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LEGISLATIVE ANALYSIS OF THE MATERNITY BENEFIT ACT, 1961

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THE MATERNITY BENEFIT ACT, 1961¹

Abstract

This act was introduced for the working women population so that they are able to get paid maternity leave during their pregnancy so that they don't face financial crisis and are able to take proper care of the child and their own selves. The women employee who have been employed directly or indirectly by any contractor and has worked for atleast 80 days in the time frame of 12 months immediately preceding the date of her expected date of delivery. The restrictions under it includes that no pregnant woman should be engaged in activities which require hard labour or long-standing hours. The job should not lead to stressful conditions which might interfere with the pregnancy of the woman. No employer should employ women during the period of six weeks from the day of her delivery or medical termination of the pregnancy.

¹ The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1963, India.

Background

➤ ***Bombay Maternity Benefit Bill, 1929***

The first legislation '***Bombay Maternity Benefit Bill, 1929***' was introduced after the study conducted on infant mortality rate and the women health by *Lady Doctor Banerjee* who was appointed by the British Government. Several other legislations like *Mines Maternity Benefit Act (1941)*, *Working Journalists (Conditions of service)*, *Plantations Labour Act (1951)* and other similar legislations were brought by the government before the introduction of 'The Maternity Benefit Act, 1961'.

➤ ***International Labour Organisation (ILO) Maternity Protection Convention, 1952***

It was introduced to classify the maternity benefit, protection and leave for the pregnant women. It was in regards to the adoption of certain set standards and proposals regarding the health and safety of the mother. In 2000, it was revised and the minimum condition of maternity leave was increased from 12 weeks to 14 weeks along with several other benefits.

➤ ***The Maternity Benefit Act, 1961***

The act was introduced in accordance with the **Article-42** of the Indian Constitution which mentioned about 'a humane working condition for the pregnant women' and the previous constitutional legislations.

➤ ***Rights enshrined under the Constitution***

- ❖ *Article 15 (3)*- It mentions about the powers of the State under which they can make provisions for protecting the interests of the women so that the strength of the race is promoted as well as preserved.
- ❖ *Article 21*- It specifies right to life and liberty which includes protection of employment so that she is able to live with dignity.
- ❖ *Article 42*- It talks about 'just and humane' conditions of working for women which includes maternity benefits.
- ❖ *Article 46*- It mentions about the improvement of conditions of working women and granting enhanced employment opportunities.

Timeline of Amendments over the years

- In **1972**, Section 5a was introduced which stated that when the Employee State Insurance Act, 1948 was applied the Maternity Benefit Act would continue until they become eligible to claim the benefit.
- In **1973**, the circus industry was included in its ambit, where the Section 1(IIIA) was substituted.

- In **1976**, Section- 5b was inserted which talked about the receipt of wages and the ambit of the act was increased to the women working in various establishments under the ESI Act or other factories.
- In **1988**, it started including shops and working places which employed 10 or more than 10 workers.
- In **1995**, it included leave for six weeks along with wages in case of the medical termination of the pregnancy and also 'leave' for a month in case illness arose due to medical termination or tubectomy operation.
- In **2008**, it entitled the woman to receive Rs 2500 as a medical bonus.
- In **2011**, the medical bonus was increased to Rs 3500.
- In **2017**, several major changes were brought into place in accordance with the International Labour Organization's (ILO) Maternity Protection Recommendation, 2000.

➤ **Other Maternity Schemes**

1. The Indira Gandhi Matritva Sahyog Yojna (IGMSY)

The aim of this scheme is to uplift the health and nutrition status of infants, pregnant and lactating women. It aims at improving the overall health so that the infant mortality rate in India gets reduced by implementing safe methods. It supports breast feeding and encourages to adopt safe and careful delivery practices.

2. Rajiv Gandhi National creche Scheme for the Children of Working Mothers

It provides for setting up of creche for working mothers so that they are able to continue their work post-delivery. The creche takes care of the child till the mother works. It is implemented by Indian Council for Child Welfare, Central social Welfare board and Bhartiya Adim Jati Sevak Sangh.

Amendment Of 2017

- 1- It increased the maternity leave from 12 weeks to 26 weeks.
- 2- Commissioning mother and a woman who becomes mother by adopting a child below the age of three years would be provided a leave of twelve weeks from the date the child is handed to the adopting or commissioning mother.
- 3- In accordance to the Section-11 of the Maternity Benefit Act, it is mandatory to establish a 'creche' where there are fifty or more than fifty employees.
- 4- There is a provision to allow for an interval for rest and allow atleast four visits to the creche.

