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Maternity Benefit in the Corporate Sectors

ANYA BEHERA¹ AND ANKITA MEHRA²

ABSTRACT

The Indian economy has seen an increase in the recent years due to the increase in the contribution of working women within the economy. A decade ago, working women in India were much less in number due to which the laws in regard to maternity benefit were not as protective and safeguarding as seen today. Thus, amendments had to be brought forth in the year of 2017 in order to protect and enhance the position of working women within their organisations. One of the crucial changes that changed the dynamics of the protection provided to women under the maternity benefit act was that the duration of leave granted to them, which was brought forth in the 2017 amendment was that the maternity leave was granted to women was increased, previously to the Amendment had only 12 weeks of maternity benefit but with the passage of time it felt the need to enhance it so as to support the women and thus it was increased to 26 weeks. After this increase India has become one of the few nations of the world to provide such support for the enhancement of women employment.

It is of outmost importance to have laws that safeguard the interest of women in today's competitive and cut throat working environment by means of having laws such as Maternity Benefit Act.

I. WHAT IS MATERNITY?

“Merrim Webster” has defined maternity firstly, as the quality or state of being a mother and secondly as a hospital facility designed for the care of women before and during child birth and for the care of new born babies.³

Maternity in the simplest words may be defined as the process of attaining motherhood or motherly feeling. It includes not only the time period during pregnancy but also the pre- and post-period. It includes the pre period so as to get mentally and physically prepared and fit for the pregnancy and it also includes the post period so that the women have the power to rejuvenate herself and to take care and nourish the new born infant.

¹ Author is a LLM student at National law university and Judicial Academy, Assam, India.

² Author is an Associate working in Delhi.

³Maternity Leave, <https://www.merriam-webster.com/dictionary/maternity>.

Maternity thus in simpler terms means the act of caring and nurturing of the mother and the child before and after the birth. Health of the mother before the birth of the child is important because the child dwells within the mother and thus dependent on the mother.

What is corporate?

According to sec 2(11) of companies act a body corporate or corporation includes a company incorporated outside India but does not include –

- A cooperative society register under any law relating to cooperative societies
- Any other body corporate (not being a company as defined in this act), which the central government may, may a notification in the official gazette, specify in his behalf⁴ .

II. WHAT IS MATERNITY LEAVE?

Maternity benefit in accordance to Maternity Benefits Act 1961 may be defined as the payment referred to in sub section (1) of section 5. Section 5 of sub section (1) states that every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefits at rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of delivery, the actual day of delivery and any period immediately following that day.⁵

In simpler terms the Act wants to include the day preceding the delivery, the day of the delivery and the day after the delivery for the convenience of calculating the amount to be given to the mother availing the maternity benefit.

According to business dictionary maternity leave may be defined as a period of approved absence for a female employee granted for the purpose of giving birth and taking care of infant children.⁶

So, as we see maternity leave is the right of every working pregnant woman throughout the world although the time period of leave may vary from several weeks to a period of few months. It depends on country to country and corporation to corporation.

Maternity leave thus is the time period given to a pregnant lady to take care and nurture the child so as to enhance the bond between the mother and the child.

⁴ Companies Act, 2013, Acts of Parliament, 2013.

⁵ Maternity Benefit Amendment Act, 1961, Acts of Parliament, 1961.

⁶ Maternity Leave, <http://www.businessdictionary.com/definition/maternity-leave.html>.

III. WHAT IS THE NEED FOR MATERNITY BENEFIT?

Maternity benefit is not only a want but also a need for the women of today's society as the man is the sole earner in today's age as the women and man work hand in hand in running a home. Thus, the following are some of the reasons for which maternity benefit is important:

(a) **Economic reasons** – Women in the earlier days have always been considered economically dependent on men as they were usually homemakers for which they did not have a stable source of income and thus they were always considered subordinate to men within the society. However nowadays women are more ambitious with regards to their career for which rights have been provided for or within the Maternity Act. These rights are essential in order for women to sustain their jobs in order to keep themselves economically independent. The government has brought forth such an Act in order to give women an opportunity to work without the fear of losing their job.

(b) **Biological reasons** –The women are the once who bear the child within their womb for the period of nine months and thus for the safety of the mother and the child it is of utmost importance that the mother is given the time off from her work to recover and regain her strength. This is a biological necessity as the women have lost a lot of strength and nutrition while nurturing the child. Women are given these benefits as the child bearing process is very difficult and can cause internal injuries. There is a need to protect not only the child but also the mother for which leave is essential.

(c) **Nurturing the child**-For the purpose of nurturing the child in a proper and adequate manner as it essential for the mother to be present with the infant as there is no one else who can step into the shoes of the mother.

