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**ANALYSIS OF MATERNITY BENEFIT ACT, 1961**- Sandeep Kaur<sup>1</sup>**ABSTRACT**

The image and role of women in the society have undergone the many changes from last so many years and it increase women participation in the workforce. Women are always behind the men and paid less than a man for work. The main reason behind this is perception of women that they are responsible for household, caretaker of family, house labour, children, unpaid community work and they are secondary source of income and it is limited their opportunity to work on decent salary employment. Even if they are work on higher paid job still they feel insecure and unsafe because when she will in the face of motherhood she will lose her or does not get any benefit for her maternity period. There are many changes made by government for make men and women equal in society and on workplace, but it seem impossible because of women biological difference from men. Women have to put up with pregnancy, child birth, taking care of child and many other complications arise out of it. For protection of wages, health and employment of women during maternity “the maternity benefit act, 1961” is provided by the government. This act insures the health and safety of women and her child and it protect the dignity of motherhood and continue the independence of women. For making it more flexible the legislature made amendment in the act and come up with the maternity benefit (amendment) Act, 2017. This study analysis the maternity benefit act and issues which is raised before the court along with criticism and some suggestions.

**Keywords:** Maternity-benefit, Wages, Women- workers, Amendment

**Introduction**

In patriarchal society women are always given second preference in the society and always suppressed and restrain by a man. Even in professional work places men come first then women and the gender based discrimination has no limits in economic, religious, social, political and cultural area, even under Indian Constitution all are equal, but in reality gender based

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discrimination have very strong roots in the society. In the house or work place there is always men come first. Women play important role in nation. Without women there is no life or generation. Motherhood is most beautiful creature in this world. Women get less opportunities comparison to men in work places, in some jobs working women paid less than men for work. The main reason behind it is that women are secondary source of income and primary source of income is men. Traditionally man is king of house and man is the bread winner of the family, role of women is to do unpaid work like be a housewife, take care of the family, children, household labour and these thing decrease a chance of women to get decent paid employment, in recent time they have better education and good living standards, they are independent and have liberty to choose their career and aware about their rights. But even though women start working outside of the house still economically, socially and culturally they have long way to go for changing the mind set of people.

The higher status of women in the work related to country or employment shows the nation development. Equality can be ensured by economically independent of women must be take part in every activity of nation and business. Also salary employment make women less dependent on men and in the case of domestic violence or spouse they have option to get separate without any hesitation. There are many work places or companies where the women are hired on some conditions like women must be unmarried or certain age. Men get more preference then women and get high wages. The main reason of all this is “Motherhood”. With growth of industrialization and knowledge multiple women’s own their own business, creation and work equal to men, but with that discrimination is also become obvious in industrial employees. The women across the world have face disadvantages because of biological reasons. They have to go through menstruation, pregnancy, child birth, taking care of the child and many other things.

The government provides a support to the women by making law for them. The law provides terms and conditions which are needed for working women. The most important law is “maternity benefit”. Its main purpose is to protect the dignity of motherhood, health of women, child care and provide a security to their employment, etc. The first maternity benefit legislature is enacted by the state government of the Bombay in 1929. After that other state are also enacted it with some changes according to their state needs. The central government pass many acts on it like The Mine Maternity Benefit Act, 1941, The Employees State Insurance Act, 1948, etc. These acts provides period of maternity benefit, not terminating her from

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employment, etc. After that government of India introduce new act known as the Maternity Benefit Act, 1961. Which reduce other acts powers of other acts related to the maternity benefits? It is amended money time till now but major amendment in this act is in 2017.

## **PROBLEMS FACED BY WOMEN**

Pregnancy is treated as very sensitive part of life for women that's why society prevent women from work month before the birth of child and one or two month after the birth of child. Majority of female workers needs to change the nature of work because of pregnancy, delivery and health issues. If she is working as professional somewhere than women have to leave the job because she has to rest for month or two and then have raise a child, if she continue her work then who is going to take care of the child? After the introduction of maternity benefits in the labour laws many employers terminate women workers because they have to pay them benefits and wages when women on the maternity leave, because of this reason many women workers lost their jobs and a many of them forced to work without any benefit and facility for them which they need during the pregnancy. And these things violate women economic right, because of all these problem females have to compromise on their career/goals.

All this issues are solved in the Maternity Benefit Act, 1961. This paper is study about whether this act is solved all problems of female workers or not and implementation of this act is effective or not and judicial interpretation through case laws.

