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A CRITICAL ANALYSIS OF THE MATERNITY BENEFIT ACT OF 1961

- Arzoo Singh

ABSTRACT

A maternity benefit is one that every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of the average daily wage for the period of her actual absence. It is important to recognize that women contribution in labour market has considerably enlarged in recent years, mainly in urban areas. Additionally, young women in urban areas contribute most of the increase in women participation in labour market. Since India is committed to create a gender friendly labour market environment, there is growing comprehension to provide a working environment. Looking at the large number of women employment in broad occupational categories it was but natural to protect the mother and the children. The fundamental purpose for providing maternity benefits is to protect the self-respect for motherhood protects the health of women complete safety of the child etc. Due to the growing number of women employees in the government and private sector it became necessary to grant maternity leave and other maternity allowance to working women. The purpose of maternity benefits is to protect the dignity of motherhood by providing the complete and health care to the women and her child when she is not able to perform her duty because of their health condition. There is need for maternity benefits so that a woman is to be able to give quality time to her child without having to worry about whether she will lose her job and her source of income.

INTRODUCTION

Being a mother of child is one of the special experiences in every women life. She changes her life completely for their child. That is why the concept of maternity leave and maternity benefits came in the picture. On 12th December 1961 Maternity Benefits Act, was declared by President and published in Gazette of India, the object of maternity benefits act is “to regulate the employment of women in certain establishments for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.”

Maternity benefits act is one of the remuneration that every woman is entitled for and hence every employer is liable for the payment of maternity benefits. The amount payable to the woman is at the average rate to the daily wages for the period of her actual absence. It is very essential things in woman life because by exercise the maternity benefits women can give time to their child and take a proper care of their child without worrying about to lose her job and the income. Women who lived alone after the birth of child they need the money for the medical expenses etc. so by utilizing the maternity benefit, they can ensure their productivity as well as their reproductively. The Maternity benefits is to protect the dignity of Motherhood by providing the complete & health care to the mother and child when she is not able to perform her duty due to her health condition.

Shri Narendra Modi is the head of union cabinet has given the retrospectively approval to the amendments of maternity benefit act 1961, by introducing the new bill the maternity benefit bill 2016 in the parliament. The same bill came up on 01 April 2017 as The Maternity Benefit Act 2017. In the new act, Prime Minister Modi Ji gave the option work from home to women during their maternity period. This option will helps the women to protects her employment during their pregnancy and she will be entitles her maternity benefit that she will able to get full payment and she also take care of her child as well. This is act is applicable to all the working women in any organization. In the recent report, approximately 1.8 million women get the job in the organized sector.¹

The amendment of maternity act 1961 did various changes into it according to the maternity benefit act 2017 maternity benefit leave got increased from 12 weeks to 26 weeks for the two surviving child and 12 weeks given to those who have more than two child. The maternity benefit leave of 12 weeks is given to the adopting mother or commissioning mother as well. This amendment also facilitates the women that they can work from home. In the recent amendment crèche facility established, this facility is given to 50 employees or more than that

¹http://jsa-cs.com/image/AN_ANALYSIS_ON_MATERNITY_BENEFIT_ACT.pdf last accessed on 27 Oct. 2020
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at once.

As we, all know maternal care is very necessary for the early child for the growth and development of a child. Due to the health, condition during pregnancy women cannot serve the work to their organisation so it is good step taken by the government to provide maternity leave to women so that she can take of her child and take care of her as well.

RESEARCH PROBLEM-

By reading, various article researchers came up with the problem those women workers are themselves responsible for the problems they faced in their working place because of the lack of awareness of their rights mentioned in the labour law of India this is happened due to illiteracy also. In this regard, various questions arise in the mind of researcher i.e.

RESEARCH QUESTION-

Does women employees have aware about the laws and their Rights?

HYPOTHESIS-

The hypothesis of my research is the execution of the Maternity Benefits Act is effective in India.

RESEARCH METHODOLOGY-

This research is primarily doctrinal research and secondary data, which is collected from the websites, library, international journals, and articles. The books collected and literature reviewed gives a better idea of the topic and scope of research.

