

Reality of women workers under the Maternity Benefits Act,1961

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Abstract – The maternity benefits act,1961, stands as an influential piece of legislation in India, representing in recognising and safeguarding the rights of the women workers in their respective workplace, this research paper will look into the overview of the Maternity Benefits Act and explore the conditions and durations for maternity leave provided under the act, it will also dissect the concept of paid maternity leave and its importance for women workers, furthermore this research paper delves into exploring whether the act covers adoptive mothers and their entitlements and also analyses the job security provisions for pregnant women and new mothers and also assess the challenges and implementation of the act in the unorganised sector, this research paper also covers the issues of discrimination and harassment faced by pregnant employees, it also discusses about the obligations of the employers under the Maternity Benefits Act, the paper further discusses about how the gig economy and freelancers are affected by this legislation and further examines the long term effects of maternity leave on women’s career advancement, this research paper also looks into how the access to maternity benefits contributes to women’s economic empowerment and also looks into the legal challenges faced by the act and proposed reforms, Ultimately this research paper seeks to provide valuable insights into the complex interplay between the regulations under Maternity Benefits Act, 1961 and the women workforce of the country. It aims to contribute to the ongoing discourse on legal and ethical frameworks that can secure the maternity benefits of the women in our country

Index Terms - International Labour Organisation (ILO), World Health Organisation (WHO), United Nations International Children’s Emergency Fund (UNICEF), United Nations Population Fund (UNFPA),

Introduction:

‘Gender parity is not just good for women- it’s good for societies’ is a quote by Angelica Fuentes who is a Latin-American businesswoman and impact investor who has committed her life to gender equality, the Maternity Benefits Act 1961 was brought in to restore the gender equality in the country especially for women in the workforce and also helps in normalizing the women’s solitary role in childbearing, this research paper will mainly focus on how to make maternity benefits accessible to all women workers in every sector of the economy. It aims to contribute to the ongoing discourse in legal and ethical frameworks that can secure the maternity benefits of the women in India. It is also used for providing knowledge to the people working in industries, provide them with information regarding the Maternity Benefits Act so that it will be useful for them when they need it, the research will help in realising how the current maternity benefits act can be improved so that everyone can benefit from it. The reader can expect answers for how it can benefit everyone, how it can be made accessible to everyone and how to improve the legal framework to the point where it benefits everyone. Extracts from existing literature is used and analysed, this research paper will have 12 subtopics which will be further discussed in the paper that is divided in a certain way that it answers the research problem and also inculcates information regarding the act to people.

1.Overview of the maternity benefits act,1961:

The maternity benefit act of 1961 is an influential piece of legislation that contributes to women’s employment during their pregnancies, it provides benefits, which are of payment of their wages when they are not in a position to work as they are caring for their newborn, the act is significant in honouring motherhood and also assist women financially while defending women’s rights. This act’s provisions are applicable to all of India, it is applicable to businesses which include stores, mines, factories, and plantations, it must be followed by every organization specifically any organization that for the past 12 months has employed more than 10 people each

day in an establishment in the state of India and the employees must receive all the perks that the act provides that is, ensuring their wellbeing because it is also what makes a business develop so the employees must receive the greatest care possible, the employee (women) must work for the organization at least 80 days in the last year to be eligible for maternity leave under this act, women are granted 12 weeks of maternity leave of which they cannot take more than six weeks before the due date or a maximum of 6 weeks of paid leave if the pregnancy ends in miscarriage or whether the woman has an abortion, pregnant woman may work from home while reaping the benefits of this act, the employer is required to explain the maternity benefits to the employee(woman) during the beginning of the employment and is also required by law to provide maternity benefits even if the employee refuses.

