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Position of Women in the Private Sector with special reference to the Maternity Benefit Act and other Allied Laws

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ABSTRACT

The emerging role of women in society today must be explored in concert, by placing special focus on the inclusion of social equality elements in law and courts. To give women an equitable and equal environment in the job, the Maternity Benefits Act, 1961 was introduced. This act is to regulate the employment of women in certain establishments for certain period before and after childbirth and to provide for maternity benefit and certain other benefits. The newest amendment to the Legislation in 2017 is a continuation of the breakthrough initiatives taken to include female workers by female workers' rights organizations. Today in our nation the position of a homemaker has changed greatly to that of a career woman. Maternity benefits and maternity leave are important functions for all female employees in all segments of female workers and play an important role in maintaining and growing the corporate presence and retention, efficiency, and satisfaction at work. The object of maternity leave and benefit is to protect the dignity of motherhood by providing for the full and health maintenance of women and her child when she is not working. Therefore, it is extremely pertinent that these provisions need to be understood and critically analysed in context to its position in today's day and time.

Keywords: *Maternity benefits, constitutional validity, empowerment of women, protection of women's rights, women's employment.*

I. INTRODUCTION

In the contemporary world, the position of a woman greatly changed from a homemaker to a career woman. This is due to broad industrialization, in which growing numbers of women have grown their abilities to serve the needs of offices, workplaces, and labor-intensive sectors. While today women are recognized and adapted to new roles offering by a civilized society, because of this exponential degree of social change, their positions as mothers had been in severe crisis and difficulty. Women require special attention, and they must stress that they need it when they come to this necessity during the different phases of pregnancy and culture around

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all these women. Maternity benefits and maternity leave are important functions for all female employees in all segments of female workers and play an important role in maintaining and growing the corporate presence and retention, efficiency, and satisfaction at work.

Maternity leave is a type of leave that mothers or birthing parents typically take shortly before and after giving birth. In some cases, it applies when adopting a child too.² Maternity leave is defined in local employment law and differs from jurisdiction to jurisdiction. It may be paid, unpaid, or paid in part.

There are provisions – Article 15 (3) and Article 39 for women in the Indian constitution. The Article 15 (3) of Indian constitution provides the state with the authority to make special provisions for women and children. "The State shall provide for safeguarding just and humane working conditions and maternity relief," under Article 39 of DPSPs of the Indian Constitution.³ These provisions advocated for separate maternity benefit act. The Maternity Benefits Act, 1961 was enacted to provide women an equitable environment and a level playing ground in workplaces. In India, working women may avail maternity leave up to 3 months under Maternity Benefits Act, 1961. It guarantees that each woman has a right to the payment amount at the time of her actual absence is referred to as the maternity benefit payment. No women shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefits for a period of not less than 160 days in the twelve months immediately preceding the date of her expected delivery.⁴ The paid maternity leave can be availed six weeks prior to the expected delivery date. No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery. It is forbidden for the employer to do so in accordance with a provision of this Act.

After the passage of 55 years, many changes took place in the society and hence new reforms were needed in the 1961's Maternity Act. During the year 1961, the number of working women was very less but with the passage of time this number continued to increase. And by the year 2016-17, the participation of working women became very important and significant. Hence, it also became necessary to understand and address the needs of women and their problems in the workplace so that they can have a better work life balance.

The Maternity Benefit Amendment Act, 2017 regulates the employment of women during the period of childbirth and provides maternity benefits. The Act introduce provisions related to the

² S. N. Mishra, *Labour and Industrial Laws*, (Central Law Publications, 29th Edition, Allahabad, 2021)

³ J. N. Pandey, *The constitutional Law of India*, (Central Law Agency, 46th Edition, Allahabad, 2009)

⁴ H. L. Kumar, *Practical Guide to Maternity Benefit Act*, (Universal Law Publishing, First Edition, New Delhi, 2017)

duration and applicability of maternity leave, and other facilities.

- After the 2017 amendment the maternity leaves were increased from 12 weeks to 26 weeks however, for those women who are expecting after having two children, the duration of the leave remains unaltered at twelve weeks.⁵
- The paid maternity leaves can be availed 8 weeks prior to the expected delivery date. Before the amendment, this duration was 6 weeks.⁶
- The Act also introduced a provision to grant 12 weeks of maternity leave to adoptive and commissioning mothers.⁷
- After the completion of 26 weeks of maternity leave, depending on the nature of work, a women can avail work from home, if agreed by the employer.⁸
- Every establishment with 50 or more employees shall provide creche facility where a mother can visit 4 times in a day.⁹
- It is mandatory to educate a woman about the maternity benefits at the time of her appointment by the employer.¹⁰
- After the 2017 amendment, six weeks of maternity leave is provided in case of miscarriage, or medical termination of pregnancy.¹¹
- After the 2017 amendment, 2 weeks leave is provided in case of tubectomy surgery.¹²

Unfortunately, extended maternity leave alone will not solve the problem of women working in all sectors. This amendment will only benefit women in the organized sector employed either by the government and its departments or by the corporate sector. The rest are in the informal sectors such as shops, small service providers and cottage industries, in households as domestic helps or as daily wage earners, in sectors such as agriculture and construction. This amendment does not address the need to provide such working women with some sort of safety net when they are nursing a new baby. Most of them anyway do not earn even the notified minimum income, and that makes them more financially vulnerable. Government – State & Centre need

⁵ The Maternity Benefit Amendment Act, 2017, Section 5 (3).