SCOPE OF THE STUDY-

The scope of the study is on Maternity Benefits Act is all the scheme available to the women employees, is effective and will help them to aware about the laws provided in the labour law.

OBJECTIVE-

The Objective of my research is-

- To analyze the Maternity legislation in India
- To study about the awareness of women workers regarding their rights
- To study about the benefits of Maternity Benefits schemes or not

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Constitutional Framework of Maternity Benefit Act

The Maternity Benefit act was passed by both the houses of parliament and later got the approval of president on 12th Dec 1961. This is best step taken by the government for the women when they are experience the pregnancy. So that they can protect their child as well, their job also the aim of the maternity leave is to ensure that mother can give quality time to the child without worrying about that she will lose her job and salary. The objective of the MBA (Maternity Benefit Act) so that women can protect the dignity of motherhood by providing the complete health care to her child and women when she is not able to perform her duty because of her health condition.

The MBA is applicable to whole of India and J& K as well. This act is applicable to all the organizations, including the factories, plantations, legislative, shops or any other organization that is centred by the central government. Women must work not less than 80 days in the 12 months immediately foregoing the date of her expected delivery. According the MBA women is entitled for 26 weeks of maternity leave and in the case of miscarriage she is entitle for 6 weeks of maternity leave. She will get additional one-month leave when she is suffering from illness out of pregnancy.

According to the MBA, women will get daily average wage by her employer when she is not maternity leave and she will get her salary in the case of miscarriage, tubectomy, or illness. The MBA also provide to all the women that she is entitle to get Rs 2500 of medical bonus and two nursing breaks per working day until the child attains the age of 15 months. If the employer discharge or dismissed the employee during the maternity leave then it will be unlawful in the eyes of law². Women can appeal within the 60 days when she got dismissed, discharges or did not received the medical bonus to the inspector appointed by the act. If she is not satisfied by the order of inspector then she can approached to the court with 1 year.

The act provides that employer should not give any heavy work to any pregnant women, which requires long hour of standing. Employer should also explain or display the act in front of the employee and explain each thing very clearly to the working women employer should also maintain the attendance records and annually submit it.

2.2 Maternity Benefit Act 2017

The maternity benefit act is providing for women to maintain the dignity of motherhood by providing full payment to the women and maternal care to the child. Currently the ratio of working women in India has increasing day-by-day and based on this scenario the maternity

²http://jsa-cs.com/image/AN_ANALYSIS_ON_MATERNITY_BENEFIT_ACT.pdf last accessed on 1 Nov. 2020
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leave and maternity benefits are becoming very common. There are many international conventions like Conventions of the Elimination of All the Forms of Discrimination against Women (CEDAW), the International Convention on Economic, Social and Cultural Rights (ICESCR) and UDHR etc. International labour organization and other expert bodies put its recommendation that 24 weeks is provided to mother for the maternal care. Based on several discussions the maternity benefit act 1961 has amended in the year 2017 and various provisions related to the duration, applicability and crèche facility were amended.

According to the MBA 2017 has increased the duration of maternity leave from 12 weeks to 27 weeks those who have more than two children the maternity leave will be same for them that is 12 weeks. Before the expected date of delivery 8 weeks is provided to avail its paid maternity leave. 12 weeks is given to those women who is adopting or commissioning mother. The women will also get the option of work from home after the expiry of 26 weeks of maternity leave if the employer will get agree on that. The newly amended act also mandated the crèche facility for the 50 employees or more than that. This act also makes compulsory to the employer to educate about the maternity benefits available to them at the time of appointment.

The significance of maternity benefit act 2017 is that according to WHO children must exclusively breastfed by mother for the 24 weeks after the birth. The duration of to increase the maternity benefit leave so that improving survival rates of children and healthy development of both mother and children.³ Many women left their job after the pregnancy because they did not focus on both taking care of her child and worrying about their job. After the amendment, the working status of women has been increased. But this amendment is also silent on the paternity benefits. As per laws paternity leave is permitted in the government jobs. The government also came up with the schemes related to the paternity benefit because men is also the co parent of his child he has the full authority to take care of his child as well.