(d) **Difficulty in the performance of duty at work** – To become a mother is a natural phenomenon but to get accustomed to the lifestyle takes time. The employer must understand and realise the physical difficulty which the women undergo would in some way reduce her efficiency at work if she continues to work in that condition. The employer must realise that this would eventually lead to degrading quality of work as she is unable to function to the best of her capabilities as she is having to carry the child in the womb or having to bring it up after the birth of the child, as the case may be.

(e) **Disadvantage at the time of employment** – It has been considered since years that it's a disadvantage to have women in any high position as she would not be able to perform her duties effectively due to her obligation towards marriage which would eventually give rise to the maternal obligation. This belief can be removed by providing maternity benefits to pregnant

women as she would have adequate time to take care of her personal needs. Thus, it would not act as a hindrance in her working front.

From the above-mentioned points, we can come to the conclusion that the difficulties faced by women employees can only be decreased if benefits such as those provided under the Maternity Benefit Act given to women workers so that they can carry on child bearing and rearing functions without strain on their health and loss of wages.

From ages it can be noticed that women have always been required to compromise and sacrifices their carriers in order to take care of their families. The ambitions of women have always been put on the back burner and thus now it's time for the women to realise and enforce such steps in order to attain gender equality at work. But as long as these traditional gender ideologies and assumptions exist within the society women will not be able to achieve great heights in their own expertise.

IV. MATERNITY BENEFIT (AMENDMENT ACT OF 2017)

The Maternity benefit act of 1961 was amended via the Maternity benefit Amendment Act of 2017 various crucial amendments were brought forth in order to safeguard the rights of working women.

Some of the amendments brought forth are as follows:

- i. Prior to the amendment the leave granted under the maternity benefit act was that of 12 weeks however post the amendment maternity leave period which can be undertaken by the female employee has been enhanced to 26 weeks. The pregnant female employee however is not allowed to take more than 8 weeks preceding the expected delivery date of the employee.

Reasoning: The period has been enhanced as 12 weeks is considered to be less than the desired time required for the mother and child to recover.

- ii. If a female employee already has 2 or more surviving children, then she is only entitled to avail 12 weeks of paid maternity leave, out of which she is not allowed to take more than 6 weeks before her expected delivery date.

Reasoning: The purpose for this amendment is to act as a birth control (population control mechanism) so as to restrict female employee from having more than two children as post the second child the benefit available to the pregnant employee are reduced within the act.

- iii. The concept of a "commissioning mother" and an adopting mother has been included. A "commissioning mother" is a biological mother who uses her egg to create an embryo implanted in a surrogate. Such a commissioning mother is entitled to pay maternity leave of 12 weeks from the date the child is handed over to her. A female employee who has legally adopted a child below 3 months is also entitled to pay maternity leave of 12 weeks from the date the child is handed over to her.

Reasoning: "commissioning mother" and an adopting mother have been included in the act with the objective of providing comfort to such mothers as well. This is a necessity nowadays as women are choosing to become mothers through non-conventional means such as by surrogacy and adoption. The time period provided is less than 26 weeks as they do not have to face any physical and biological changes that a carrying mother has to face.

- iv. A provision for "work from home" has been introduced, where under if the female employee's work profile is such that she can "work from home", the employer may allow her to do so after the statutory paid maternity leave period, subject to mutual agreement on the terms and conditions that are available within the contract.

Reasoning: Work from home has been inserted within this amendment as it new concept which has in recent times gained strength. This option has been made available to the female employees who want to not only stay at home but also work. However, this depends from company to company in accordance to their own terms and condition prevalent within the agreement.

- v. The employer is required to provide written intimation, including electronically, of all benefits under the MB Act to each female employee at the time of her initial appointment.

Reasoning: This has become a necessity within the act as it is important for the female employees to be aware of the rights available to them in the Maternity Benefit Act.

The Maternity Benefit Amendment act has also brought forth a provision by which it has become mandatory to set up a crèche facility for such establishments which have 50 or more employees. This crèche must be within a prescribed distance, either separately or within common facilities.⁷

Crèche is basically places where in working mothers can leave their children supervised. The

⁷Mariya Paliwala, *The Maternity Benefit Act, 1961 and Maternity Benefit (Amendment) Act, 2017 and creche facility*, IPLEADERS, (February 12, 2021, 10:00 pm), <https://blog.ipleaders.in/the-maternity-benefit-act>.

crèche allows the child to be cared for during the span which the mother works. Under the act the mother has the right to visit the crèche 4 times a day. But this provision has come in to effect from July 1st 2017⁸ and this has been done so that the companies have an opportunity to determine or decipher as how to comply with this new provision.

The objective behind the establishment of crèche facility is to allow the mother to visit her child during course of the day this allows the mother to be stress free thus, making her efficient at her work. These amendments have been made for the purpose of enhancing the opportunity of employment for women so that they don't have to compromise on their dreams. The main purpose for these amendments is to enhance the safety and up keep of not only the infant but also the pregnant women employee. This act has also provided work from home facilities which adds flexibility for the women employees as they are able to carry forward with their respective work despite being in their own homes.

