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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

A STUDY ON THE MATERNITY BENEFIT LAWS IN INDIA

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INTRODUCTION

Maternity benefits refer to the relief provided to a woman for embracing motherhood without losing the independence of employment irrespective of a birth parent or adoptive parent. This is a topic which is gaining popularity in the recent times as motherhood should not interrupt employment. This is not merely a moral obligation but also a legislative mandate. It is listed in Article 42 of the Indian Constitution as Directive Principles of State policy. Thus, it means that the state should take into account this mandate while framing laws in this regard.

HISTORY

The history of maternity benefits dates back to the 18th century in India i.e., from the pre-independence era:-

Between the 18th and 19th centuries, India entered the industrialization phase leading to a boom in the economy of the nation. It led to the emergence of factories which acted as a catalyst for the growing demand for workers. In the first instance, the demand for workers grew at an exponential rate but gradually the demand for the same became stagnant. As the majority of the population was illiterate and there was a lack of opportunities to work in any sector thus, they were forced to choose to work as a worker in the factories. The illiteracy prevailing among the employees led to their exploitation by the employers including deduction of wages on unreasonable grounds with zero medical or social security.

Before independence, major acts were passed by the British Government which failed to improve the condition of workers for their proper governance. The British Government first passed The Employee's Compensation Act which was to secure social insurance for the timely payment of compensation by a certain class of employers to their employees for injury by accident. The second Act passed by the British Colonial Government was The Payment of Wages Act, of 1936 enacted

with the objective of regulating the payment of wages to certain classes of employed persons.

After independence due to the pathetic conditions of workers, the government tried to enact various legislations, acts which failed to improve the overall working conditions which includes bonuses, gratuities, equal remuneration for men and women, and some special provisions or acts for a woman such as Immoral Traffic (Prevention), Act of 1956, Equal Remuneration, Act of 1976, The Medical Termination, Act of 1971, The Pre-Conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse), Act of 1994 and The Maternity Benefit, Act of 1961¹.

LEGAL PROVISION

The Maternity Benefit Act, of 1929 was the very first piece of Indian legislation enacted in the pre-independence era to expressly tackle the need for protections relating to childbirth at the workplace. The law was written by Dr. Babasaheb Ambedkar, N.M. Joshi, and M.K. Dixit. The majority of the pressure for the enactment of the legislature came from Bombay's cotton factories, which had a number of women employees but failed to respect the right to reproductive freedom of women. The updated International Labour Organization Maternity Protection Convention, 1952, gave independent India acted as a catalyst which led to the adoption of "humane" working standards for women. In independent India, the Maternity Benefit Act of 1961 was enacted, following the judicial decisions on the pre-constitutional laws.² The Act included government agencies and factories, but failed to offer any assistance to small-scale industries or agriculture. Eventually, it covered the private sectors also under the ambit of this act.

The Maternity Benefit Act,1961

In India, the maternity benefits are guaranteed under the provisions of the Maternity Benefit Act, 1961. The Act aims to provide maternity benefits to women employed in certain establishments before and after childbirth. Here are key points regarding maternity benefits in India:

1. Eligibility:

- The Maternity Benefit Act applies to every establishment employing ten or more persons.

¹ https://labour.gov.in/sites/default/files/the_maternity_benefit_act_1961_0.pdf

² <https://www.vvgnli.gov.in/sites/default/files/2012-099.pdf>

- Every woman who has worked for the employer for at least 80 days in the 12 months immediately preceding the date of her expected delivery is eligible for maternity benefits.

2. Duration of Maternity Leave:

- A woman is entitled to a maximum of 26 weeks of maternity leave. This includes eight weeks of leave before the expected delivery date and 18 weeks of leave after the delivery.
- In case of a woman who has two or more surviving children, the maximum duration of maternity leave is 12 weeks, with six weeks before the expected delivery date.

3. Maternity Leave Pay:

- During the period of maternity leave, the woman is entitled to receive maternity benefit, which is calculated at the average daily wage for the period of her actual absence.
- The employer may pay this amount in advance at least six weeks before the expected date of delivery.

4. Work from Home Option:

- In certain circumstances, an employer may allow a woman to work from home if the nature of work permits it. This is subject to mutual agreement between the employer and the woman.

5. Nursing Breaks:

- Every woman is also entitled to two breaks of the prescribed duration for nursing the child until the child attains the age of 15 months.

6. Prohibition of Dismissal or Discrimination:

- It is unlawful for an employer to discharge or dismiss a woman during or on account of her absence from work due to maternity leave.
- Discrimination on grounds of pregnancy or maternity is prohibited.

7. Medical Bonus:

- Some women may also be eligible for a medical bonus if no prenatal confinement and postnatal care are provided by the employer.

Applicability of The Maternity Benefit Act,1961

- A private or government establishment which includes a factory, mine or plantation.³
- Shop or establishments (as per the Shops and Establishments Act within that State) that has employed 10 or more people in the past 12 months.
- Any other establishments that the State government may notify.

Other alternative similar laws that provide Maternity Benefits to the workers include the:

The Employer State Insurance Act, 1948

This act is also known as correspondence to the Maternity Benefit Act because it contains certain provisions with safeguard the health of the female worker by the employee under this act section 46 (1)(B) provides for periodical payments given to a woman employee that is assured and others in the event of miscarriage sickness operations. Etc, arising out of pregnancy of birth or miscarriage.

Section 56 (3) of this act provides for medical benefits for women who is qualified to claim maternity benefits from her employer.

The Maternity Benefit (Mines and Circus) Rules, 1963

This prescribes various procedures and compliances to be followed with regard to maternity health of their employees.

