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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

MATERNITY LAWS- A COMPARATIVE ANALYSIS **BETWEEN INDIA AND THE U.S.**

AUTHORED BY - BHAVINI KODAVANTI

ABSTRACT

This paper talks about the Maternity Benefits provided to the female employees working in an organization. It talks about the main act passed in 1961, the Maternity Benefits Act and its amendment in 2017. The differences between India and the U.S while providing maternity benefits has also been discussed. The various steps taken by the government to ensure the protection of women during pregnancy and after pregnancy, what provisions are available in the Maternity Benefits Act, what the employer's role is in safeguarding the rights etc. have been illustrated.

The various cases that have been given judgements to and have led to change in the Act have also been discussed. Lastly, suggestions to improve the implementation of the Maternity Benefits Act have been mentioned.

INTRODUCTION

Maternity benefits are provided to women all over the world. There have been many acts regarding maternity laws and there have been a lot of amendments to the law as well. For e.g., to protect the rights of female employees during pregnancy and after childbirth, the law makes it compulsory for almost all offices and establishments to provide maternity benefits to the female employees. In the Constitution of India, Article 42 provides just and humane conditions of work and maternity relief to affect the employment of women in many sectors of employment in periods before and after childbirth, the Parliament passed the Maternity Benefit Act in 1961

Maternity benefits are mainly derived from the Maternity Benefits Act in 1961. This applies to all shops and establishments with 10 or more employees. The women working in factories with 10 or more workers are given maternity benefits as under the Employee's State Insurance Act, 1948.

The employers have to inform the female employees in writing and also electronically about the maternity benefits they can avail under the Maternity Benefit Act when they join the workforce.

The law allows the female employees to work from home with added maternity benefit period if the nature of the work allows it. In the U.S, maternity leave is governed by the US Labor law. There are many differences between both the countries when maternity benefits are concerned.

ACTS PASSED FOR PROVIDING MATERNITY BENEFITS

The first Maternity Benefit Act was passed in the year 1961. It protects the female employees during the time of her maternity and provides her with maternity benefits. Some of the benefits include paid absence from work, payment of medical bonus of twenty-five rupees, in case of miscarriage, provision of wages at the rate of the maternity benefit and will be entitled to leave for a period of six weeks, nursing breaks, leave for illness arising out of pregnancy etc.

The Act was amended in 2017. The Maternity Amendment Bill was passed in the Rajya Sabha in 2016, in Lok Sabha in 2017 and received the assent of the President on 27th of March in 2017. The amendments were as follows:

1. The Maternity Bill has led to an increase in the paid maternity leave for the female employees from 12 weeks to 26 weeks for the first two children. This benefit could be availed by women up to the maximum of 8 weeks before the due delivery date and the remaining after the birth.
2. Maternity leave for mothers who adopted a child below three months was also introduced. The mothers would be provided with a maternity leave of 12 weeks from the date of adoption.
3. The amendment also introduced the provision of working from home that can be availed after the 26 weeks of the leave period.
4. The amendment made the facility and availability of creche in every establishment with 50 or more workers. The female employees should be allowed to visit the creche 4 times in a day.

One benefit provided to the employers was that the government started working on a scheme where the employers would be reimbursed with seven weeks of wages when they employ women workers and provide maternity benefit.

The amendment in 2017 was a result of the revolutionary steps taken by the women's rights groups and labor justice unions to provide women laborers justice and a pleasant environment when working during pregnancy and when the child is present in the workplace.

- **Criticism of the Maternity Amendment Bill, 2017**

This amendment received a lot of criticism as well. Some said that the employers would stop employing females that belonged to the child bearing age to reduce their expenses on providing creche and child care facilities. Some said that this would increase the burden of cost on the employer as they have to bear the entire cost of providing leave to the female employees.

“While the act is intended to improve female workforce participation certain deep-rooted societal realities inhibit women from joining the workforce. Patriarchal attitudes and gender-role stereotypes continue to play a key role in suppressing LFPR rates, while also rendering the act ineffective.”¹ The amendment was criticized after 3 years of implementation by Rituparna Chakraborty who is an Executive Vice President and Co-Founder of Team Lease Services.

The added provisions like creches come with certain pre-requisites like caretakers, visits by mothers etc. that are mandatory lack clarity.

According to some researchers, certain changes in the Amendment bill are likely to improve the condition of working women even more. For e.g., the government should set up creches and caretakers for the ease of the mothers as well as the employers. These changes could help the working mothers more, according to researchers.

- **ANALYSIS:**

Based on my understanding of the Act and the amendment that followed, I have the following points to make,

1. The Act passed in 1961 and the amendment that followed was a great step towards the protection of working mothers, however, I would like to suggest some changes like provision

¹ Sonal Khetarpal, “Maternity Benefits (Amendment) Act 2017: 3 years later, result far from satisfactory”, Business today, Nov 3, 2020, <https://www.businesstoday.in/current/economy-politics/maternity-benefits-amendment-act-2017-3-years-later-result-far-from-satisfactory/story/420856.html>

of breastfeeding rooms in the office for the comfort of the mothers.