Schemes Related to Maternity Benefit Act

Becoming a mother is one of the most beautiful moments in the women's life. After delivery mother wants to spend quality time with their children to take care of her child and most importantly for the growth and development of child, breastfeeding is very important and no mother will compromise from it. No women left the job so that government made schemes⁴ to

³<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> last accessed on 02 Nov 2020

⁴<https://acadpubl.eu/hub/2018-120-5/4/363.pdf> last accessed on 02 Nov. 2020

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help women during the pregnancy period.

- **Employees State Insurance Act of 1948 –**

The Employees State Insurance act is the social security legislation provides benefits to the employees on certain grounds like sickness, maternity and injury and provides medical care to the insured persons and their families. This act is applicable to whole India to all women who is working in the organizations where 10 or more persons are employed. Women are eligible for this when she should work not less than 70 days of the preceding year before the incarceration and the income will be less than Rs. 15,000 per month. The ESI will be entitled to the insured women and she will get 12 weeks of leave when she in the confinement and 6 weeks leave during the miscarriage. She will also get one-month additional leave because of the pre mature birth, miscarriage, termination of medical in pregnancy. The ESI states that no women will be discharge, dismissed or punish the employees during the maternity leave. If the employer did so then it will be invalid in the law.

- **National Maternity Benefit Schemes (NMBS)**

The National Maternity Benefit Schemes (NMBS) provides cash benefit to the pregnant women. The cash is provide so that they can take proper diet and take care of their health during the pregnancy. This cash benefits is provided only to those pregnant women from families who live below the poverty line. There are several eligibility criteria for the women who will get this cash benefit they are women should be the permanent resident of that village, women should belong to below the poverty line, she should be pregnant 8-9 months and the last she should be pregnant for the first or second time.

- **Janani Suraksha Yojna (JSY)**

The Janani Suraksha Jojna scheme is based on the cash transfer to the pregnant women and helps them financially. The main objective of the JananiSurkshaJojna schemes to decrease the maternal and infant mortality and to increase the institutional deliveries to the families who are below the poverty line. According to this, scheme pregnant women will get Rs. 500 for home delivery and additional Rs. 200 for the institutional delivery⁵ total Rs. 700 to the rural areas women and urban area women will get additional Rs. 100 total Rs. 600 for the institutional delivery. This benefit is provided to the both government hospitals and private hospital as well. According to this scheme, women will be entitled to get Rs. 1500 when in the government

⁵ In low performing states, the total amount of benefit for institutional delivery is 1400 in rural areas and 1000 rupees in urban areas.

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hospital if they are able to handle the complications or caesarean sections and they are hiring the doctor from the private sector. The eligibility criteria of this scheme are the women should be the age of 19 or above. Secondly, the women and their families belong to the below poverty line or belongs to schedules caste or scheduled tribes. Thirdly, the women should be pregnant for the first or second time then only she will be entitled for the benefit of the JananiSurakshaJojyna scheme.

- **Indira Gandhi Matritava Sahayog Yojana (IGMSY)**

Indira Gandhi Matrivata Sahayog Yojna is a central government scheme that is applicable to 50 districts among all the sates and union territories. The objective of the scheme is to provide compensation to the pregnant women when she loses her wage so that there is not mandatory to work at the last stage of delivery to the women. The reason behind this compensation so that pregnant women rest as much she can before the delivery so that she should not give birth to low birth weight babies and the women after the delivery women can breastfeed to the child and take of herself as well. One of the basic motives of this scheme is to improve the health of the pregnant women and the lactating women and their child. This scheme helps the women by providing nutritious food and enhancing the infant nutrition by providing early 6 months of breastfeeding in the child's life. The amount of money the pregnant women is entitled for is Rs. 4000 and it will be provided in three instalments that is between the trimesters of pregnancy and till the child completes the age of 6 months. The eligibility criteria for the pregnant women under this scheme are that she should be the age of 19 or above and she should be pregnant for the first or second time.

