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ANALYSIS OF THE MATERNITY LEAVE POLICY IN INDIA IN CONTEXT TO THE MATERNITY BENEFIT ACT, 1961

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ABSTRACT

Maternity benefits have been considered as the crucial rights which are being received by the women while undergoing their pregnancy and up to a certain time limit after the new born baby for the overall wellbeing of both the mother and the newly born child as well as to promote child care. The Government of India has endeavoured certain agendas to be achieved in relation to the mother and childcare and for that, the government has opted for an optimistic approach for fulfilment of the maternity benefit goals by inserting various maternity benefit provisions into the different laws and by enacting separate legislation on the same i.e., the Maternity Benefit Act, 1961. Not only this, the framers of the Constitution while preparing the draft of the Indian Constitution were also concerned about including the provisions for mother and child benefit so they had included the same under various articles covered under the Fundamental Rights and the Fundamental Duties. Hence, this paper aims to discuss the provisions brought by the Indian Constitution alongwith the provisions of the Maternity Benefit Act, 1961 in order to understand the maternity benefit concept in relation to India in a vivid manner. Also, the case laws would be discussed to check the judicial trends being emerging out and to check the interpretation of the maternity provisions being done by the judiciary to relate the concept with the practicalities.

Keywords- #Maternitybenefit #India #Laws #Policies #Mother #Child #Government #IndianConstitution #Judiciary

INTRODUCTION

Mothers have been universally considered as the indication of God's sovereignty in everyone's life. It has been observed that a mother can take a place of everyone but a mother's place can never be taken by any other person in our lives. Thus, a mother always gives unconditional love to her child. She bears those pains and risks for her child which no one ever can bear for them. So, if she does so much of sacrifice for her child then why she has not been given that proper importance which she deserves? When a female is about to deliver a baby, she not only needs proper care, health, and attention, but also needs ample of time for her body to take rest thus she deserves mandatory maternity leave not just for herself, but also for her child because being a new born baby, the baby also wants proper care for at least 6 months to 1 year span of time. Also, the body of female also needs proper recovery time after post-partum.

What is maternity leave?

Maternity leave which is also called as 'Family leave' is a kind of Employment benefit which is now available in majority of the world countries. This is a paid leave which is in particular given to a mother of newly born baby before and after the birth of the child. This leave is considered to be as crucial for not only the child but for the mother as well because the postpartum recovery is needed for a woman to recover from her post-delivery condition in which a woman may become physically weak. So, for taking care of the new born as well as regaining her health back, the concept of maternity leave serves twofold purpose.

Moreover, women are considered to be as the sensitive ones in terms of physical/ biological factors so pregnancy makes their bodies a bit weaker so in order to re-gain strength and also to give proper nutrition and care to their new born babies, women mandatorily need to have maternity leaves.

Definitions of 'Maternity leave'

According to Merriam Webster dictionary: -

Maternity leave is- *"Time off from a job given to a mother to take care of a new born child"*.

According to Oxford's Learner's Dictionary: -

Maternity leave means- *"A period of time when a woman is allowed to be away from work before and after having a baby"*.

According to Cambridge Dictionary: -

“A period in which a woman is legally allowed to be absent from work in the weeks Before and after she gives birth”.

According to Macmillian Dictionary: -

It's the *“Time before and after the birth of a baby when a woman is allowed to be away from her job”.*

From studying all the above definitions on the concept of “Maternity Leave”, we could analyse them in a crux that maternity leave is a kind of leave which is given to a woman before and after the birth of the child. This leave is a paid one and is given for weeks depending upon the laws and the employment policies on the same.

HISTORICAL BACKGROUND

From looking at the history of the Indian society, we could trace India consisted of the Patriarchal society i.e., the Indian society was the male dominated society in which the voice and the rights of the women were always suppressed. Since time immemorial, women have been working like puppets in the Indian society. Since decades, women have been doing unpaid work like household chores, cooking, cleaning, taking care of home, husband, family members and children.

But with the evolution of time, the women have been started stepping out of the homes to find employment.

When women found employment for them then afterwards many other issues started emerging like wage discrimination, discrimination on the basis of sex, physical and mental harassment, sexual harassment, miserable working conditions and pregnancy was also one of them.

When a working woman used to conceive during older times, then she had been denied her right to work and was being terminated because after pregnancy, a woman was being considered as incapable of doing any job.

The very first law on the maternity relief was brought in the year 1929 which was the Bombay Maternity Benefit Act, 1929¹. The law was initially applicable in limited provinces only but later on

¹ The Bombay Maternity Benefit Bill, 1929, *available at:* <https://www.aparajitha.com/blog/lets-talk-compliance-maternity-benefit-act-tracing-the-history/> (Last visited on March 21, 2023).

the provisions of the act was extended to other provinces as well. Later on, some similar legislations were also brought which covered various kinds of maternity benefits for women.

