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Maternity Benefit (Amendment) Act, 2017: Its Advantages and Disadvantages

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ABSTRACT

“Beginning in the 1800s with the Industrial Revolution, when women started to go into the formal workforce, leaving working at home to working in factories, countries realized they needed to do something. And they started to pass paid maternity leave” - Jody Heymann.

Maternity Benefit is one of the essential concepts in case of a working woman. Motherhood is an important and a challenging job which could be done only by women. In the modern world many women have started to go for work and it is essential to provide them with maternity leave so that they could take care of their children and also their health. The Maternity Benefit Act was passed in 1961 to provide various benefits to women that includes paid maternity leave and maternity leave up to 12 weeks. In March 2017 Central Government had amended the Maternity Benefit Act thereby making some changes to the original Maternity Benefit Act, 1961. In this Article the author would like to state the object behind providing maternity benefit and then going through The Maternity Benefit Act, 1961 and then describing about the Maternity Benefit (Amendment) Act, 2017 with its advantages and disadvantages.

I. INTRODUCTION

In this modern world many families are not able to survive only on one person i.e. the men. So, the women also started going to jobs and they are also earning very well and able to help her male counterpart to run the family and sharing the burden with him. Every women’s biggest happiness in the world is none other than being a mother. In order to provide medical and monetary support to woman during the time of maternity, the concepts like paid leave during maternity and other allowances are provided. The Maternity Benefit Act was passed in 1961 to provide various benefits to women that includes paid maternity leave and maternity leave up to 12 weeks². Maternity Benefit means any payment or allowance made by the state or employer for the women employee during when she is pregnant or going to give birth to a child³. In March 2017 Central Government had amended the original Maternity Benefit Act,

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²Maternity Benefit Act, 1961

³https://www.lexico.com/definition/maternity_benefit

thereby making some changes to the act which was passed in 1961⁴.

II. OBJECT BEHIND THE MATERNITY BENEFIT ACT:

Maternity leave is provided to protect dignity of motherhood and providing medical support to both mother and child when the mother can't attend her duties because of her health. Also, maternity benefit is given to woman to ensure that she is not deprived of her work and she won't suffer from loss of pay. In 1961, the Maternity Benefit Act was passed by Indian government aiming at a consistent maternity benefit everywhere in the country with an aim to manage the women employed in factories, shops or commercial establishments where 10 or more employees engaged⁵.

III. MATERNITY BENEFIT ACT 1961 - HISTORY

The concept of Maternity Benefit was introduced in the Bombay Legislative Council on 28th July 1928. *Dr. B.R. Ambedkar* said that *"It is in the interests of the nation that the mother ought to get a certain amount of rest during the pre-natal period and also subsequently"*⁶ The Maternity Benefit Act was passed in the year 1961 with an object of regulating the working of women employees in the establishments specified therein for some time that is to be taken before and after child birth and also it seeks to provide maternity and some other benefits. This said act consists of 30 sections. Maternity benefit means the payment mentioned in sub-section (1) of section 5⁷. Section 5 of the Maternity Benefit Act, 1961 says that every woman is entitled for payment of maternity benefit at a rate of average payment she used to receive during her absence i.e. (six weeks before and includes the date of delivery and six weeks which immediately follows after the birth of child)⁸. The employer of that organisation or factory or the place where she is working is liable to pay maternity benefit payment to that woman. A woman shall have right to receive the maternity benefit only when she has worked for a period of 160 days in the establishment of employer in a period of 12 months preceding the expected date of her child's birth and she will be entitled to receive the maternity payment only for a period of twelve weeks⁹. This act also says that when a woman dies during this period, she will be entitled to receive maternity payment only for the days till her death and in an circumstance where she dies and her child is alive then, employer is having the responsibility to pay maternity payment for the entire period of six weeks after the date of birth of her child and in case where

⁴The Maternity Benefit (Amendment) Act, 2017

⁵Section 2(1)(a) of Maternity Benefit Act, 1961.

⁶"Babasaheb on Maternity Benefit Bill in 1928." www.dalitweb.org/?p=3430

⁷Section 3 (h) of Maternity Benefit Act, 1961.

⁸Section 5 of Maternity Benefit Act, 1961

⁹Section 5(2) of Maternity Benefit Act, 1961

the child is dead during the said time, the employer is having the duty to pay maternity payment till the date of death of child¹⁰. This act also laid down that it is the responsibility of the employers to provide the woman with maternity leave with wages and no employer can dismiss or terminate any woman during the said maternity leave and he cannot deduct any daily wages of a woman who is entitled to maternity leave. Section 21 of the said Maternity benefit Act provides for penalty if there is contravention of any section made by employers. Any employer who contravenes any provisions or rules made under this act shall be punished with jail term for a period of 3 months or with fine which may extend up to five hundred rupees or both¹¹.

