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THE MATERNITY BENEFIT ACT, 1961

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History

Maternity Benefit Act was legally introduced in India in the Bombay Legislative council on 28th July 1928. The act was enacted by Parliament on 12th December 1961 as Act no.53 of 1961. The main objective of this act is to regulate the employment of women for a certain period of time before and after the child's birth. To provide maternity benefit, this act is applicable to the mines, factories, the government established offices under government Legislative or others recognized by the central government in which ten or more persons employed or were employed on any day of the preceding twelve months.

Development

Exploratory maternity leave from 12 weeks to 26 weeks has changed the position of India to the top 10 countries in the world. This amendment has been implemented after fifty-six years of the maternity benefit act implemented. Some outputs of the amendment are:

- Maternity benefit leave duration has increased from twelve weeks to twenty-six weeks and it is not applicable for the mother having children more than two.
- A commissioning mother shall be entitled to maternity benefit for twelve weeks from the day she handed the baby under commissioning or adoption.
- Crèche facility should be provided if the establishment has more than fifty employees. Mother is allowed to crèche four times a day and the period of the visit is considered as an interval of break or rest.
- Women have the facility to work at home after the maternity leave, based on mutual understanding between employee and employer.

- In *Hamsaanandini Nanduri v. Union of India*¹ the Supreme Court issued a notice to the Central Government challenging the Constitutional validity of Section 5(4) of the Act which lays down adoptive mothers will be eligible for maternity leave only if they adopt children who are less than 3 months old.

Work from home: If an organization assigns work to a woman with the purpose of allowing her to telecommute, the company may allow her to do so after she receives Maternity Benefit. The parameters for telecommuting may have been consented upon by both the company as well as the lady.

Brief

This amendment act brought a hugely positive environment, protection, security to all the women in the country. Nearly 1.8 million women who are working in an unorganized sector are benefitted from this bill.

- Good for baby growth – this act helps the baby to grow in a stress-free environment and better child care.
- A study shows that the depth of mortality rate of infants dropped by nearly ten percent.
- Improved and better relationship between the mother and infant.
- Due to these benefits the mental health of women was improved. A study shows that the depression levels of mothers who are fifty years old or approximately after thirty years have decreased.
- Now this act can be easily utilized by the UN – organized sector women.
- Women who preferred public assistance dropped to a good amount.

Important Judgement

Preeti Singh v. State of UP and ORS ²

¹ Writ Petition (Civil) No. 960/2021

² Service Single No. - 9907 of 2021

The respondents granted the petitioner maternity till the date of 28th December 2019. Later, the petitioner filed for another maternity leave, from 17th March 2021 to 12th October 2021. This was rejected a day before the leave was to come into effect, on 16th March 2021. The ground cited was that the next leave was sought before the two-year period of the earlier leave being up. According to [Section 153\(1\)](#) of the Uttar Pradesh Financial Handbook, it stated that there must be a minimum period of two years between the first and second maternity leave. So, the second leave can not be granted. The court held that the provision of a minimum duration of two years between maternity leaves is not mandatory to avail benefits. It also reiterates an important principle of constitutional law by giving precedence to the provision that categorically lays down that it would prevail over others. This judgment upholds values of equity and affirmative action, allowing women to be able to participate in the workforce more freely. It is another tiny step to rectifying our distorted sex ratio in labor participation of women in India.

Misuse

The Bombay High Court voiced its concern over the ‘misuse’ of ‘maternity’ benefits by working women. The court observed in *Smt. Richa Shukla v. State of U.P.*³ that if women claim these benefits during the entire gestational period, then it would defeat the very purpose of the Maternity Benefits Act. It also laid down that women would not be entitled to maternity benefits if they have not worked in the employer’s establishment for at least 80 days in the past 12 months (provided the woman immigrated to Assam, and was pregnant at the time of immigration). Women misusing the provisions of the Act for their own benefit, by availing the maternity benefits and leaving the said employment immediately after the period for maternity benefit has passed, thus, causing a great waste of resources for the employer.

Many companies cite poor performance, attendance, loss of projects, overall downsizing, and inability to provide 26 weeks of paid leave as reasons to terminate employees who have declared their pregnancy. The act is very clear that there can be no changes to her service conditions during her pregnancy and no dismissal for any cause.

Suggestions

³ SERVICE SINGLE No. - 32394 of 2019

- There is a great need to improve the implementation of the Act with regard to access to medical bonuses and nursing breaks.
- The wages equivalent to only seven weeks shall be reimbursed by the government of India to employers who employ female workers and provide maternity benefits of 26 weeks paid leave.
- It should include cost-sharing between employer and government by way of reimbursement once the employer furnishes the proof of payment of maternity leave wage, slab-based tax rebates offered by the government on actual maternity wages paid,
- There needs to be a convergence of Ministries of Women and Child, Health, Rural Development, Labour on the entitlement of benefits as enumerated under the Act.