Effects of Maternity Benefits Programmes

Many women want to work and raise children as well. Some women left their jobs for the short period of time and soon after delivery join the work. Sometimes due to health problem, they are not able to return to their workplace due to this they lose their jobs.

1- Maternal Health

It is very necessary for any women to take care of her health during the pregnancy. Any women who leave the workplace too late before the childbirth and return to the workplace too early after the childbirth that women experience the physical and mental health problem. Those women cannot take of her child in growth and development. Hence, maternity leave helps the women to take of herself and her child as well so that she should not experience any health

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problem.

2- Child Health

If we will talk about the child health due to less maternity, leave mother is not able to feed properly to his child and due to this sometimes mother lose his child because she concern about her income. For any mother child will be priority she can leave his job for them. By getting maternity leave mother will be capable of giving more quality time to their child and she should be able to feed her child and help in growth and development.

3- Economic Benefits

Government should take appropriate action so that pregnant women are not dismissed from their job during their maternity leave and a woman does not feel discrimination in re-entering in the labour market. According to the maternity programmes, it enhances the women rights and independency. It is clear that maternity programmes impact on the economic benefits by providing maternal protection and economic participation.⁶

4- Economic Participation

For the women empowerment, economic participation is mandatory. If the women are employed then she should not depend on the male or their spouse and it will help women to exit from the domestic violence from the home and during that she will be able to take of her child. Maternity leave is one of the paramount steps taken by the central government, which helps the women to make a balance between the work and the family due to the maternity leave women should not compromise between these two. If both male and female will work together and earn then it will easy for them to run their home easily without any discrimination.

5- Gender Division of Labour

After discussing all the factors of the maternity benefits it is clear that maternity leave prevent the pregnant women from quitting the job also have the option to re-enter in the labour market after maternity leave. Due to maternity leave, the ratio of working women is increased in last few years and this act helps in gender equality. This act gives equality between the men and women so that they both can take care of their families. The maternity Benefits programmes reduce the gender inequalities and income too. Inequality is one of the major problems in India that is faced by women at every place. However, due to this act it will be easy for the women to work and earn without leaving their job in the maternity period. With full dignity they can stay

⁶<https://www.who.int/topics/breastfeeding/en/e>

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at home and take care of child.

CONCLUSION

To conclude this topic, maternity advantage is that every woman might be qualified for because it is the requirement to the mothers so that she can spend more time with child. As we, all know with the fact that parenting is one of the most important and challenging jobs. In the life of working woman, it is very challenging to maintain balance between their work and family. There are many reports, which show that there are many women who left the jobs because she is not able to perform her duty and take of their family as well. Motherhood is one of the factors, which is the integral part of the woman's dignity and it should be protected. After analyzing the whole concept of maternity benefit act is a boom for the working woman because there is job security during the maternity period every woman should aware about their rights and duties. In the unorganised sector, many women are not aware about the maternity benefits because of their illiteracy because of this newly amended government mandated the employer that at the time of appointment they will explain and aware about the maternity benefits.

In India, it might help the women economic problem but still women are seen as reproductive not as the productive actors. At present woman faced so many problems at their work place like discriminatory wage, sexual harassment, exploitative working conditions and many more. This is because the lack of awareness about the law and rights is because the bias and exploitation of women at their work place. One of the major objectives of this act to provide equal opportunity to both men and women at their workplace. This is because according to Article 14 the constitution everyone is equal and gets equal protection in the eyes of laws.

Both father and mother becomes the parent but all the responsibility will put into the mothers alone. The suggestions for these issues that there should be provision for paternity leave as well. So that both parents can take care of his/her child together and distributes their duty among themselves then it will be easy for them to bringing up their child together.

Becoming a mother is one of the best moments in the life of women and every woman want to experience this and they do not want to sacrifice any moment with their child so they want to more time to spend with child. Therefore, this is good step taken by the government and every woman should aware and entitled for this benefits.

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