2. Also, the employers should be given more benefits so that they do not hesitate from employing women belonging to the child-bearing age and also to reduce the burden over the employers. The government should take in charge of providing maternity benefits to the working mothers rather than the employer.

MATERNITY LAWS AND BENEFITS IN THE U.S

Maternity leave in the U.S is regulated by the U.S Labor Law. The Family and Medical Leave Act (FMLA) of 1993 guarantees 12 weeks of unpaid leave annually for mothers of newborn or newly adopted children, if they work in a company with 50 or more employees. But for the majority of U.S workers who work in small companies with less than 50 employees, have no legal right to paid or unpaid leave to take care of the new child.

The leave given to female workers in the U.S is less than the recommended 16-week minimum leave by the World Health Organization.

The U.S is also one of the only countries in the world who is an Organization for Economic Cooperation and Development (OECD) member to not have passed laws requiring organizations to provide paid maternity leave to their female employees.

The FMLA guarantees the security of the job of the employees who became parents, but does not protect employees who go on a paid leave. But there are some states in the U.S that do protect the jobs of the paid workers as well.

To receive maternity leave protections, the following conditions must be fulfilled:

1. The employee should work for a covered employer.
2. The employee should have worked for 1250 hours during the 12 months prior to the start of the leave.
3. The employee should work in an organization with 50 or more employees.
4. The employee should have worked for the employer for at least 12 months.

- **Comparison of the Maternity benefits in India and the U.S**

It can be seen that the benefits provided in both the countries are quite different from each other. In India, a paid leave of 26 weeks is provided to the new mothers whereas in the U.S 12 weeks of 'unpaid' maternity leave is provided. Some conditions are the same like the employee should work in an organization with more than 50 employees. In the U.S, only the employers covered by the FMLA Act can provide the unpaid leave to the new mothers.

In India, if the employers do not provide pre-natal and post-natal care to the new mothers, then the employer is eligible for the monetary payment.

CASE LAWS ON MATERNITY BENEFITS

1. Anshu Rani vs State of U.P, 2019

- The petitioner, Anshu Rani had filed a suit against the respondent, District Basic Education Officer to grant her maternity leave. The respondent in this case had granted her with a maternity leave of 90 days instead of 180 days.
- The respondent claimed that maternity leave was rightly granted to her taking into account the government orders dated 20.11.2017 and 3.1.2018.
- The petitioner said that she is entitled for the maternity benefits mentioned in the Maternity Benefits Act, 1961 and the Maternity amendment act as well and should be granted a leave for 180 days.
- The Court gave its judgement saying that the respondent should provide the petitioner with a leave of 180 days. Referring to the amendment to the Act in 1961, the court said that the decision of the Central Government had been adopted by U.P. The court said that maternity leave is an insurance given to the mother and the child and cannot be denied. The court further said that all female workers should be granted a leave of 180 days, irrespective of the nature of employment.

- **ANALYSIS OF THE CASE-**

This judgement guaranteed that all female employees irrespective of their nature of employment should be granted with 180 days of Maternity leave. It stated that Maternity leave is an insurance given to the mother and the child and hence cannot be denied.

2. **Mandeep Kaur vs Union of India, 2020**

- The petitioner, Dr. Mandeep Kaur, a medical officer who is a contractual employee at the ECHS Clinic in Shimla had claimed for maternity leave along with benefits, including continuity of her service.
- The respondent, saying that the petitioner is a contractual employee, denied granting her leave as she was not entitled to get maternity benefits.
- Justice Sureshwar Thakur, referring to the Section 2 of the Maternity Benefit Act held that the clinic was within the bound of the Act and referring to the judgement in the case of Municipal Corporation of Delhi vs Female Workers and Ors. stated that female employees who were employed on daily wages or casual basis are still entitled to get maternity leave benefits.
- Referring to Article 21, the High court said that not providing a female employee with maternity benefits is exploitation of the woman.
- The judgment passed was that the petitioner was entitled to 26 weeks of paid maternity leave. The respondent was told to abide by the Section 5 of the Maternity Benefit Act wherein every woman is entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, for which the employer is liable.
- ANALYSIS OF THE CASE-

The case introduced the fact that employees, even when employed on a contractual basis, should be provided with Maternity benefits. Every female employee, irrespective of the basis of her employment should be provided with maternity benefits and if the employer fails to do so, it leads to the exploitation of the woman.