## **THE MATERNITY BENEFIT ACT, 1961**

The Maternity Benefit Act passed on December 1961. It regulate the conditions of female employment before and after the birth the child and provide them ensure economic protection and provide maternity leave. This act provides protection to the motherhood by providing health care to women and child while she enable to perform her duty. This act is applicable to whole India. Every establishment being a Factory, Mine, plantation or government or non government body or where people are employed for the exhibition of equestrian, Acrobatic and other performance and every shop or establishment in state where 10 or more persons are employed.

Following aspects cover by the act:

- Employment of, or work of, women prohibited during certain periods
- Right to payment of maternity benefits

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- Payment of Maternity Benefits in case of death of a woman
- Payment of Medical Bonus
- Leave for miscarriage, etc
- Leave for illness arising out of pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy or tubectomy operation
- Nursing Breaks
- Dismissal during absence of pregnancy
- No deduction of wages in certain cases
- Forfeiture of maternity benefits
- Major points which are covered by the act is:
- Duration of leave

According to this act female employ entitled to 12 weeks of maternity leave and not more than 6 weeks leave after the delivery. In the case of miscarriage women is entitled the leave of 6 weeks and if women is suffering from any illness out of the pregnancy then she is entitled to 1 month leave. In tubectomy operation 2 weeks leave will be given to the women.

### **Job protection**

It is unlawful for an employer to dismiss or discharge any women during or on account of such leave or serving any notice of dismisses or discharge on such day the notice will expire during the leave of employee.

### **Pay during leave**

Female employee during her maternity leave shall be paid at the rate of her daily average wages. This is also applicable in the case of miscarriage, tubectomy operation, illness etc.

### **Health benefits**

Female employee has right of medical bonus 2500 rupees and on her work days she has right to get 2 nursing breaks until her cannot reach the age of 15 months. In the case of death of the women employer has to pay her dues or maternity benefits to nominee or legal representative of the female.

### **Filing the complaint**

Women can file a complaint in sixty days to inspector appoint under this act in the case of dismiss, discharge during leave or not given maternity benefits and medical bonus. If women employee is not satisfied with decision of inspector she can file appeal against the inspector

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order to prescribe authority within thirty days and she can file a case in the court if she against the order of inspector and if question law is involved.<sup>2</sup>

## **THE MATERNITY BENEFIT (AMENDMENT) ACT 2017**

The Maternity Benefit (Amendment) Act, 2017 come into force on 1st April, 2017. The basic structure of the act is but some important changes are made in this act for providing better care of child and better benefits to women. The following changes are made under this act:

- Increase of Maternity leave

Maternity leave has been extended from 12 to 26 weeks and not more than 8 weeks after the date of delivery. The women employee who already have two or more children shall entitled to 12 weeks and not more than 6 weeks after the date of delivery.

- Provisions for commissioning mother

A commissioning mother means biological mother who uses her egg to create an embryo implanted in another women.

- Adoption/ Commissioning leave

The women who adopt the child age below the three months or a commissioning mother entitled 12 weeks maternity leave from the date the child hand over to them.

- Work from home facility

The woman employee can work from home it is depends on nature and parameter of work that it may complete from home. After the 26 weeks of her maternity leave, the female and employer mutually agreed upon this.

- Creche facility

All establishments with 50 or more employees are required to provide the crèche facilities in their own or separate premises. The female employee shall be allowed four visits during working hours. These visits include in the rest periods of the employee.

- Obligation of the employer

It is duty of employer to provide written or electronic notice of maternity benefit to the female employees and the company policies. Company may provide these information in employee handbooks or HR manuals.<sup>3</sup>

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<sup>2</sup> The Maternity Benefit Act, 1961 (No. 53 of 1961)

<sup>3</sup> The Maternity Benefit (Amendment) Act, 2017 (No. 6 of 2017)

## CRITICAL ASPECTS

According to the Maternity Benefit Act all burden lies on the shoulder of employer. The employer has to bear the direct and indirect cost of during the duration of maternity. After amendment 2017 it increase the expenses of employer by adding crèche facilities and increasing the duration of leave employer has to pay her for more weeks.

This act increase the discrimination based on gender and age because employer will think first before hiring the women employee and women of child bearing age or many organizations put condition for women for job like they will be unmarried or does not have child for certain time etc, or women face the reduction in their compensation or salaries.

- It is not provide the clarity if the act is applicable on unorganized sectors or not and after the applicability of this act their not much difference in the working women conditions.
- This act does not talk about the parental benefits. It does not talk about the father leave or any benefit.
- Even after enforcement of this act there are many women workers who lost their jobs because pregnancy.
- Leave taken by one gender for long time and still get benefit even it is a pregnancy then this is discrimination between employees and also ability of men and women to contribute in their family and raising children. So, leave should be gender neutral, it should not be mandatory for women to stay home after recovery of childbirth. It would be their own choice.

