

## MATERNITY LEAVE AND BENEFITS: IS IT STILL BEING DENIED EVEN AFTER THE FORMULATION OF A LAW?

Aaditi Singh\*

### ABSTRACT

*According to Article 21 of the Indian Constitution<sup>1</sup>, a woman has a right to reproduce. For the purpose of effectively using this right, the Indian government passed a law named the Maternity Benefit Act, 1961 which mandates that a pregnant woman is entitled to a paid leave of twelve weeks which was increased to twenty-six weeks as per the Maternity Leave Act, 2017. The formulation of a law is not enough, its implementation is a crucial factor in fulfilling the purpose of the legislation. The implementation of this law has been dealt with in this article. The reality of hardships faced by an expecting working mother has been elaborated and how the Maternity Benefit Act has worked in alleviating the same. The judiciary has taken a stand for the mothers and ensured the implementation of the Act in various cases which has also been elaborated in order to substantiate the dissatisfactory implementation of this Act by the employers.*

**Keywords:** Pregnant, Maternity, Benefit, Employment, Paid Leave.

### INTRODUCTION

Empowering women is a never-ending process. The number of working women than housemakers in India has increased significantly. Working women are frequently observed juggling their time between home and work. However, these women effectively manage their households and jobs despite frequently encountering many difficult situations. One of these difficult situations is pregnancy. It becomes extremely difficult to work during this time. Previously, women who requested maternity leave or whose performance was affected by pregnancy would be sacked from their jobs. Women opted to take unpaid leave in order to avoid being fired.

Maternity leave in India is a period in which pregnant women are entitled to paid leave after the delivery of their newborn. This leave is allowed to a woman for the purpose of taking care of her child and coping with its responsibilities while retaining her job. As per the Maternity

\*BA LLB, FIRST YEAR, NATIONAL LAW UNIVERSITY ODISHA.

<sup>1</sup> Constitution of India 1950, art. 21

Benefits Act, 1961, female employees who were pregnant were only granted a paid leave of twelve weeks. An amendment was made in this act through the Maternity Leave Act, 2017 in which this leave was extended to the period of twenty-six weeks.

### **MAJOR LAWS RELATED TO MATERNITY BENEFITS**

Maternity Benefits Act, 1961 - An employer is bound to grant a paid leave of twelve weeks to a pregnant employee. In order to receive this paid leave, a woman should work for 160 days preceding the 12 months from her expected date of delivery. The Act applies to all organisations with ten (10) or more employees. According to the Act, if there is no prenatal confinement and no paid postpartum care, the employer must give the beneficiary a medical incentive of up to 1,000 rupees. The medical bonus has been increased by the Central Government to 25,000 rupees. The Act states that it is illegal for an employer to fire or dismiss a pregnant employee while she is away or on account of her pregnancy, or to give termination notice on a day when the notice would expire while she is away, or to alter any of the conditions of her employment to their disadvantage. The law prohibits wage reductions for light tasks assigned to pregnant mothers and breaks for child feeding.

Maternity Benefit (Amendment) Act, 2017 - The period for maternity leave was extended to twenty-six weeks from the previous mandate of twelve weeks. This act also included the term “commissioning mother” which means a biological mother who utilises her egg to make an embryo that is placed in another woman. An amendment was also made in Section 3(4) which was, a woman who lawfully adopts a child under the age of three months or a commissioning mother shall be eligible for maternity benefits for a period of twelve weeks beginning from the day the child is given to the adopting mother or the commissioning mother. A new Section 11A was inserted which said that each corporation with fifty or more employees must have a creche within the prescribed distance, either independently or in connection with common facilities.

Employee State Insurance Corporation Act 1948- This Act was applicable to all the factories including government-owned factories where 10 or more people were employed. As per Section 46(b), a woman employee will receive periodical payments in the event of a miscarriage, illness, surgery, or other circumstances resulting from pregnancy or premature birth.

Maternity Benefit Mines and Circus Rules, 1963 - This Act shall be applicable to all employers of mine or circus in which women are employed.

Mines Act, 1952 - As per this Act, a woman who engages in the administration, control, supervision, or direction of a mine or any portion of a mine is entitled to maternity leave. This act allows the woman concerned to take a 12-week maternity leave.

### **INCREASING CASES OF WOMEN BEING DENIED MATERNITY LEAVE**

Even though the government has taken appropriate actions to amend the maternity law and ensured that expecting mothers do not face any hardships in their employment, a huge number of women in our country face unequal treatment by their employers even to the extent of being terminated from their employment after they inform that they are expecting or when they ask for maternity leave. The National Commission for Women (NCW) has reported an increase in complaints<sup>2</sup> by women that their employers refused to grant the entitled maternity benefits. As per NCW, the majority of complaints over the last two years, have been about being refused the six-month maternity leave that is required in cases of pregnancy and the absence of daycare facilities at work which is mandated by the Maternity Benefits Act. Since 2013, it has received 352 complaints, out of which, 99 cases were reported from Uttar Pradesh. Recently, a matter came to light in Uttar Pradesh that as many as 60 government teachers' maternity leave requests were rejected<sup>3</sup> by the Block Education Officers (BEOs). The Director General of school education in Uttar Pradesh has asked for an explanation from these BEOs.