2.Maternity Leave Entitlements:

The maximum period a woman may receive maternity benefits is twenty-six weeks, although it does not include the eight weeks prior to the due date of her expected delivery, this is according to section 5(3) as amended by the Maternity Benefit (amendment) act 2017. During the pregnancy period when a woman passes away, the benefits arising from this act will only be paid for the days culminating and including the day when she passed away. In section 5(4) when a woman legally adopts a child under three months of age or a mother who commissions an adoption will be eligible for maternity benefits for a period of twelve weeks starting on the day the child is given to the adopting mother or the commissioning mother as applicable, in section 5(5), in case where the woman's type of work assigned to her is such of where she can work from home then the employer may allow her to do after utilizing the maternity benefit for a particular period and only on conditions that both employer and the employee(woman) mutually agree on. The employee(woman) can only claim the benefits under the Maternity Benefits Act, 1961 if she has worked for a period of not less than 80 days in the twelve months preceding the date of her expected delivery, the woman employee claiming the right to maternity benefit must submit a notice to her employer with the following information- the name of the individual who must receive the payments, when her absence from work officially starts, the maternity benefits and any other additional benefits that she is entitled to receive according to the act, a statement stating that she will not work at the company while enjoying the maternity benefits and also provide a documentation that proves her pregnancy. After submitting the notice, the employer is required to provide the employee's maternity benefit in advance

3.Paid maternity leave:

The ILO Maternity Protection Convention, 2000 gives the mother various rights related to childbirth for a time period with cash, employment security, medical benefits, health protection, non-discrimination and the right to breastfeed, the reason as to why the concept was started is to provide support to women in coping up with the physiological and psychological demands that comes along with pregnancy, but a large portion of working mothers don't have access to maternity leave and their benefits. Maternity leave includes the periods before, during and after childbirth, the main purpose of it is to safeguard the health of the pregnant woman and her child and also to meet the psychological and physiological demands that comes along with pregnancy. It should be noted that maternity leave is not sick leave and should not under any situation reduce sick leave claims, either before or after childbirth as pregnancy is not an illness. The ratification of ILO Maternity Protection Convention No.183 has policies and regulatory framework that support and enable the mother, family and communities, especially the ones that need special care for the newborn babies. It is recommended by the WHO, the World Bank, UNICEF, UNFPA and the partnership for maternal, newborn and child health (PMNCH). Maternity leave is needed especially to help the mother recognise and report postnatal complications and any hazardous signs in the mother and the baby, and also heal and rest, recover physically and emotionally from childbirth and also commence and continue exclusive breastfeeding. To sum up taking leave after childbirth helps prevent maternal and infant mortality, morbidity and also maintain health.

4. Maternity benefits for adoptive mothers:

Section 5(4) of the Maternity Benefit Act, 1961 states that a woman who legally adopts a child below three months old is entitled to 12 weeks of maternity leave. In a recent petition that is in **Hamsanandini Nanduri v. Union of India (Writ petition(s)(civil)no(s).960/2021**, the petitioner Hamsaanandini Nanduri questioned the constitutional validity of section 5(4), expressing that the provision is discriminatory and arbitrary towards adoptive mothers as it violates article 19(1)(g) of the Indian constitution that is it restricts the adoptive mother's capability to carry on her employment/profession based on the child's age, the provision also discriminates between adoptive and biological mothers as adoptive mothers get only 12 weeks of maternity benefit whereas biological mothers get 26 weeks as per the amendment, all the more it also discriminates between biological and adopted children by not getting the adequate care that is required by both of them. There is also no provision of providing maternity benefit for a mother adopting an orphaned, abandoned or surrendered child above the age of three months, this will also lead to a preference of parents wanting to adopt new born children rather than older children, it is also very evident that the Maternity Benefit Act's provision is incompatible with the Juvenile Justice Act and adoption laws of India. Every country in the world has an international obligation concerning children under the age of 18 as declared by the United Nations Convention on the rights of the child that there shouldn't be any form of discrimination and there should be a provision of care and welfare of the child and also having a wholesome environment for the development of the child.