## CASE LAWS

Issues raised before the court:

### *AIR India v. Nargesh Mirza*<sup>4</sup>

In this case the Air India Corporation Act and Airlines Corporation Act was challenged because of discrimination on the retirement and termination conditions of the airhostess and male members of the crew who performing same duties. The condition of retirement and termination of the airhostess is:

- Attaining the age of 35 years
- Marriage, if it took place within four years of service
- Pregnancy

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<sup>4</sup> *Air India v. Nargesh Mirza*, (1981) 4 SCC 335 703

The court held that it to be “grossly unethical” and as smacking of “deep rooted sense of utter selfishness at the cost of all human values”. After taking services of 4 years and terminate it when she is pregnant that would be compelling her for not having any children. Continue to work after having children it is individual choice. If she find difficult to looking after children or not it is personal matter of airhostess and not airline. According to the court pregnancy is not disability; It is natural consequence of marriage. The discrimination on the based on marriage or pregnancy is very unreasonable and arbitrary. This condition was held unconstitutional because it is violating article 14 of Indian constitutional and struck down by the court.

### **Bombay Labour Union vs. International Franchises Pot. Ltd<sup>5</sup>**

As a rule, unmarried women were obliged to leave their service upon marriage. The court stated that there was no evidence showing that married women missed work more frequently than single women or widows. If having children were to be the factor contributing to married women's higher absence rates, widows who also had children would likely experience a similar situation.

### ***B. Shah vs. Presiding Officer, Labour Court, Coimbatore and others<sup>6</sup>***

The question of whether Sundays, which are wage-free holidays, could be removed from the calculation of maternity benefits for the time period covered by Section 5 was brought before the Supreme Court. In ruling that Sundays must be covered, the Apex Court applied the beneficial rule of construction in the woman worker's favour and noted that the benefit granted by the Act, when read in light of Article 42 of the Constitution, was intended to enable the woman worker to not only survive but also to make up for her lost energy, nurse her child, preserve her efficiency as a worker, and maintain the level of her prior efficiency and output. During this period, she is unable to work and needs additional money to pay for her medical expenses. The law allows for maternity benefits to help the working woman subsist and keep herself well during this time so she may carry out her reproductive and productive duties successfully.

### ***Vandana Kandari vs. University of Delhi<sup>7</sup>***

The court ruled that any act by a university or college that excludes or holds back any female

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<sup>5</sup> *Bombay Labour Union v. International Franchises Pot. Ltd*, (1966) 2SCR 493

<sup>6</sup> *Shah v. Presiding Officer, Labour Court, Coimbatore and Others*, (1977) 4 SCC 384

<sup>7</sup> *Vandana Kandari v. University of Delhi*, 170 (2010) DLT 755

student during any semester solely because she was unable to attend classes due to being pregnant or having given birth is an act that completely negates not only the spirit of the Constitution but also women's rights and the idea of gender equality.

## SUGGESTIONS

- Government should ensure that the laws which includes universal social security cover all employees and unorganized sector and guarantee to pension of work to all classes. Government needs to enforce all the laws made by legislature strictly, so, that all population can get its benefits.
- The all burden is on the shoulder of the employer, the government shall make some new scheme so that the responsibility can divided. Some amount or benefit government can provide to the working females. Government must provide only those female workers who work in small establishments or have small amount turn over.
- The parental leave shall also be added in the act. So, the presumption of people that different gender has different personal life can be removed.
- Their still many women who is not get any maternity benefits because of lack of awareness. Government needs to provide information to the women through campaigns and outreach programs and by educating the women about their right of paid maternity leave and other benefits.

## CONCLUSION

India provides flexible maternity system for women. The maternity benefit laws are important for the progress of the women or mother to balance their work and personal life. The female need not to choose between her child or her profession. This act reduces the stress of women by providing her benefits during pregnancy like leaves, health benefits and child care. After the amendment 2017 benefits are increase and leave are extended from twelve weeks to twenty-six weeks. It proved a boon to the working women but there is a negative effect also the whole liability is on the employer the government is not supporting in the payments in any way. The unorganized sectors are not following it properly. Universal enforcement of this act through the labour unions or officers will ensure the applicability of this act in the sectors. The government should address all outcomes of the law and ensure the justice and equality to the employees.

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