Later on, the Central Government had enacted 3 major laws out of which some were of pre-independence and some were of post-independence era and those were: -

- i. *The Mines Maternity Benefit Act, 1941*² (Pre independence).
- ii. *The Employees State Insurance Act, 1948*³ (Post independence).
- iii. *The Plantations Labour Act, 1951*⁴ (Post independence).

Though these 3 laws were enacted and implemented to benefit the women and to give them maternity benefits but all these 3 laws were deficient and had major differences amongst themselves in some or the other way e.g., duration of leave, amount of benefit and many other such lacunas. These lacunas were creating various inconsistencies as there were the different inconsistent provisions talking about the same matter.

To fill the lacunas created by the above 3 laws, the Central government in the form of major legislative reforms in the year of 1961 enacted an act namely as

*'The Maternity Benefit Act, 1961*⁵. The said act was introduced in order to safeguard the employment of women during their pregnancy period and so that the services of the women are not terminated because of the mere fact of their pregnancy.

The said act aimed at providing the maternity allowance either by the employer or the state to the woman during the pregnancy and after the childbirth. The relief under this act was defined for the total period of 26 weeks. This time period was defined by taking into consideration the maternity leave time period recommended by the World Health Organisation (WHO) as the WHO believes that these weeks are crucial for both the health of the mother as well as of the child.

² The Mines Maternity Benefit Act, 1941, available at: <https://www.casemine.com/act/in/5a979ddb4a93263ca60b7529> (Last visited on March 21, 2023).

³ The Employees State Insurance Act, 1948, available at: https://labour.gov.in/sites/default/files/TheEmployeesAct1948_0.pdf (Last visited on March 21, 2023).

⁴ The Plantations Labour Act, 1951, available at: <https://labour.gov.in/sites/default/files/The-Plantation-Labour-Act-1951.pdf> (Last visited on March 21, 2023).

⁵ The Maternity Benefit Act, 1961, available at: <https://labour.gov.in/sites/default/files/TheMaternityBenefitAct1961.pdf> (Last visited on January 21, 2023).

RESEARCH METHODOLOGY

The research methodology which is being used for the preparation of this Research Paper is Doctrinal method. The data gathering and identification of the concepts is done with the help of Primary and Secondary sources which includes-

- Reports/ Books.
- Internet Sources.
- Case Laws/ Landmark Judgments.
- Constitutional provisions.
- Propositions.
- Case Studies.

RESEARCH OBJECTIVES

Under this research, the following objectives would be covered-

- ⇒ To conceptualize the meaning of the term 'Maternity leave' with the help of the relevant definitions.
- ⇒ To analyse the Historical background of the concept of maternity benefits in India and evolution of the same.
- ⇒ To discuss the relevant provisions and the legislative steps taken over to promote the maternity leaves and other benefits in India.
- ⇒ To interpret and analyse the concept of maternity benefits in India through the landmark judicial pronouncements.

HYPOTHESIS

The women into Indian society have always been suffered into the hands of the male dominated patriarchal society where women got no rights for their wellbeing and upliftment. Since older times, women have been confined into the 4 walls of the house and have always been deprived of their rights like education, job/employment, marriage and many other rights of theirs and have always been subjected to sabotage, subjugation and many cruelties into the hands of the male dominated Indian society. In such a scenario, the women were not even getting the maternity rights and maternity

benefits which we could see as their inherent right because all women have to give birth once in their lives, if giving birth is inevitable; then so is the maternity benefits and reliefs. If women are sacrificing this much of their lives for giving birth to a child, then it is their right that their rights and concerns pertaining to maternity should be taken care of. But in reality, what we see is that women do not receive that enough rights and benefits for maternity which they actually deserve to receive.

With the passage of time, the legislation and judiciary felt the need to bring maternity laws and policies and not only just bringing them, but for also putting them in action, the judiciary from time to time, through its landmark judgments and decisions, brought a light upon how the maternity rights and benefits are going to be given to a woman.

THE CONSTITUTION OF INDIA AND MATERNITY BENEFITS

First of all, the Indian Constitution has given very wide and major rights especially to the weaker sections of the society which were being oppressed in the history of India and women were the significant part of the oppressed classes during those times.

In this context, the *Article 15 (3)*⁶ of the Constitution of India has empowered the government to enact any law/legislation especially for women on the basis of the principle of “Protective discrimination” as we all know and believe that women are physically in weaker position than men; hence they are required to be uplifted by providing them with some special treatment or privileges. Thus, this provision has allowed both the Central as well as the respective State governments to enact any law especially for the benefit of the female, so as to uplift their position and standard in the society and also to place them at par with the men.