IV. CHANGES AND ADVANTAGES OF MATERNITY BENEFIT (AMENDMENT) ACT, 2017:

i) Increased Maternity Leave: The latest amendment has increased the maternity leave from 12 weeks to 26 weeks¹². For woman who is going to give birth to a third child after having two children the maternity leave will be 12 weeks only. The reason for increasing the maternity leave is based on the recommendations made by expert bodies like World Health Organisation (WHO) and also from various conventions which states that minimum of 24 weeks maternity leave is needed to protect maternal and child health¹³.

ii) Maternity leave to adopting mothers: The amendment act 2017 has provided a maternity leave of 12 weeks from the date on which the child is adopted¹⁴.

iii) Increase in maternity leave with pay: The Maternity Benefit (Amendment) Act 2017, has increased the time period for paid maternity leave to 8 weeks for woman before the date of delivery and 18 weeks after the date of delivery¹⁵. Before the amendment only a time period of 6 weeks was given before the date of delivery¹⁶.

iv) Enabling work from home facility: The latest amendment act has given an option for mothers to work from home after the expiration of time period of 26 weeks depending on the work that is assigned and woman can avail this provision in mutual agreement with the employer¹⁷.

v) Creche facility: The Latest Amendment Act provides that any establishments where 50 or

¹⁰Section 5 (3) of Maternity Benefit Act, 1961.

¹¹Section 21 of Maternity Benefit Act, 1961

¹²Section 3(A)(i) of The Maternity Benefit (Amendment) Act, 2017

¹³<https://www.prsindia.org/billtrack/the-maternity-benefit-amendment-bill-2016-4370/> last visited on 07.10.2020

¹⁴Section 5 (4) of Maternity Benefit Act, 1961.

¹⁵Section 5(3) of The Maternity Benefit Amendment Act, 2017

¹⁶Section 5 (3) of Maternity Benefit Act, 1961.

¹⁷Section 5 (5) of The Maternity Benefit Act, 1961.

more woman is employed it is compulsory to have in-house creche facilities. The employers are also required to allow women to use this facility 4 times a day¹⁸.

vi) Awareness: The Act made it mandatory for employers to inform about maternity leave and its benefits to the women who are working there. Such, information must be given in writing and electronically¹⁹.

V. DISADVANTAGES AND RECOMMENDATIONS:

i) No Paternity leave to fathers: The amendment act has not announced any paternity leave to fathers. Therefore, the whole responsibility for taking care of children lies only on mother. Fathers must also be given paternity leave to take care of both mother and child. Father as a Co-Parent has a duty to give due care to mother and child.

ii) Lack of clarity in specifying time: The latest amendment act has enabled creche facility for women to nurse their children at the working hours which is very important but at the same time there is no time limit mentioned as to the duration of creche facility available to the working women.

iii) Impact on job opportunities for women: Providing of wages with maternity leave will increase burden on the employer. So, the employer will not prefer hiring women in order to reduce their burden of cost which will affect job opportunities for women. Instead of keeping burden on the employer it will be better if a social insurance scheme can be started to reduce the burden.

iv) Application of Act to the Unorganised Sector: Provisions regarding the application of this act to unorganised sector workers is not clear. On one hand this act states that this act covers all men who are all working in mines, plantations, shops and factories in both organised and unorganised sector employing 10 or more employees, The Unorganised Workers Social Security Act, 2008 defines unorganised workers as an home based workers or those who have employed themselves by earning wages and they will be having less than 10 employees²⁰. It is not clear whether this said act will apply to those women who are working in unorganised sector.

V) Need for Uniformity in laws: The acts like Employees State Insurance Act, 1948, All India Services (Leave) Rules, 1955, Central Civil Services (Leave) Rules, 1972, Factories Act, 1948, and the Unorganized Workers Social Security Act, 2008 have differences in coverage, benefits

¹⁸Section 11A (1) of The Maternity Benefit Act, 1961

¹⁹Section 11A (2) of Maternity Benefit Act, 1961.

²⁰Section 2(m) of Unorganised Workers Social Security Act, 2008

and financing²¹. The Government must bring uniformity in providing Maternity Leave benefits to all the women irrespective of where they are working.

VI. CONCLUSION:

Any law must be amended from time to time based on the current situation and the amendments are a very good initiative by the Government. While making amendments the Law makers should also work towards the short comings and address those issues to make the law benefit to all the people. It is important to note the case of *Mini.K.T vs Senior Divisional Manager W.P (C)No. 22007 of 2012 (A)* wherein *Justice A. Muhamed Mustaque* said that *“Motherhood is an integral part of dignity of a woman. Motherhood encompass status, dignity and self-respect as elements and further he says that A woman employee is not expected to surrender her self- respect fearing action against her for not being able to attend duty for compelling family responsibility and he added that a woman employee cannot be thrown out of from service for remaining absent on account of taking care of her child, if such taking care is indispensable for her”*²². In the said Maternity Benefit (Amendment)Act 2017, the disadvantages can be taken as recommendations and must be addressed to make this act more opportunities and advantages to women working in a workplace and ensure all the women get equal opportunities in workplace. *“A deal that goes against the rights of women is unacceptable - Malala Yousafzai”*²³.

²¹<http://www.legalserviceindia.com/legal/article-176-the-maternity-benefit-amendment-act-2017-a-big-and-positive-step-towards-improvement-in-securing-the-employment-rights-of-women.html>, 07.10.2020

²²Mini.K.T vs Senior Divisional Manager W.P (C)No. 22007 of 2012 (A)

²³https://www.nbcnews.com/news/world/malala-yousafzai-being-shot-taliban-made-me-stronger-flna6C10612024_last visited on 07.10.2020