⁶ H. L. Kumar, *Practical Guide to Maternity Benefit Act*, (Universal Law Publishing, First Edition, New Delhi, 2017)

⁷ The Maternity Benefit Amendment Act, 2017, Section 5 (4).

⁸ The Maternity Benefit Amendment Act, 2017, Section 5 (5).

⁹ The Maternity Benefit Amendment Act, 2017, Section 11A (1).

¹⁰ The Maternity Benefit Amendment Act, 2017, Section 11A (2).

¹¹ The Maternity Benefit Amendment Act, 2017, Section 9.

¹² The Maternity Benefit Amendment Act, 2017, Section 9A.

to address the concern of this large population of women.

II. OTHER ACTS RELATED TO MATERNITY BENEFITS ACT

1. **Employee State Insurance Act, 1948:** Parliament of India promulgated the Employee State Insurance Act of 1948. Initially, only in two industrial facilities in the country, Kanpur and Delhi, with an overall coverage of about 1.20 lakh workers, was the ESI scheme launched on 2 February 1952.¹³ The plan was subsequently implemented phased throughout the active zone. State governments' involvement in 1948 the Workers' State Insurance Act came into effect. To give workers certain privileges if they are, as mentioned in its preamble illness, motherhood, and "work mistake" cover several other problems. The Act created an integrated health-related social welfare system, insurance for motherhood and accident. The scheme was launched as a mandatory government insurance program scheme for the profit of Indian industry employees. The ESI scheme provides the full payment of the covered employee to the maternity benefits contribution in the previous two consecutive contribution cycles for at least 80 days. That's the way the scheme also contains Rs 5000 (US\$70) for containment where containment is performed on a site. Under the ESI program, the relevant medical facilities are not eligible benefits for protected women can be given for up to 26 weeks (extendable to women). Not more than 8 weeks before the date envisaged for one month of medical advice. The containment date in the case of an insured female with two or more surviving children, maternity is paid for profit for a period not exceeding six weeks for a total of twelve weeks. Containment date set an 'insured female' must include the description: A conscientious mother who wants to have a baby as a biological mother and prefers an embryo. Any other female implanted; a mother who adopts a child lawfully up to the age of 3 months. Employees must note the employees who receive their maternity leave salaries. The ESI Act is not, in compliance with the ESI Act, eligible for a related benefit. Act 1961 on Maternity Compensation or some other act while maternities are one of the advantages, the law provides for benefits. It permits the regular payment to insured females in the situation of detention and abortion or disease. The law also prohibits bosses to terminate, release or discipline employees when she's away from the office during her pregnancy.

2. **Sexual harassment of women at workplace (Prevention, Prohibition & Redressal) Act, 2013** – It includes provisions on grievances, redress, and maintaining a safe working women's atmosphere.¹⁴

¹³ S. N. Mishra, *Labour and Industrial Laws*, (Central Law Publications, 29th Edition, Allahabad, 2021)

¹⁴ Durga Das Basu, *The Constitution of India*, LexisNexis, 24th Edition, 2019.

3. **The factories Act, 1948** – This legislation provides for safeguards in the context of health, welfare, a just working day, vacation, and other similar benefits to workers working in a factory. The Act provides for women's special protection.¹⁵

4. **The Equal remuneration act, 1976** – Under Article 39 of the Indian Constitution, the State shall explicitly propose, in particular for males and females that do the same or similar work and are not discriminated against by men, policies to guarantee fair pay for equal work and females are hiring as they are.¹⁶

5. **Shops and Establishments Acts:** The State's governments shall take action on their respective businesses and shops and supervise employees' working conditions in a store or commercial premises. They set out several proposals, including provisions on closure, leave rights and conditions of employment, and special rules for women.

III. JUDICIAL PERSPECTIVE OF MATERNITY PROTECTION LAWS

1. “Female Workers (Muster Roll) v. Municipal Corporation of Delhi - Special Leave Petition (civil) 2000”¹⁷

When it comes to maternity leave, the ‘Municipal Corporation of Delhi’ used to only offer it to permanent female workers and not to muster roll women. Female employees in the latter class demanded maternity breaks, and their case was championed by the union in question. Additionally, the corporation argued that the “Maternity Benefit Act, 1961” could only be applied to "industrial" workers and not to the women on the municipal corporation's muster roster.