*Article 42*⁷ of the Indian Constitution, which is a Directive Principle of State Policy enshrined under the Part IV of the Constitution of India, specifically used the expression “Maternity relief” in its provision.

⁶ Article 15 (3) of the Constitution of India, 1949, available at: <https://indiankanoon.org/doc/1603957/> (Last visited on January 21, 2023).

⁷ Article 42 of the Constitution of India, 1949, available at: <https://indiankanoon.org/doc/111604/> (Last visited on January 21, 2023).

This article says:

“The State shall make provision for securing just and humane conditions of work and for maternity relief”.

This article in particular by mentioning the words ‘maternity relief’, imposes an obligation upon the State to provide with the adequate laws and policies which provides the women with maternity relief. Further, **Article 14**⁸ of the Indian Constitution which significantly talks about the Right to Equality; lays an emphasis on the rights for the betterment of women and for upraising their standard by providing them not only with the equal employment benefits but also with the adequate maternity benefits.

Article 16⁹ of the Constitution talks about the social equality in terms of employment. The concept of giving maternity benefit and maternity leaves also amounts to giving of social equality to women in jobs and employment.

Articles 39 (a), 39 (d) and 39 (e)¹⁰ ensures the sufficient means of livelihood, Equal pay for equal work and ensuring the worker’s health by providing just and humane working conditions at the employment.

Article 46¹¹ provides that the working conditions of the women should be improved and they should be provided with the improved and proper working & employment opportunities.

And last but not the least, the **Article 21**¹² of the Indian Constitution which ensures the Right to Life and Personal liberty and covers almost each and every sphere of a human life without which it is not possible to live with dignity and thus a broader provision; also tends to ensure the equal women rights and also providing them with some special rights which also covers the Right to maternity benefits

⁸ Article 14 of the Constitution of India, 1949, available at: <https://indiankanoon.org/doc/367586/> (Last visited on March 24, 2023).

⁹ Article 16 of the Constitution of India, 1949, available at: <https://indiankanoon.org/doc/211089/> (Last visited on March 24, 2023).

¹⁰ Article 39 of the Constitution of India, 1949, available at: <https://indiankanoon.org/doc/555882/> (Last visited on March 24, 2023).

¹¹ Article 46 of the Constitution of India, 1949, available at: <https://indiankanoon.org/doc/352126/> (Last visited on March 24, 2023).

¹² Article 21 of the Constitution of India, 1949, available at: <https://indiankanoon.org/doc/1199182/> (Last visited on March 24, 2023).

and leave; for both the mother and the child so that they could have a healthy life ahead. The mother could recover from her post-delivery complications and also the newly born child could receive proper care from the mother.

From studying these Constitutional provisions, we could easily imply that the framers of the Indian Constitution deeply emphasized upon the concept of evolving and implementing the Social Justice and Social Equality into the Indian society.

Since maternity benefits are also considered to be a part of social justice and equality; hence the Indian Legislature was obvious to bring and formulate the maternity benefit laws and policies in India.

JUDICIAL OUTLOOK

Under this part, we're going to discuss some crucial landmark judicial decisions which the Indian courts have emphasized upon and delivered keeping in mind the needs women with regard to the maternity benefits and policies which should be formulated and implemented keeping into mind the changing trends of the Indian society.

In the case namely as *Rattan Lal & Ors. vs. State of Haryana & Ors.*¹³, the ad-hoc teachers of the State of Haryana were denied their salaries along with the other employment benefits like medical leaves, summer vacations, maternity leave and other allowances.

The Apex court strongly criticized and went against such a non-justifiable policy of the state government of Haryana and ordered them to fulfil all these above-mentioned benefits with immediate effect including the maternity leave and medical leave to all those who were denied the same before. In *Vandana Kandari vs. University of Delhi*¹⁴, the Hon'ble Supreme Court of India held that if any university or college which detains any female student just on the grounds that she was not able to attend the classes due to her pregnancy months or because of the delivery of the new born bab, then it not only negates the objectives of the Constitution but it also violates the gender equal rights and also the women rights.

¹³ 1987 AIR 478.

¹⁴ W.P.(C) No. 8302/2009.

In *Tata Tea Ltd. vs. Inspector of Plantations*¹⁵, the hon'ble Apex court of India held that if the employee is enjoying the maternity leave under the provisions of the Maternity Benefit Act, then the employer cannot call that employee for work during her maternity leave.

The court also held that the wages which have been already paid by the employer under the National and Festival Holidays Act should not be adjusted towards the maternity leave pay.

