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LEGAL PROVISIONS ON MATERNITY BENEFITS IN INDIA

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ABSTRACT:

Conventionally, women are primarily associated with the home and man with the outside world. This conventional parameter has for a very long time fostered the thought of men having the onus for economic production. Women have always been at work; only the definitions of “work” and “workplace” in history have not been realistic enough to include their contribution to the economy and society. By and large, manual work for one’s own house is to be done by women. Women work as the cooks, tailors and domestic help for the household but the economic worth of their contribution is over-looked as they are not paid. Hence they are reduced to unpaid family workers who may not be returned in the census under the category of workers. In modern day society, economic pressures have increased the need for families to have dual incomes.

Women at the reproductive stage are exposed to special risks during pregnancy and child bearing, and mortality and maternal morbidity are factors which require special provisions. It is the fundamental right of every person to be free from any form of discrimination, primarily on the basis of sex under Article 15 of the Constitution of India. The right against discrimination incorporates within itself policies facilitating protective discrimination for the purpose of ensuring equality. The right to maternity entitlements has been explicitly recognized as a Directive Principles of State Policy. Under Article 39(e), the state has committed to ensure to women, health and strength to work, and to protect them from coercive economic abuse and situations where they are forced by economic necessity to enter avocations unsuited to their age or strength. The state has also committed to ensure provisions for maternity relief under Article

42, and Article 47 provides that “the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties”.

The Maternity benefit Act was passed to regulate the employment of women for certain period before and after the child birth and to provide certain maternity and other benefits.

The object of maternity leave and benefit is to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. With the advent of modern age, as the number of women employees is growing, the maternity leave and other maternity benefits are becoming increasingly common. But there was no beneficial piece of legislation in the horizon which is intended to achieve the object of doing social justice to women workers employed in factories, mines and plantation.

This paper attempts to examines the provisions of the Maternity benefit Act, 1961, its objectives, and give some suitable solutions for the implementation of the Act.

Keywords: *Constitution, Protective discrimination, Social justice, Legislation, society.*

Introduction:

Conventionally, women are primarily associated with the home and man with the outside world. This conventional parameter has for a very long time fostered the thought of men having the onus for economic production. Women have always been at work; only the definitions of “work” and “workplace” in history have not been realistic enough to include their contribution to the economy and society. By and large, manual work for one’s own house is to be done by women. Women work as the cooks, tailors and domestic help for the household but the economic worth of their contribution is over-looked as they are not paid. Hence they are reduced to unpaid family workers who may not be returned in the census under the category of workers. In modern day society, economic pressures have increased the need for families to have dual incomes.

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What is Maternity Benefit?

Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of the average daily wage for the period of her actual absence.

Who is entitled to Maternity Benefit?

1. Every woman employee, whether employed directly or through a contractor, who has actually worked in the establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery, is entitled to receive maternity benefit.
2. The qualifying period of 80 days shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of immigration.
3. For calculating the number of days on which a woman has actually worked during the preceding 12 months, the days on which she has been laid off or was on holidays with wages shall also be counted.
4. According to the Maternity Benefit Act female workers are entitled to a maximum of 12 weeks (84 days) of maternity leave. Out of these 12 weeks, six weeks leave is post-natal leave. In case of miscarriage or medical termination of pregnancy, a worker is entitled to six weeks of paid maternity leave. Employees are also entitled to one additional month of paid leave in case of complications arising due to pregnancy, delivery, premature birth, miscarriage, medical termination or a tubectomy operation (two weeks in this case).
5. Female civil servants are entitled to maternity leave for a period of 180 days for their first two live born children.

There is neither a wage ceiling for coverage under the Act nor there is any restriction as regards the type of work a woman is engaged in.

Objective of the maternity benefits:

The object of maternity leave and benefit is to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. With the advent of modern age, as the number of women employees is growing, the maternity leave and other maternity benefits are becoming increasingly common. But there was no beneficial piece of legislation in the horizon which is intended to achieve the object of doing social justice to women workers employed in factories, mines and plantation.

Among the problems faced by women in the economic sphere of life discrimination resulting from their biological role in nature of childbearing is one. To curb such problem and protect the economic rights of women there is need for maternity benefits for a female employee.

Women are entitled to these benefits as the child bearing process is intensely painful and can cause bodily damage. This may severely affect the future work of the woman as an employee and decrease her productivity so there is a need for maternity benefits for the women worker.

To safeguard working women and their rights to remain self-reliant and economically independent, maternity benefits are required. A just social order can be achieved only when inequalities are obliterated and everyone is provided what, is legally due. When who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman.

Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth.

Historically, maternity has been treated as a state of disability in women workers from undertaking any work during the few weeks immediately preceding and following child birth. With the emergence of the system of wage labour in the industrial undertakings, many employers tended to terminate the services of the women workers when they found that maternity interfered with the performance of normal duties by women workers. Many women workers, therefore, had to go on leave without pay during this period in order to retain their employment.

Many others had to bear a heavy strain to keep their efficiency during the periods of pregnancy, which was injurious to the health of both, the mother and the child. To remove this hardship of the women workers, the concept of maternity benefit is needed in order to enable the women workers to carry on the social function of child; bearing and rearing without undue strain on their health and loss of wages.

The vast majority of women want to have children at some time in their lives. The economic arrangements which were there earlier required them to compromise their career and family goals. Hence, although women have taken enormous strides toward gender equity at work, as long as traditional gender ideologies and assumptions (i.e., sex-typed stereotypes, roles, and status beliefs) linger, they won't have been able to continue in the business unless there is maternity benefits provision.

International labour Standards on Maternity protection:

Raising a family is a cherished goal for many working people. Yet pregnancy and maternity are an especially vulnerable time for working women and their families. Expectant and nursing mothers require special protection to prevent harm to their or their infants' health, and they need adequate time to give birth, to recover, and to nurse their children. At the same time, they also require protection to ensure that they will not lose their job simply because of pregnancy or maternity leave. Such protection not only ensures a woman's equal access to employment, it also ensures the continuation of often vital income which is necessary for the well-being of her entire family. Safeguarding the health of expectant and nursing mothers and protecting them from job discrimination is a precondition for achieving genuine equality of opportunity and treatment for men and women at work and enabling workers to raise families in conditions of security.

Maternity Protection Convention, 2000 (No. 183) - This convention is the most up-to-date international labour standard on maternity protection, although the earlier relevant instruments - the Maternity Protection Convention, 1919 (No. 3), and the Maternity Protection Convention (Revised), 1952 (No. 103) - are still in force for countries in certain countries.

Convention No. 183 provides for 14 weeks of maternity benefit to women to whom the instrument applies. Women who are absent from work on maternity leave shall be entitled to a cash benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living and which shall be no less than two-thirds of her previous earnings or a comparable amount. The convention also requires ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work which has been determined to be harmful to her health or that of her child, and provides for protection from discrimination based on maternity. The standard also prohibits employers to terminate the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work, except on grounds unrelated to pregnancy, childbirth and its consequences, or nursing. Women returning to work must be returned to the same position or an equivalent position paid at the same rate. Also provides a woman the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

Origin and Development of Maternity Benefit Schemes in India:

At the time when the Maternity Protection Convention was adopted by the ILO in 1919, it was suggested that the countries represented should carry out inquiries into the question of maternity benefits for women workers. The conference, therefore, adopted a special resolution requesting the Indian Government to make a study of the question of maternity benefits and to submit a report to the text conference.

Upon this the Government of India consulted the provincial Governments and employers etc. and submitted a report to the International Labour conference held in 1921. The report prescribed that “legislation upon the subject would be premature, but an attempt would be made to induce the principal organized industries to start voluntary benefit scheme by assisting them financially”¹. Therefore, the Government of India expressed its inability to adopt the Convention.

The reasons given were (a) the impossibility of enforcing the compulsory periods of absence from work in case of the pregnant women workers (b) the shortage of medical women who would be necessary for issuing medical certificates, (c) the impossibility of compulsory contribution schemes to provide benefits and (d) the absence of need for provision regarding nursing periods and for the protection of women from loss of employment during pregnancy (ILO. Labour Legislation in India, 1952,p.98.).

However, the provincial Governments continued to persuade the employers to take unilateral decision for the adoption of the ILO Conventions. In the meanwhile, a private member Mr. N.M. Joshi², who had attended as worker’s delegate the International Labour Conference at which the Maternity Protection Convention was adopted, introduced a Maternity Bill in the Central Legislature. The Bill seeks to make statutory provisions for maternity benefit for women employed in factories and mines, and paying those cash benefits during confinement. The Bill could not be passed because of lack of public support, impossibility of supervising the scheme, low availability of women doctors and because of migratory character of women workers.³ There was also a feeling that the passing of the legislation would harm the employment prospects of women.