The court ruled that: When a woman is far along in her pregnancy, she should not be required to perform strenuous work because this would not only be harmful to her health but also the health of the unborn child. Due to the fact that this is the case, the Act stipulates that she would be eligible for maternity break for specific time durations both before and after the delivery of her child. All pregnant women who are employed on a regular basis, irrespective of whether they work casually or on a muster register, are eligible for a maternity break.

2. “Rattan Lal and Ors. vs. State of Haryana and Ors. 1985”¹⁸

The state of Haryana's ad hoc teachers' grievances about non-payment of salaries during the summer holidays and refusal of other benefits like as casual leave, sick leaves, maternity stay,

¹⁵ S. N. Mishra, *Labour and Industrial Laws*, (Central Law Publications, 29th Edition, Allahabad, 2021)

¹⁶ J. N. Pandey, *The constitutional Law of India*, (Central Law Agency, 46th Edition, Allahabad, 2009)

¹⁷ *Municipal Corporation of Delhi Vs. Respondent Female Workers (Muster Roll) & Anr.* AIR2000SC1274 2000.

¹⁸ “Rattan Lal and Ors. vs. State of Haryana and Ors.” MANU/SC/0354/1985.

and so on were taken into consideration. Summer holidays, along with payroll and entitlements, as well as all other perks accessible to all public employees, such as casual vacation, healthcare stay, maternity stay, and so on, are rejected by ad hoc teachers outrageously due to the State Government's deleterious appointment scheduling, according to the Court. The Hon'ble supreme court, strongly criticising the state administration's policy of denying ad hoc teachers' income and perks during the summer holidays, directed the delivery of the above-mentioned benefits, notably maternity and medical coverage, to those who were eligible.

3. “Bombay Labour Union vs. International Franchises Pot. Ltd.” (1966)¹⁹

There was a regulation that said all single women had to leave the military once they were wedded. The court made the observation that there was no evidence to support the notion that wedded women were inherently more inclined to take time off from their jobs than either single women or widows. If the existence of children were the cause of increased absenteeism among wedded women, then the situation would be the same in the case of widows who are caring for their children.

4. “B. Shah vs. Presiding Officer, Labour Court, Coimbatore and others” (1977)²⁰

The Apex Court was asked whether the maternity benefit for the term provided by Section 5 should be calculated. Sundays should not be included as a paid break. When the Federal Court ruled to involve Sundays, it followed “Article 42” of the Constitution's beneficial guideline of construction in favour of women workers and noted that this benefit was meant to allow women workers to not only survive, but also to replenish their lost power, breastfeed their children, maintain their productivity as workers, and maintain their previous productivity levels. During this time, she is unable to work and needs more funds to cover her medical bills. Maternity benefits are mandated by law to ensure that working women may support themselves and their families during this time while also protecting their health. The biological role of childbearing necessitates a woman's temporary absence from employment.

5. “AIR India vs. Nergesh Meerza and Ors. 1981”²¹

Six Air India and Indian Airlines flight attendants sued over the validity of their employer's policies allowing for the dismissal of their employment upon the discovery of first pregnancy in the case known as “Air India v. Nergesh Meerza”. The Indian Apex Court upheld that this regulation violated Article 14 of the Indian Constitution because it was arbitrary and unjustified.

¹⁹ “Bombay Labour Union vs. International Franchises Pot. Ltd.” (1966) 2SCR 493

²⁰ “B. Shah vs. Presiding Officer, Labour Court, Coimbatore and others” (1977) 4 SCC 384

²¹ Air India v. Nergesh Meerza & Ors, SCC 335. (1981)

When air hostesses with two live children had their third pregnancy, the Supreme Court backed an amendment that would effectively force them to retire. The amendment said that it was in the best benefit of women's health and the national family planning programme.

6. “Neera Mathur v. Life Insurance Corporation of India 1992”²²

A female worker was fired from her job because she failed to appropriately state her last menstrual date and the fact that she was pregnant on her employment disclosure form when she joined the company. This woman sought justice in India's Apex Court, alleging that the arbitrary decision of dismissal had breached her right to equality as protected by “Article 14” of the country's constitution. The Appellate Court decided that the statement requested in the form was insulting, degrading, and a breach of the employee's dignity and self-respect, and so the dismissal decision was quashed. Efforts to escape providing maternity coverage to a female worker by not employing her if she is pregnant would be vulnerable to a constitutional dispute, the Court said in its recommendation to remove such restrictions from the disclosure form.

²² Mrs. Neera Mathur v. Life Insurance Corporation of India & Anr. SCC 286(1992)

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