
LEGISLATIVE COMMENTARY: THE MATERNITY BENEFIT ACT, 1961

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ABSTRACT

The Maternity Benefit Act, 1961 is the foremost legislation in our legal system which provides for the safeguards and aids duly required by women at, and around the time of their pregnancy. The Code on Social Security 2020, when it will be enacted, will subsume the Maternity Benefit Act and modify its features. However, it is important to assess the drawbacks and the problems faced by the original Act, to analyse them and implement some changes in the fresh legislation to ensure that the benefits provided for the betterment of women themselves, do not result in them being at a disadvantage.

The legislative comment includes analysis of the Act from the time of its early inception and how the Act has been time and again amended and upgraded for the advancement of women. It also includes the opinion of the Judiciary in the matter, and how their pronouncements have shaped the interpretation of the Act. Finally, it provides for several suggestions and recommendations for the improvement of the Act which must be incorporated and implemented into the upcoming Code. Additionally, the paper also sheds some importance of the need of presence of paternity benefits in our country. It is found that many small to medium corporations, which are not able to keep up with the requirements of the Act, stick to not employing women, which is contrary to the aim of the Act. Therefore, steps need to be taken to alleviate such defects so that the condition of our country in this aspect is not only good on paper, but in practical reality.

I. INTRODUCTION, SCOPE, AND IMPORTANCE OF THE ACT

Women were endowed with a Central legislation pertaining to maternity benefits, namely, the Maternity Benefit Act for the first time in 1961. It was a saving grace for women who were forced to choose between having a profession or motherhood. The primary purpose is to provide a just and fair law to safeguard women's employment for a fixed period immediately preceding and proceeding childbirth, from wrongful termination, as well as, ensuring that they receive the crucial monetary benefits, in the form of a paid leave for the aforementioned period as a part and parcel of their employment. The ideology is that these benefits, are not a bonus, but a prerequisite that all women are rightfully entitled to, to give them equal opportunities as men with the same level of qualifications.

Originally the Act had numerous shortcomings which, over time, employers had taken advantage of, disregarding the social-welfare aspect of the legislation. As an endeavor to overcome the same, the Act was amended in 2017¹ to increase its scope, giving it an all-pervasive application, including all sectors of employment, and all kinds of employment, even casual and contractual within its purview². Another significant change was the increase of the period of paid leave, which drastically changed the global status of our country as to compulsory maternity leave³. This legislative commentary seeks to analyze these changes.

As of 2019, 23.7% of the workforce of India constitutes women⁴. Correspondingly, the importance of this legislation need not be stressed enough, as these provisions are undoubtedly indispensable in today's society, to ensure that women are not suppressed in the professional world for wanting to have a family, especially when men are as much as a part of a family as women.

II. ANALYSIS

¹ The Maternity Benefit (Amendment) Act, 2017

² Sasikumar, S.K., 2017. Bold Initiative to Increase Women's Participation in India's Labour Market: New Measures in Maternity Benefit Act. Policy Perspectives.

³ Laura Addati, Naomi Cassirer and Katherine Gilchrist, Maternity and paternity at work: Law and practice across the world, (Geneva: International Labour Office, 2014), accessed September 17, 2020, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf.

⁴ World Bank Group, "Labor Force Participation Rate, Female (% of Female Population Ages 15+) (Modeled ILO Estimate), India" (September 2019)

It is imperative to analyze the few key upgrades that were brought about to the Act. The major change that has been observed is in S.5, i.e., the increase in the time period of paid maternity leave from 12 weeks to 26 weeks⁵. This has been a huge sigh of relief for women as the previous stipulated time ultimately lead to them quitting their job in the interest of their child, or their own health⁶. The Amendment tripled the period of leave preceding the birth, granting women their well-deserved right to enjoy motherhood in the early stages without having to worry about losing their hard-earned job. S.5(4) was added which expands to scope of the Act to include adoptive mothers⁷ and commissioned mothers⁸, and grants them a 12-week paid leave as well. Such a progressive change looking after the well-being of women is commendable and ensures that they have by regular standards, fully recovered by the time they are supposed to join back. Furthermore, another rather new concept was introduced in this regard by way of S.5(5) to include ‘work from home’, post the period of maternity leave, if the nature of the job permits so, terms of which are to be decided by both in the parties in mutual agreement.