Central Civil Service Rules of 1972

This set of rules is applicable to government servants and which provides maternity leave of 135 days to the female government servants. During this leave she will be paid the leaves salary which should be equal to the pay of working day while she was still working in the service. It also provides for a maternity leave not exceeding for 45 days in the event of miscarriage of the foetus.

The Mines Act of 1952

Under this act it provides maternity leave for those women that take part in management control supervision or direction of minor any part of the mine. Under this act the women concerned can take 12 weeks of maternity leave.

³ https://labour.gov.in/sites/default/files/the_maternity_benefit_act_1961_0.pdf

The Factories Act, 1948

Under this act it provides maternity leave for 12 weeks of maternity leave for women who work in a factory or any part of the factory. Furthermore, it allows the employers to employ more than 30 women workers to create a familiar environment for the women workers.

The Maternity Leave Incentive Scheme, 2018

It provides reimbursement of 7 weeks wages to the employers to employ women workers and provide Maternity benefits to them for 26 weeks of paid leave.

The Maternity Benefit Bill,2017

There has been a recent amendment to the maternity bill of 1961, where the government of India has proposed several changes, i.e., increasing the maternity leave period from three months to six months (i.e., from 12 weeks to 26 weeks).⁴ However, if a woman has more than two children, the woman employee would be subjected to only 12 weeks of maternity leave and additionally six weeks of paternity leave, i.e., 18 weeks total.

Important Feature Of The Bill:

- As per the new amendment, it provides an adoption leave which can be sanctioned up to 12 weeks from the taking of the child's custody.
- The act also allows 12 weeks for commissioning mothers. Commissioning mothers are those who opt for assisted reproductive technology. They conceive through a surrogate.
- The working woman who had taken maternity leave shall be given at least 80 days' payment in the 12 months prior to her expected date.
- The average daily wage of the workers is the basis for calculation of the amount payable.
- Apart from this 12-week salary, she is also entitled to a bonus of ₹3,500. If no medical care has been assigned by the employer, then she is entitled to get a ₹1000 bonus.
- The female civil servants are allowed 180 days of maternity leave for their first two living children under this Act.
- In the case of a miscarriage, leave with wages for a period of six weeks immediately following the day of her miscarriage.

⁴<https://pib.gov.in/PressRelease>

JUDICIAL PERSPECTIVE ON MATERNITY BENEFITS

1. AIR INDIA V. NERGESH MEERZA⁵

Facts: As per the regulations of the Air India Corporation (AIC) Act and the Indian Airlines Corporation (IAC) Act, there was a discrimination made between the conditions of retirement and termination of service pertaining to air hostesses (AH) and those of male pursers (MP) forming part of the same cabin crew and performing similar duties. These conditions were that an AH under AIC retired from service:

- (1) On attaining the age of 35 years, or
- (2) On marriage, if it took place within four years of service, or
- (3) On first pregnancy.

Fact in Issue: Whether this amounts to violation of Article 14 (right to equality) and Article 15 and 16 (no discrimination on basis of gender) of the Constitution?

Relevant condition in dispute: Retirement in the case of 1st pregnancy

Court's decision: As far as this condition was concerned the court held it to be “grossly unethical” and as smacking of “deep rooted sense of utter selfishness at the cost of all human values”. The ability / capacity to continue to work after having children is an individual matter and whether she would find it difficult to look after the children or not is her personal matter which affects the Air Hostesses concerned and not the airline. Pregnancy is not a disability; it is a “natural consequence of marriage” and any distinction made on the ground of pregnancy is extremely unreasonable and manifestly arbitrary. This condition was held to be unconstitutional as violative of article 14 and was struck down.

2. CONTEMPORARY JUDICIAL PERSPECTIVE

Hamsaanandini Nanduri vs. Union Of India⁶

- The petitioner filed a Public Interest litigation challenging the constitutionality of Section 5(4) of the Maternity Benefit Act, 1961.

⁵ (1981) 4 SCC 335

⁶ Writ Petition(s)(Civil) No(s). 960/2021

- Section 5(4) of the Act states that a person who has adopted a child of below 3 months is only qualified to have the benefit of 12 weeks maternity leave.
- The petition stated that there is no such provision in the Act about the maternity leave of such mothers who had adopted an orphaned, abandoned or surrendered child above the age of 3 months thus encouraging the adoption of newborn babies vis-à-vis the older ones. The petition stated that the same section discriminates not only adopted mothers but also the adopted children.
- It further talks about the discrimination happening between the biological and adopted mothers as a biological mother gets maternity leave of 26 weeks whereas an adopted mother gets only 12 weeks as leave period.
- Further, stating the delay caused by adoption procedure, the plea emphasised on the Adoption Regulations which takes a minimum time period of 2 months to declare the child 'legally free for adoption' in the light of the Juvenile Justice Act.
- The bench comprising of Hon'ble Mr Justice Abdul Nazeer and Hon'ble Mr justice Krishna Murari on October 1st 2021 issued a notice to the Central Government and sought responses from the Ministry of Law and Justice and the Ministry of Women and Child Development on this plea. The responses are yet to be filed.

CONCLUSION

In today's world it is crucial that women receive a maternity leave in order to ensure not only their own but also their children's health. Due to the inherent nature of maternity leave, it has become a critical issue the government is taken very seriously. In a very progressive move, to increase the length of the maternity leave from 12 weeks to 36 weeks. While this is a welcome change, there is still a criticism of the amendment, and it appears that India still has many other issues to address in the maternity leave debate.