5. Employment Protection:

New social norms, urbanisation, industrialization encouraged women to look for employment outside of their houses where they worked unpaid for decades by doing household work, cleaning or cooking or childcare, several issues turned up after this like work discrimination, hazardous working conditions, one major issue was pregnancy, women were dismissed due to it or they were forced to quit their jobs to take care of their newborn. The burden of giving birth and taking care of the newborn always laid on the women's hands in most societies so the Maternity Benefit Act was introduced in the year 1961 for securing the employment of working women during their pregnancy, when the maternity benefit (amendment) act 2017 came into force, it protected the working women from termination during pregnancy, it stated that dismissing a pregnant woman is illegal and the employer will be held liable for the same, although if there exists a situation of intentional misconduct then employer can take the appropriate disciplinary action according to the company's disciplinary policy. There are several cases that played an important role in the development of the Maternity Benefits Act, especially to strengthen the job security of working women, **AIR India vs. Nargesh meerza and ors** – it stated that services of an air hostess being terminated upon the first pregnancy is unreasonable and arbitrary by the court and also an obvious violation of article 14 of the constitution, in **K.Chandrika vs. Indian Red Cross Society** – the woman's employment was terminated while she was on her maternity leave and the court held that the termination was illegal and that the woman should be reinstated in service with continuity of service. Therefore, the act allows the working women to carry on with their employment while caring for their newborn thus maintaining the work life balance

6. Maternity benefits for unorganized sector workers:

6.1. Situation of unorganised sector workers in the country:

Under the unorganized worker's Social Security Act, 2008, the term unorganised worker has been defined – a self-employed worker, home based worker or a wage worker in the unorganised sector and also comprises of a worker in the organised sector who is not covered by any of the acts mentioned in schedule-II of the act that is Employee's Compensation Act 1923 (3 of 1923), the Employees' State Insurance Act 1948 (34 of 1948), the Industrial Disputes Act 1947 (14 of 1947), the Employees Provident Funds and Miscellaneous Provision Act 1952 (19 of 1952), the Maternity Benefit Act, 1961 (53 of 1961) and the Payment of Gratuity Act, 1972 (39 of 1972). Different schemes and portals have been introduced by the government to create a database of the workers in the unorganised sector, eShram is a portal for registering the unorganised workers which was launched across the country on 26th august 2021, the portal was to be used as a way of delivery of welfare schemes for crores of unorganised workers that are more than 38 crore workers, another government scheme is Pradhan Mantri Shram Yogi Maan-Dhan which is meant for social security of unorganised workers and the central government has also introduced a bill in the parliament known as Aam Admi Bema Yojana, it is for the workers in the

unorganised sector that include about 93% of the total work force in the country , it recognises the need to provide social security to the unorganised sector workers.

6.2. Situation of informal women workers:

The legislative framework to guarantee maternity benefits for women workers in the country is currently very weak as the legislation only covers women who work in establishments excluding majority of women who work in unorganised sector like the farms, at home or on the streets which covers over 90% of the women in the informal sector. When the unorganised workers Social Security Act was passed in 2008 , it included maternity benefits as one of the entitlements for the unorganised sector although no wage linked scheme for the maternity benefits was introduced by the government, the Janani Suraksha Yojana is another scheme introduced by government which promises at least Rs 6000 for all pregnant and lactating women, the Pradhan Mantri Vandana Yojana has reduced the amount to Rs 5000 and benefits are limited only to the first child, some states have increased the amount of benefit , Madhya Pradesh and Tamil Nadu have increased the amount to Rs 16000 and 18000 respectively, there are other sectoral laws under which women can get maternity benefits from but the registration is a difficult process that requires annual renewal and evidence for showing that the person has worked there for a minimum stipulated period. There exists no central authority that monitors whether women workers are getting their maternity benefits through these various legislations, the proposed social security code that combines all the existing labour laws related to social security, rather than using this opportunity to triumph over the challenges of maternity benefits for women, the draft code amalgamates all the flaws in the existing legislations

7. Workplace discrimination:

Many pregnant women and new mothers are vulnerable in the workplace , they suffer from discrimination at work because of the mentality that maternity is a liability, ILO has uncovered a lot of cases where women were being harassed and fired after becoming pregnant, they were denied maternity leave or were made to undergo pregnancy tests by their employers and were also made to sign pledges that they will not become pregnant by their employers, in 2013 Teamlease conducted a survey where it was concluded that 48 percent of Indians face discrimination at work ,Indian companies were infamously known for asking female job candidates questions about their marital status and maternity plans which were never asked to the male job candidates and female employees when they come back from maternity leave face with different set of problems where they are being denied promotion since it is mostly based on performance and not tenure based, most companies do not provide incentives like creches or flexible hours , forcing women to the point where they have to choose between work and the home. Employers are obligated to provide a safe and healthy work environment for pregnant women which includes not assigning tasks that might affect their health or their child and identify and remove dangerous components or activities that will also pose a threat to the female employee who is pregnant, also provide lighter workload that is the employee should not be exposed to increased physical strain , they also should not face any discrimination based on it, also should not be terminated and also not be denied of promotion or benefits.