Amendments were made to S.11 as well. S.11A(1) mandates every organization with over fifty employees to provide their workers with a creche facility, which female employees are allowed to visit at least four times a day. Originally this section only had a provision for nursing breaks, but it seemed ambivalent. It is understandable that finding a reliable creche facility after maternity leave can be incredibly complex, and, working while constantly worrying about your infant child would inevitably lead to distractions and reduction in efficiency. By providing this provision, the legislature took a positive step towards overcoming such instances, so that a woman can work without any hesitancy and skepticisms which would increase the overall productivity of an organization⁹. Furthermore, to extend more security, S.11A(2) directs the employers to intimate the benefits available under the Act to all their women employees, to educate them about their rights, and so that no organization can take advantage of an unfortunate unfamiliarity of any women with these benefits.

⁵ Restricted to 8 weeks immediately preceding the expected date of delivery and the remaining after it, as per Section 5(3), Maternity Benefit Amendment Act, 2017

⁶ Nidhi Buch, Maternity Benefit Act, 2017 - A Game Changer for Women's Economic Empowerment, (2019) 9 GJLDP (October) 138

⁷ Maternity Benefit Amendment Act, 2017, Section 5(4), “(4) A woman who legally adopts a child below the age of three months...”

⁸ Maternity Benefit Amendment Act, 2017, Section 3(ba) “commissioning mother” means a biological mother who uses her egg to create an embryo implanted in any other woman;

⁹ Gaur Suchi, How Creches at Indian Offices Can Empower More Women to Work, available at <https://www.womensweb.in/2014/07/more-creches-at-indian-offices/> accessed September 16, 2020.

III. JUDICIAL INTERPRETATION

In a Common Law country such as India, the Judicial interpretation of legislations is prime to fully appreciate the practical application of the same on an unabridged level. Correspondingly, certain lacunae in the Act of 1961 gave impetus to various cases, outcome of which has had a radical impact on the development of Labour Jurisprudence.

The stipulation provided for the number of days of employment in S.5(2)¹⁰ of the Act, has repeatedly abetted a considerable amount of ambiguity concerning the employment of casual workers. In various instances, women employed on a contractual/daily-wage basis were denied the maternity benefits by taking advantage of the technicalities in a contract which restricted them from being employed for a continual period of 160 days. Consequently, the hon'ble Supreme Court prudently interrupted in *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*¹¹ relying on international conventions¹² and cases¹³, by holding that employees are entitled to all the benefits conceived under the Act¹⁴. Similarly, it will apply to a wage-labourer turned regular employee.¹⁵ Furthermore, such acts of denying temporary employees these benefits are discriminatory¹⁶, absolutely illegal and violative of Articles 14 and 21¹⁷.

The Courts have also been discerningly proactive in acknowledging that cases of miscarriage should be treated differently. In a landmark judgement the Court rationalized that the minimum requirement of 160 days stipulated in S.5 is independent of S.9¹⁸, and they cannot be combined¹⁹, miscarriages are an unfortunate incident and should be treated distinctly. The employer is expected to be fair and non-arbitrary in matters concerning this Act in light of the equality clauses enshrined in our Constitution.²⁰ It has also been expressed that there is no

¹⁰ employment for at least 160 days in the 12 months immediately preceding the expected date of delivery.

¹¹ *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, (2000) 3 SCC 224

¹² Universal Declaration of Human Rights, 1948; Convention on Elimination of all Forms of Discrimination Against Women, 1979

¹³ *Crown Aluminium Works v. Workmen*, AIR 1958 SC 30; *J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. Labour Appellate Tribunal of India*, AIR 1964 SC 737; *Budge Budge Municipality v. P.R. Mukherjee*, 1953 1 LLJ 195; *Baroda Borough Municipality v. Workmen*, (1957) 1 LLJ 8

¹⁴ Mohd. Wasim Ali and Saba Alam, Women Empowerment: Legislative Actions and Judicial Verdicts, 20 ALJ (2012-13) 243

¹⁵ *Anima Goel v. Haryana State Agricultural Marketing Board*, (2007) 112 FLR 1134 (P&H)

¹⁶ *Geeta Sharma v. Union of India*, 2001 SCC OnLine Raj 488

¹⁷ *L. Kannaki v. Animal Husbandry and Fisheries Deptt.*, 2011 SCC OnLine Mad 2509

¹⁸ Section 9, "Leave for Miscarriage", Maternity Benefit Act, 1961

¹⁹ *Kallayar Estate, Jay Shree Tea and Industries, v. Chief Inspector of Plantations*, 1998 SCC OnLine Mad 516

²⁰ *Punjab National Bank v. Astamija Dash*, (2008) 14 SCC 370

prohibition or ceiling on number of deliveries made by a female worker to come under the purview of this Act.²¹ The Court has also elaborated upon the definition of wages and held that it is a composite term²². Additionally, a State cannot, by operation of a State Law exempt a particular establishment vis-à-vis the application of this Act.²³ It has been reiterated time and again that the nature of this Act is that of a Social Legislation, and hence must it must be interpreted so.