V. PATERNITY LEAVE FOR MEN

It is mainly the mother who takes care of the child and thus is allowed to avail the maternity benefit but in some circumstances wherein a woman makes higher profits than the father and thus can take the maternity leave. This is a very rare phenomenon thus very few people are aware of it. This practice however is still not very much prevalent in India but can be seen in most European countries. In various foreign countries the father is allowed to take paternity leave as he is expected to be their physically and emotionally for the mother and child before and after delivery. In India the central government in 1999 under central civil services (leave) Rule 551(A) gave the provision of paternity leave for a male central government employee having less than two children for a period of 15 days. The father has been given this right so that he is given the opportunity to bond with the child and mother. However, there is no particular legislation for the private sector⁹, thus the private sector is not obliged to provide any such benefit to the male employees.

The advantage of having paternity leave is that the couple gets a chance to support one another. It helps to make their relationship stronger as they get the time to bond. It helps in forming mutual respect for one another as assist one another in fulfilling their duties towards the child. This quality time spend helps in establishing the strong bond not only among the father and the child but the family as a whole.¹⁰

⁸ *Ibid.*

⁹ *Maternity Leave & Paternity Leave Benefits in India*, HELPLINE LAW, (February 6, 2021, 7:34 pm), <http://www.helpline.law.com/family-law/MPBI1/maternity-leave-and-paternity-leave-benefits-in-india.html>.

¹⁰ Anubhav Pandey, *Paternity leave Policy in India*, IPLEADRES, (February 12, 2021, 3:30 pm),

Paternity leave is not currently present in India in abundance however slowly the concept is being accepted as the role of the father and mother becoming at par. As both have a responsibility towards nurturing and caring for the child.

CASE STUDY: Dr. MANDEEP KAUR V. UNION OF INDIA

Facts: In this case law the petitioner is practicing in the field of medicine. She is working in a clinic which is run by the state of Himachal Pradesh under this scheme “Ex-Servicemen Contributory Health Scheme” (ECHS). During the course of her employment, she requested for maternity leave under the Maternity Benefit Act, 1961 which was however denied by the authorities of the ECHS clinic stating that the employment contract signed by her did not comprise of any provision pertaining with maternity benefit.

Issues: Denied the rights of availing the maternity benefit.

Judgement: The court ordered that in accordance to Sec.2 of the Maternity Benefit Act, 1961, every establishment comprising of 10 or more employees shall have the right to avail maternity benefit.

The court held that despite being an employee of the ECHS clinic she under Sec 2 of the Maternity Benefit Act, 1961 has the right to avail maternity benefits. The court also held that despite being a contractual employee she could still avail benefit under this act as the right to maternity leave is for all the women employees whether their job is permanent or contractual.¹¹

Benefits Available under Maternity Benefit Act, 1961-

This Act has been enacted for the welfare of pregnant women employees and thus it provides a number of benefits to them so that they can have a smooth and tension free pregnancy. Benefits given to them are broadly classified into two categories-

(1) Cash benefits

- She can avail paid leave for 26 weeks.
- A medical bonus if the employer does not provide free medical care to the woman
- An additional leave with pay up to one month if the woman shows proof of illness due to the pregnancy, delivery, miscarriage or premature birth
- In case of miscarriage, six weeks leave with average pay from the date of miscarriage.

(2) Non-Cash Benefits/Privilege

<https://blog.ipleaders.in/paternity-leave-india>.

¹¹ Dr. Mandeep Kaur V. Union of India, (2018) CPW No. of 1400 of 2018.

- Light work for ten weeks (six weeks plus one month) before the date of her expected delivery, if she asks for it
- Two nursing breaks in the course of her daily work until the child is 15 months old
- No discharge or dismissal while she is on maternity leave
- No change to her disadvantage in any of the conditions of her employment while on maternity leave
- Pregnant women discharged or dismissed may still claim maternity benefit from the employer.¹²

VI. CONCLUSION

The information provided in this article emphasises on the importance of the Maternity Benefit Act. It helps us to conclude that it is due to the availability of such benefits itself that there has been an increase in the number of woman employees. Women are more motivated to find jobs as they know their needs will be taken care of. Women nowadays work hard in order to get promotions as the fear of having to leave their jobs due to pregnancy have vanished as they know that paid leave shall be made available to them for a sufficient span of time after which they will be able to join back at the same post itself rather than starting a fresh.

Acts like these always bring progressive changes within the society and help the society to develop. The Amendments brought in this Act clearly shows the perseverance and hard work of women to achieve great success in their own respective fields and thus the proverb perseverance always leads to success is very true in this case.

¹² Richa Jhanwar, *The Need for Maternity Benefits for Women Employee*, ACADEMIKE,(February 14,2021, 9:15 pm),<https://www.lawctopus.com/academike/the-need-for-maternity-benefits-for-women-employee>.