- 5- The employer is liable to inform the female employees regarding the benefits under Maternity Benefit Act and also provide medical assistance at the time of pregnancy in case they do not cover health facilities.

Analysis

The motherhood is one of the most crucial phases of a woman's life. It comes with a lot of changes in her own body and then even post the birth of the baby there comes an issue of taking proper care of the baby and the mother, especially when there was a drastic change in the number of women who started working. This act was introduced for the working mothers to uphold the dignity of motherhood as there were incidents being reported where they were not able to get sufficient leave during pregnancy, or even if they got leave, they used to become financially unstable due to unpaid leave or else they were terminated from the job. The problem related to it was first solved through the '*Bombay Maternity Benefit Bill, 1929*' which was introduced in the textile hub of India (Bombay) where the female working population was more, this legislation was introduced after various studies by the Britishers where they found lack of proper care, nursing, poor sanitation, unhygienic environment and a huge number of women leaving the jobs post maternity. This legislation played a key role in the formulation of other legislations related to women and even helped to draft the Maternity Benefit Act, 1961.

BENEFITS-

- a) Leave with average pay for six weeks before or after the delivery.
- b) Medical bonus incase, free medical care is not provided by the employer.
- c) Pregnant Women who are terminated or dismissed can still claim maternity benefits.
- d) In case the woman wants, she is entitled to light work for 10 weeks before the date of expected delivery.
- e) The woman is entitled to two nursing breaks until the child turns 15 months old.

In case of medical termination of the pregnancy, there is a provision of six weeks leave with average pay from the date of miscarriage.

Judicial Response-

- **Municipal Corporation of Delhi v. Female Workers²**

In this case the court held on the basis of Article 39 and Article 42 of the Indian Constitution that at the time of pregnancy in an advanced stage cannot be forced to take up extreme labour and she would be granted leave during delivery.

- **Air India v. Nergesh Meerza³**

In this case the court held that if a woman is compelled to terminate from her job then it would be amounting to forbid her from getting pregnant which is 'grossly unethical' and 'unreasonable' for a natural outcome like pregnancy.

- **Shah v. Presiding Officer and ors⁴**

The court in this case the court held that the maternity act aimed to provide for the energy lost and to help the woman and child to be in good health and in a better condition.

- **Chandrika v. Red Cross Society⁵**

The pregnant woman was terminated wrongfully and the maternity benefits were also not given to her. The court held that the job and the maternity benefits should be reinstated as the employer had no valid grounds to do the same.

Point Of Contentions

- The amendments which have been brought earlier (except the amendment of 2017) did not clearly mention whether they will be applied to the women who were under maternity leave at that time.
- It also did not provide provisions regarding 'work from home' for pregnant women who would wish to continue from the ease of their homes and left it to the discretion of the employer and the employee.
- It also did not specify the work through statutes, which are prohibited for pregnant women, and left the decision on the woman to undertake a particular task in the workplace or not. The problem is that the woman would be deciding under influence of the employer.
- The government is not providing assistance for the creche and other facilities and so the burden falls entirely on the employers who would try to employ less women so that their expenditure cost does not increase due to paid leave, creche facilities etc. It would lead to be detrimental for the employment opportunities of women.

² Municipal Corporation of Delhi v. Female Workers, AIR 2000 SCC 224.

³ Air India v. Nergesh Meerza, (1981) 4 SCC 335.

⁴ Shah v. Presiding Officer, Labour Court, Coimbatore and ors, (1977) 4 SCC 384.

⁵ Chandika v. Red Cross Society, 131 (2006) DLT 585.

Conclusion

Hence, the Maternity Benefit Act, 1961 was a key legislation that helped to increase the number of working mothers in the workplace by protecting their employment at the time of maternity. It not only protects their health interest but also made provisions for paid leave and medical assistance so that they do not suffer from financial stress and are able to take proper care of themselves and their child. The amendments which have been brought over time are praiseworthy as they have enhanced the effectiveness of the act over time. The amendment of 2017 was really crucial as it added various important aspects related to the International Labour Organization's (ILO) Maternity Protection Recommendation, 2000. It also introduced provisions like creche facilities and an increase in maternity leave. There are few improvements needed in regards to the 'work from home' and specification of the prohibited activities which cannot be undertaken by the pregnant woman in the workplace.

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