3. **Tanuja Tolia vs State of Uttarakhand, 2020**

- The petitioner, Tanuja Tolia after completing her maternity leave had applied for the Child Care Leave (CCL), which was rejected by the director of the Ayurveda and Unani Services.
- The respondent stated that the petitioner was not eligible for the CCL as she was a contractual employee. The respondent also stated that the employee had been employed for a period of 12 months and it would be impossible to give her a leave of 730 days,
- The High Court declared that the provisions of the CCL are created for the benefit of the female employees and should be provided to every female employee irrespective of the nature

of her job. The court said that as per the judgement in the case of Municipal Corporation of Delhi vs. Female Worker, the right to get maternity leave was same for all kinds of jobs. The court said that as no difference had been showed in providing maternity benefits, the same should be applied in the case of CCL. The court gave its judgement that the respondent should provide the petitioner with the CCL.

- **ANALYSIS OF THE CASE-**

Child care is a kind of insurance to the child as well as the mother. The court's judgement that no discrepancy should be shown while providing CCL is considered to be one step towards justice. But according to me, the petitioner in this case was employed for 12 months and granted a leave for 730 days in total. The judgement even though is providing justice to the employee, seems a little biased when the employer is taken into account. But child care is extremely important for new mothers, hence it cannot be denied as well.

SUGGESTIONS TO IMPROVE THE CONDITION OF FEMALE EMPLOYEES DURING AND AFTER PREGNANCY

Even though a lot of acts have been passed in India regarding the provision of maternity benefits, I would like to make some suggestions which might help to provide the female employees more confidence to work as well as the employer to not hesitate when employing a woman belonging to the child-bearing age.

- Employing a gynecologist for female employees during pregnancy so that they can visit them in case of any sudden emergency while working.
- Improvement of the conditions of the workplace, especially women working in factories.
- Clean sanitation facilities which is a pre-requisite for any organization.
- Provision of breastfeeding rooms so that the mother can feel comfortable. This facility has been provided in some organizations but it should be a basic necessity in offices.
- The cost of the maternity benefits should be taken up by the government so that the employer feels less burdened.
- Provision of proper child care in the offices.

These facilities can help to improve the condition of the female employees when they are working during pregnancy and helps in providing a reassurance to the employers y making them feel less burdened.

CONCLUSION

In conclusion, each country differs from one another in terms of providing maternity benefits. We can see the huge difference between India and the U.S when guaranteeing maternity leave. Maternity benefits help women who belong to the child bearing age to come forward and look for employment or to continue working in an organization they are currently working in. It makes them feel reassured that their jobs will be protected even during and after the pregnancy. The steps and acts passed by the government have helped women to come forward and state their grievances. Although there isn't hundred percent improvement, there is a huge improvement in the conditions when compared to the time when the Maternity Benefits Act did not exist. Some improvements in the laws can help to create more difference and equality in the condition of the female employees.

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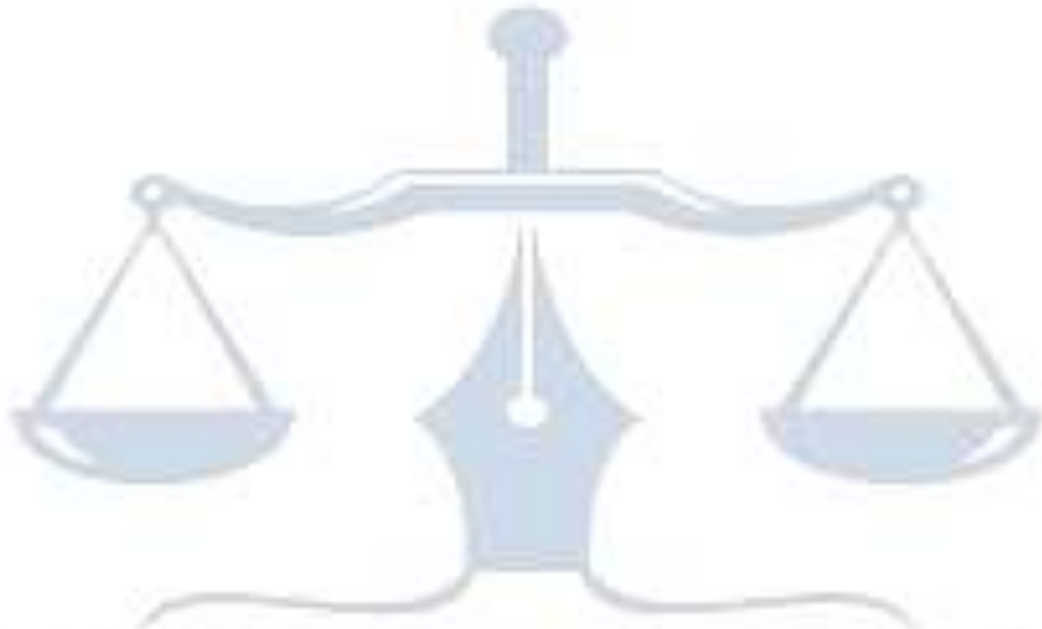
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