Despite the negative attitude of the Central Government, the state Governments considered the feasibility of maternity benefit legislations in India. And as such, the maternity benefit legislations took their roots with the passing of the Bombay Maternity Benefit Act, 1929. Under the Act, every woman worker who has worked for nine months in a factory is entitled to maternity benefit on the production of a medical certificate. She is entitled to leave of absence for four weeks. Maternity benefit was to be paid to her at the rate of 8 annas per day (8 annas are equal to 50 paise according to today’s currency). This was the first maternity benefit legislation in India. This was followed by enactment of a similar law by the Central Provinces and Berar in 1930.

Another milestone in the field of maternity benefit was reached with the appointment of the Royal Commission on Labour in 1929⁴. The Commission, inter alia, recommended that maternity benefit legislation on the lines of Bombay Maternity Benefit Act, 1929 should be enacted in other provinces. The commission also recommended that the maternity benefit should be non-contributory and in line with the

¹ International Labour Code. Vol.II, 1952, P.743). accessed on <http://legal.un.org/ilc>.

² Mr. N. M. Joshi was a Trade Union Leader and general secretary to the All India Trade Union Congress. He Was instrumental in getting the Trade Unions Act, 1926 passed.

³ (Srivastava, S.C. social Security and Labour Laws. Lucknow, Eastern Book Co., 1985, p.262.).

⁴ The Viceroy of India announced on January 28 at the opening of the Legislative Assembly that the King had approved of the establishment of a Royal Commission under the chairmanship of Mr. T. Whitley to enquire into the condition of labor in India.

recommendations a number of provinces passed their own maternity benefit legislations. 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. Many other states passed these legislations a bit later, during the Post-Constitution Period. This application of these Acts has been reviewed from time to time and necessary modifications have been introduced.

However, the Central Government did not lag behind. It took the clue from the provincial governments and passed the maternity benefit legislations. The first central enactment in the sphere was the Mines Maternity Benefit Act, 1941. This Act was of a very limited application as it was applicable only in mines.

However, despite such steps the commitment to providing maternity protection remained low. The Report by the Bhore Committee pointed out to the inadequate availability of crèche facilities in several industries and poor implementation of Maternity Benefit provisions by various Union Provinces of pre independent India.

After India attained Independence, the constitution was formulated and adopted in 1950. The constitution, which is the foundation and the guiding principle of all future legislations, contains specific provision, providing rights and privilege to the women. These right and privileges are contained in the Fundamental rights and Directive principles of the state policy.

Maternity Benefit and the Indian Constitution:

These rights and privileges are: right to equality in law⁵, right to social equality⁶, right to social equality in employment⁷ (Id., Article 16.), right to protective discriminations,⁸ right against exploitations of women⁹, right to adequate means of livelihood,¹⁰ right to equal pay for equal work,¹¹ right that the health and strength of workers both men and women are not abused,¹² right to just and humane conditions of work and maternity relief,¹³ and right to improvement in employment opportunities and conditions of the working women.¹⁴

Article 42¹⁵, a directive principle of State Policy, states that “The State shall make provision for securing just and humane conditions of work and for maternity relief.” Art. 21¹⁶, Right to Life and Personal Liberty

⁵ Article 14 of the Constitution of India

⁶ Article 15 of the Constitution of India

⁷ Article 16 of the Constitution of India

⁸ Article 15 (3) of the Constitution of India

⁹ Article 23 of the Constitution of India

¹⁰ Article 39 (a) of the Constitution of India

¹¹ Article 39 (d) of the Constitution of India

¹² Article 39 (e) of the Constitution of India

¹³ Article 42 of the Constitution of India

¹⁴ Article 46 of the Constitution of India

¹⁵ Provision for just and humane conditions of work and maternity relief The State shall make provision for securing just and humane conditions of work and for maternity relief

is not merely a right to protect one's body but the guarantee under this provision contemplates a larger scope. Right to Life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning. It is something more than surviving or animal existence. The meaning of the word life cannot be narrowed down and it will be available not only to every citizen of the country. Therefore, the State must guarantee to a pregnant working woman all the facilities and assistance that she requires while protecting her employment as well as her own and her child's health. The measures and provisions which are made in the Post-Constitution

THE MATERNITY BENEFIT ACT, 1961

The Act was passed with a view to reduce disparities under the existing Maternity Benefit Acts and to bring uniformity with regard to rates, qualifying conditions and duration of maternity benefits. The Act repealed the Mines Maternity Benefit Act, 1941, the Bombay Maternity Benefit Act, 1929, the provisions of maternity protection under the Plantations Labour Act, 1951 and all other provincial enactments covering the same field. However, the Act does not apply to factory or establishment to which the provision of Employee's State Insurance Act 1948 applies, except as otherwise provided in Sections 5A and 5B of the Act.