In the case namely as *Anshu Rani vs. State of Uttar Pradesh & Ors.*¹⁶, the court analysed the importance of "Maternity leave" and observed that: -

"Maternity leave is a social insurance. The maternity leave is given for maternal and child health and family support."

In the case namely as *Mrs. Bharti Gupta vs. Rail India Technical and Economical Services [RITES] & Ors.*¹⁷, the hon'ble court held that into the Maternity benefit act, the provisions have been specially laid down for the benefits of the females during and after childbirth.

In the case namely as *K Chandrika vs. Indian Red Cross Society*¹⁸, the employment of the petitioner was terminated merely on the basis of the maternity leave. The hon'ble court in this case, held that the services/employment of the petitioner have been terminated illegally and the employer also do not have any fair and reasonable justification of doing so. The court gave orders for the immediate reinstatement of the petitioner.

LEGISLATIVE RESPONSE

Under this head, we're going to discuss about the laws and legislations which have been significantly brought by the Indian Parliament keeping in view the needs, demands and rights of the women in particular to the concept of maternity leaves and other maternity benefits as well.

¹⁵ (1992) ILLJ 603 Ker.

¹⁶ Writ-A No. 3486 of 2019.

¹⁷ 123 (2005) DLT 138.

¹⁸ 131 (2006) DLT 585.

MATERNITY BENEFIT ACT, 1961

When we talk about the maternity benefit laws in India post-independence, we see that the first law which came into picture was the Maternity Benefit Act, 1961. The major aim of the legislation was for securing the employment of the women during their pregnancy. The act further aimed for providing some sort of allowance or payment to the women. This law was initially applicable to employments/establishments having 10 or more employees. Some of the important provisions of this act are: -

- ✓ The act particularly specifies the duration of the maternity leave for the total duration of *12 weeks*. Also, the female had no option to avail this leave before 6 weeks from the expected delivery date. That means the woman could avail maternity leave under this act nearby her delivery date. [Section 5 (3) of the Act]
But later on, this leave period was reduced from 12 weeks to 8 weeks for the women having single child only. But the women having 2 or more children would continue to avail the 12 weeks maternity leave period.
- ✓ This act made one special provision pertaining to the not only the females who are going to give birth, but also the ones who are legally adopting a child whose age is below 3 months and also the commissioning mothers. For both these cases, the period of maternity leave shall be calculated from the date on which the child is actually being handed over to the adoptive or the commissioning mother. [Section 5 (4) of the Act]
- ✓ Another novel provision which was brought under this act was that the women were also being offered the option of work from home depending upon the type of employment they are being employed in. This was to be done via mutual agreement between the employer and the female employee. [Section 5 (5) of the Act]
- ✓ The provisions of the act not only provided for the maternity leave, but one of the provisions of the act provided for informing the female employees about the fact that there are laws under which they have the right to avail maternity leave. This provision is incorporated under the Section 11-A (2) of the Maternity Benefit Act.

- ✓ The provisions of the act provide for the leave of miscarriage as well. If any pregnant woman employer suffers from miscarriage, then that woman employee would be provided with the leave of 6 weeks after providing sufficient medical proofs. [Section 9 of the Act]
- ✓ The act further prohibited the employer to dismiss or terminate the services of a female employee merely due to the absence from work during her pregnancy. [Section 12 of the Act]
- ✓ The act states the punishment for the employer in contravention of the provisions of this act. It provides for imprisonment for not less than 3 months which is extendable up to the duration of 1 year as well plus fine of not less than Rs. 2000 but which is also extendable up to Rs. 5000.
- ✓ The Maternity Benefit (Amendment) Act, 2017 brought a unique and fresh provision of providing the Creche facilities at the workplaces for the women. The provision provides for facilitating the creche facilities at a stipulated distance. Under the provision, a mother is allowed to visit her child 4 times within her job hours inclusive of her time to rest. [Section 11-A (2)]
- ✓ The act further provides for the prohibition of dismissal during the absence or pregnancy during the course of employment. The act has made dismissal of women employees during pregnancy and even if the employer does so, the he/she will have to pay the maternity bonus as mentioned in the act. [Section 12 of the Act]

CONCLUSION

Maternity benefits refer to the financial assistance and other support provided to women during their pregnancy and after giving birth. These benefits are intended to help women cope with the physical, emotional, and financial challenges that come with having a child.

Maternity benefits are important because they promote gender equality, support families, and contribute to the well-being of children. By providing financial assistance, paid leave and other benefits, governments and employers can help women maintain their career while also fulfilling their responsibilities as mothers.

Overall, it can be concluded that maternity benefits are crucial for the health and well-being of mothers, children and families. Policymakers, employers, and society as a whole should work to ensure that these benefits are accessible to all women, regardless of their income or job status.

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