IV. SUGGESTIONS AND RECOMMENDATIONS

Despite the rather reformist changes, there is always scope for improvement. Some clarification is sought as to the details of these changes, as the Act does not seem to provide any minimum standards for some provisions, such as ‘work from home’. As for the creche facility, a detailed notification has been released²⁴, however, the language of the section seems to imply that these facilities are not accessible to male employees, which may be counter-productive as it suggests towards the stereotype that it is only a woman’s job to tend to a child²⁵. To add further, it is about time that such benefits be extended to men as well, as paternity benefits, to include the cases of single adoptive fathers and maternal mortality. Additionally, since these added benefits are going to lead to incurring of heavy costs, the Government should take the initiative to make it lucrative, by providing tax benefits to the organisations incorporating them. Lastly, on a rather different, yet related note, recently, a big corporation on their own behest, subsumed a provision for ‘menstrual leave’ for women, to overcome to stigma attached to the same²⁶. This has stirred an opportune debate, and while still preliminary, can be seen as something that should be considered, in line with maternity benefits.

V. CONCLUSION

²¹ *N. Mohammed Mohideen v. Deputy Commissioner of Labour*, 2008 SCC OnLine Mad 1006

²² *B. Shah v. Presiding Officer, Labour Court* (1977) 4 SCC 384, It was held that wages include all kinds of cash allowances as well as money value of articles such as food grains.

²³ *Noorul Islam Educational Trust v. Asstt. Labour Officer*, (2008) 117 FLR 533 (Ker)

²⁴ Ministry of Labour, [Notification No. G.S.R. 483(E)], Dated May 18, 2017; Ministry of Labour, [Notification. No. G.S.R. 560(E)], Dated August 6, 2019

²⁵ Jayakumar, K., 2018. Maternity Benefit Legislation Reinforcing Patriarchy, Excluding Intersectionality. *Journal of Public Affairs and Changes*, 1(2).

²⁶ Geneva Abdul, *Zomato's paid leave for periods takes on a workplace taboo*, Economic Times, August 13, 2020, <https://tech.economictimes.indiatimes.com/news/startups/zomatos-paid-leave-for-periods-takes-on-a-workplace-taboo/77517530>

It is evident by the Amendment Act of 2017, that the Legislature paid necessary heed to the international conventions, observations of the Courts, and Law Commission Reports²⁷, which have continually suggested that the existing provisions pertaining to maternity benefits were sub-par. However, it is important to note that although the changes were made to favour women, their drastic nature seemed to have done the opposite²⁸. While it can be assumed that it would be feasible for large-scale organisations to incorporate such dire changes to their employees' pay-scale, it might not be so for medium or small organisations. Therefore, although women can be saved from wrongful termination unless a case of gross misconduct is proven²⁹, it remains out of the ambit of this Act, or for that matter, any Act, to keep a check on the internal, informal, and unwritten recruitment "policies" which would now, without having to say, prefer employing men over women to save up on such costs, thereby, having an absolute effect of reducing the employment rate of women in our country. In fine print, while it seems sterling that India has made it to the list of the top 10 countries that provide the longest period of paid maternity leave, in practice the picture is not that rosy. The numbers show a clear decline in the percentage of women in the workforce of this country³⁰, from 32.2% in 2005 to 23.7% in 2019³¹. It is utterly alarming that in this day and age women are being subjected to such arbitrary discriminations, and while the Act is fairly progressive and benevolent, until such phenomena is brought under control, no amount of fair benefit provided to women will actually serve its purpose.

²⁷ Early Childhood Development and Legal Entitlements, Law Commission of India, Report No. 259 (August, 2015)

²⁸ Krishnan, D. As India advances, women's workforce participation plummets, (2020, May 15). Retrieved September 19, 2020, from <https://www.strategy-business.com/blog/As-India-advances-womens-workforce-participation-plummets?gko=762f7>

²⁹ Section 12, "Dismissal during absence or pregnancy" and, Section 21, "Penalty for contravention of Act by employers", Maternity Benefit Act, 1961

³⁰ Sher Verick, Women's labour force participation in India: Why is it so low? ILO, (2014)

³¹ Malini Goyal, How India's workforce participation rate of women has sharply declined over the years, Economic Times, March 7, 2020, <https://economictimes.indiatimes.com/news/company/corporate-trends/how-indias-workforce-participation-rate-of-women-has-sharply-declined-over-the-years/articleshow/74531505.cms?from=mdr>