Applicability:

The Maternity Benefit Act applies to (a) every establishment being a factory, mine, plantation or circus and every shop in which 10 (Ten) or more persons are employed and (b) to every shop or establishment defined under any law in a state in which persons are employed on any day of the preceding 12 (Twelve) months. It may be noted that the Maternity Benefit Act does not apply to employees who are covered under the provisions of the Employees State Insurance Act, 1948.

Object and Scope:

The Act seeks to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide maternity benefit and certain other benefits to women workers.

The Act extends to the whole of India. It applies, in the first instance: to every establishment being a factory, a mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; to every shop or establishment within the meaning of any law for the time being in force in relation to shop and establishments in a state, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

¹⁶ Protection of life and personal liberty } No person shall be deprived of his life or personal liberty except according to procedure established by law

The State Government is empowered to extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise with the approval of the Central Government by giving not less than two months notice of its intention of so doing.

However, as stated above, the Act excludes the applicability of the provisions of the Act to any factory or other establishment to which the provisions of the Employee's State Insurance Act, 1948 applies except as otherwise provided in Sections 5A and 5B of the 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, 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 so as 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

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 a 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 leave 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/- 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.

Salient Features of the Act:

According to Section 4 of this Act, no employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, or miscarriage, nor shall any woman work during this period. Besides, no pregnant woman shall, on a request made by her in this behalf, be required by her employer to do any work of arduous nature, or that which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus; or is likely to cause her miscarriage or otherwise to adversely affect her health, during the one month immediately preceding the six weeks before the date of her expected delivery.

Every woman shall be entitled to, and her employer shall be liable for, the payment of Maternity benefits at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day, says the provision under Section 5.

However no woman shall be entitled to these benefits unless she has actually worked in an establishment of the employer from whom she claims them, for a period of not less than 80 days in the twelve months immediately preceding the date of her expected delivery. The maximum period for which any woman shall be entitled to Maternity benefits shall be 84 days.

In case a woman dies during this period, then the Maternity benefit shall be payable only for the days up to, and including, the day of her death. Similarly, if a woman dies during her delivery, or during the period of six weeks immediately following the date of delivery, leaving behind in either case the child, the employer shall be liable for the Maternity benefits for the entire period of six weeks immediately following the day of her delivery. But if the child also dies during the said period then for the days up to, and including, the day of the death of the child. In the event of a women's death, the employer shall pay such benefits or amount to the person nominated by the deceased in the notice given under Section 6 and if no notice has been given, then to her legal representatives. Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after delivery.

The provision under Section 6(5) says that the amount of maternally benefits for a period preceding the date of her expected delivery shall be paid in advance by the employer.

Miscarriage has also been given same importance. Section 9 provides that in case of miscarriage, a woman shall be entitled to leave with wages at the rate of maternally benefit for a period of six weeks immediately following the day of her miscarriage. Besides a woman suffering from illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall be entitled to an additional leave with wages at the rate of Maternity benefit for a maximum period of one month under Section 10, (Gupta and Gupta 2008).

Regarding nursing breaks Section 11 provides for two additional breaks of the prescribed duration for nursing the child until the child attains the age of 15 months. Moreover, deduction of wages in certain cases has been made unlawful. A woman cannot be discharged or dismissed by the employer when she absents herself from work in accordance with the provisions of this Act.

Conclusion:

In modern day society, economic pressures have increased the need for families to have dual incomes. Though these should ideally have combined with egalitarian norms to radically alter attitudes toward working women.

Women's ties with pregnancy and child rearing and the failure of employers and policymakers to deal consistently with this issue exacerbate the difficulties women face in the economy. Women continue to have the primary responsibility for housework and childcare, even when they have extremely demanding jobs. Few employers provide help with childcare, flexible work hours to accommodate children's needs, or paid maternity leaves. Women in blue-collar work as well as clerical jobs face rigid time schedules, low pay, and virtually no recognition or help from employers for their family responsibilities. Professional women, although better paid, also face these problems

Most importantly the duration of leave must be extended in order to allow a mother to fully recover and recuperate as well as efficiently nurse her new born child. Within this, the duration of post natal period must be extended keeping in mind factors like rise in number of late marriages, cesarean births, nuclear families and increasing urbanization. In the 44th Indian Labor Conference, held in February, 2012, it has been recommended that Maternity Leave Under the Maternity Benefit Act be Increased from the Present Level of 12 Weeks to 24 Weeks

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