Paternal leave in India is not at the same footing as is seen in several other countries and the time old notion of childcare being the predominant domain of a woman continues. It is expected that more work will be required on this front before childcare is gender blind and both working parents are equally responsible for the same.

The Maternity Benefit Act, 1961, has ensured to some extent through paid maternity benefit to have a more gender inclusive work force in India, however, it is alarming to see reports that on account of the additional costs incurred for providing maternity benefits there is a lack of preference for recruiting women, hence the Act could also be said to have a negative impact on gender inclusivity in the work force.

VI. CONCLUSION

To be a real game changer, the Maternity Benefit Act, 1961, needs to be coupled with more awareness and acceptance in society of the childcare role being the responsibility of both parents. Provisions on paternity leave need to move out of the ambit of service rules and find its place in the Act. Men should be encouraged by the employer to avail the leave available and contribute positively to the responsibility of childcare. It is very important that the maternity benefit provisions are extended to women in the unorganised sector at the earliest as the major chunk of working women are in this sector. Better implementation of the Act is required, and the erring States should be asked to notify the required rules for implementation without delay as the provisions relating to creche and work from home have not been fully implemented. The most important issue to be addressed is how to share the financial burden on the employers especially those in the MSME sector, wherein profitability margins are not so high. As is the practice around the world, social security schemes, which would be both employer and employee funded and Government funding of maternity benefit schemes for deserving industries needs to be considered for full hearted acceptance by the industry of the provisions of the Maternity Benefit Act 1961 and the Amendment Act of 2017. This would remove the bias against recruitment of women of childbearing age and help in achieving the goal of gender diversity in workforce.

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