8. Employer responsibilities:

According to section 3(d) employer means a person or authority appointed by the government in an establishment which is under the control of the government for supervising and controlling the employees provided no person or authority is so appointed as the head of the department, a person appointed for supervision and control of employees in an establishment under any local authority provided that no person is appointed, the chief executive officer of the local authority, a manager, managing director, managing agent or by any other name is entrusted with ultimate control over the affairs of the establishment. There are certain obligations that the employer must fulfil under the maternity benefits act which are

- the employer should not employ a woman who is within six weeks of her delivery or miscarriage,
- the employer should not make the pregnant woman do work which involves heavy physical activity like long hours of standing or any activity that is likely to interfere with the pregnancy,
- the employer must also pay the woman average daily wage for the period of her absence which includes the day before the delivery, actual day of the delivery or any following day of the delivery, if the employer does not adhere to this condition, they will be imprisoned for a period of three months which might extend up to one year and with fine ranging from two thousand to five thousand,

- the employer shall allow the woman to absent herself from work if she is claiming maternity benefit under this act
- the amount of maternity benefit should be paid in advance when the woman provides the proof that she is pregnant, the amount should be paid within forty-eight hours of producing the proof
- if the woman who is entitled to maternity benefit dies before receiving it then the amount should be paid by the employer to the person who is nominated by the woman
- the woman is also entitled to receive medical bonus from the employer under this act
- if the woman takes her leave of absence according to the provisions of the act, then the employer should not fire her from her position of work if the employer does so, then they are liable to imprisonment for three months which might also extend to one year and also pay fine of two thousand to five thousand
- the employer must provide information of the names and addresses of the woman working in the establishment and also the notices of women claiming maternity benefits under this act and also give information regarding the maternity benefits provided to them to the authority appointed under this act
- the employer should also maintain the records and other necessary information which are required under this act
- every establishment which has fifty or more employees must have a daycare or creche facility where babies can be cared for during the working day and the employer must also allow four visits to the women for them to see their children in the daycare facility
- women working in the establishment should be notified with the maternity benefits provided to them during the initial stage of appointment itself in writing and electronically

9. Maternity benefits and the gig economy:

Gig is a slang term which means a job for a specific period of time, it does not have a traditional employee-employer relationship, it includes freelancers who are employed on a contractual basis with the employers, a lot of communities are moving towards a gig economy, in a 2017 Ernst & Young study, it was found that 24% of the world's gig workers are from India. Independent contractors, temporary workers, project-based workers all come under the gig economy, these employees could be writers, artists, tutor, delivery agents or anyone without being on the company's payroll but enter into formal agreements with the company. Indian labour and employment laws recognises only three categories of employment that is government employees, employees in public sector undertakings and private sector employees, these employees are provided with the apt working conditions like minimum wages, compensation for termination, safe working environment but the gig workers are people who lack the employment status. The parliament of India introduced the Social Security Code in 2020 which includes the nine enactments, it contains beneficial schemes for platform and gig workers and they also get protection under the code, although the gig workers are eligible for benefits like maternity benefits, minimum wages, old age protection, disability cover but it does not mean that the benefits are guaranteed as there is no fixed responsibility.

10. Impact on career progression:

Balancing life and work is one of the dilemma faced by every working woman who is pregnant, research shows that longer maternity leave is related to lower infant mortality and reduced maternal stress, there is an increasing trend towards legislating longer maternity leave to improve the work-life balance and also the relationship between the child and the mother, even though longer maternity leave has its positives, there is another side of it where it affects the work life of the working woman, research shows that the more paid leave the mother takes, they are less likely to be promoted or receive a pay rise once they return back to work, they are also at a huge risk of getting demoted or fired, the social circle that is the co-workers of the working woman might also judge the woman for taking longer maternity leave as being less committed to work, this leaves the woman to choose between motherhood or career success. There exists a "keep in touch" program where parents of new born stay in contact with their co-workers and workplace while they are on leave by being paired up with a co-worker who will provide daily updates on clients, projects and other important information regarding the workplace, it was also found in an experiment where a sample of 558 Canadian employees was taken, it was found that female workers who took the maternity leave were recognised to be more committed to their jobs and ultimately hireable, these positive outcomes only exist if female workers actively use these programs.

11. Maternity benefits and economic empowerment:

Maternity benefits can provide various economic benefits as it helps the women to contribute to the country's economy by maintaining the health of the women and their children which in turn benefits the society as a whole, one of the major contributions is that it strengthens the women's economic role and labour force extension, providing maternity leave and other benefits under the act would encourage young women of child bearing age without any children and also for young mothers to join and maintain the labour force market, if maternity leave does not exist then many women will have no choice than to leave the labour force after the birth of their child. Providing protection against discrimination of women in the workforce due to their pregnancy also reinforces the labour market that is women will consider going back to work after childbirth. Stable and increased labour force market will in turn increase the productivity and stimulate business, it also increases the efficiency of using human capital as women's skills and their education will be utilized efficiently by the employers who can recruit employees with better skills, experience and knowledge due to the existence of maternity benefits. Implementing maternity benefits will also bring about other positive changes like lower staff turnover, high rates of return after leave, employee's loyalty increases, decreased absenteeism. Breastfeeding also provides numerous economic benefits that is it ensures that newborn babies have sustainable, environment friendly and balanced nutritional food which will not only reduce the expenses of buying substitutes for the milk but it will also prevent a lot of common illnesses among babies and benefits the child in the long term. Therefore, breastfeeding is critical for cost saving and poverty reduction.

12. Legal challenges and reforms:

There are various legal challenges that the Maternity Benefits Act face, one of the primary challenges faced by the act is its implementation and enforcement, many factors like inadequate infrastructure, limited resources, no sufficient training regarding the act for the employers and employees hinder the proper implementation of the act. There is also very limited public awareness about the provisions of the act, there needs to be public awareness programs and education initiatives to educate the female employees, employers and other stakeholders who are affected by the act and also increase the awareness about the rights of pregnant women, the act also does not include the women who are employed in the informal sector, where a significant number of women in the country are employed in the informal sector, since they lack protection and do not have the required maternity benefits, this leaves the female workers in a vulnerable position where they are exploited and discriminated due to pregnancy and childbirth. The act needs to extend its provisions so that the women working in the informal sector also get access to the maternity benefits. The act also puts the financial burden of providing the maternity benefits to the employers which can be a huge hurdle for small and medium sized establishments, this will lead to the employers not hiring female workers which will lead to discrimination and lack of employment opportunities for women, the government needs to come up with welfare schemes or government subsidies that could help reduce the financial burden on the employers. The act also needs to come up with provisions for paternity leave so that it will reinforce the idea that childcare is primarily a responsibility of men and women, by introducing paternity leave provisions, it promotes gender equality in the workplace and also encourages a balanced approach of dividing the childcare responsibilities equally between men and women. The act also needs to come up with strict regulation and enforcement of childcare facility or creche for providing high quality affordable childcare services for working women.

Conclusion:

The Maternity Benefits Act, 1961 is an important legislation that protects the well-being of a pregnant working woman by providing certain maternity benefits to help ease the process of childbirth. The act has several features like paid maternity leave, protection against termination and discrimination, medical benefits, creche facilities and all other essential components which are required to protect the employment rights and wellbeing of a working woman during childbirth and pregnancy. Even though the act has several positive objectives which it aims to achieve, the act also has several challenges in achieving it, particularly in increasing the awareness about the act or extending the coverage of the act to the informal sector, gender equality, paternity leave or lack of crèche facilities, these challenges need to be addressed from various stakeholders' perspective. In conclusion the act has impacted the lives of the working women significantly by providing the essential maternity benefits required during pregnancy and childbirth, however there are certain challenges that needs to be acknowledged and effectively implemented for the social and economic empowerment of women in the country.

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