In another study conducted by TeamLease<sup>4</sup>, in the 2018–19 fiscal year, 1.1–1.8 million women (across 10 main industries) may not even obtain employment because companies do not consider maternity leaves and benefits achievable. Several Indian Banks are stepping back from employing pregnant women. For instance, the State Bank of India announced

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<sup>2</sup> Bansal A, 'NCW Sees Spurt in Complaints of Maternity Benefits Being Denied' (*The Economic Times*, 12 November 2018) <<https://economictimes.indiatimes.com/news/politics-and-nation/ncw-sees-spurt-in-complaints-of-maternity-benefits-being-denied/articleshow/66583525.cms?from=mdr>> accessed 25 June 2023

<sup>3</sup> Correspondent H, 'U.P.: Reply Sought for Denial of Maternity Leave to 60 Govt Women Teachers' (*Hindustan Times*, 7 January 2023) <<https://www.hindustantimes.com/cities/lucknow-news/up-reply-sought-for-denial-of-maternity-leave-to-60-govt-women-teachers-101673107072020.html>> accessed 25 June 2023

<sup>4</sup> BUREAU BI, 'Indian Companies Aren't Hiring Women to Avoid "maternity Leave" Liability: Study' (*Business Insider India*, 26 June 2018) <<https://www.businessinsider.in/indian-companies-arent-hiring-women-to-avoid-maternity-leave-liability-study/articleshow/64749016.cms>> accessed 26 June 2023

expecting mothers were temporarily incompetent. It considered them eligible for employment only four months after delivery.<sup>5</sup>

These are the cases mentioned above where women were denied relief during their pregnancy violating their rights and subjecting them to discrimination.

### **JUDICIARY'S STAND ON MATERNITY BENEFITS**

In the case of *Municipal Corporation of Delhi v. Female Workers (Muster Roll) &Anr*<sup>6</sup>, the Hon'ble Supreme Court of India held that even women employed on a casual basis or on a muster roll basis daily wage were entitled to maternity leave under the provisions of Maternity Benefit Act of 1961. Following the apex court's decision the Himachal Pradesh High Court has reaffirmed in the case of *State of HP v Sita Devi*<sup>7</sup>, that all women are entitled to maternity leave, regardless of their employment status. It held "The respondent in the instant case was a daily wage woman employee at the time of advance pregnancy and could not have been compelled to undertake hard labour, as it would have been detrimental to not only her health and safety but also to the child health, safety and growth. The maternity leave is a fundamental human right of the respondent, which could not have been denied. Therefore, clearly, the action of the petitioner is violative of Articles 29 and 39D of the Constitution of India."

In the case of *Centre for Professional and Advanced Studies v. Abhitha Karun &Ors*<sup>8</sup>, the Kerela High Court recently ruled that female officials who work on a contractual basis are also allowed to receive the benefits of the Maternity Benefit Act, 1961. It held that any establishment within the meaning of any law applicable to establishments in the State is a permissible definition of an "establishment" for purposes of the Act.

In the case of *Renuka v. University Grants Commission and Anr*<sup>9</sup>, the Delhi High Court stated that "women cannot be forced to choose between their right to education and right to exercise reproductive autonomy." It also observed: "The Constitution envisaged an egalitarian society where citizens could exercise their rights, and the society, as well as the State, would allow the manifestation of their rights. A compromise was then not sought in the Constitutional

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<sup>5</sup> Kalia S, 'Many Banks in India Are Denying Work to Pregnant Women, Perpetuating Gender Exclusion' (*The Swaddle*, 21 June 2022) <<https://theswaddle.com/many-banks-in-india-are-denying-work-to-pregnant-women-perpetuating-gender-exclusion/>> accessed 26 June 2023

<sup>6</sup> 2000 SCC OnLine SC 530

<sup>7</sup> 2023 LiveLaw (HP) 39

<sup>8</sup> 2022 LiveLaw (Ker) 400

<sup>9</sup> 2023 LiveLaw (Del) 458

scheme. The citizens could not be forced to choose between their right to education and their right to exercise reproductive autonomy.”

The Madras High Court in the case of *Tamil Nadu State Transport Corporation (Coimbatore) Ltd and another v. B Rajeswari*<sup>10</sup> ruled that a woman cannot be denied maternity benefits on technicalities and she cannot be forced to oscillate between pregnancy and employment. The court also stated “A woman is not a pendulum and cannot be forced to swing between motherhood and employment, as the maternity benefit relates to the dignity of a woman. In Hindu mythology, women, who respect elders and sacrifice their life for the welfare of the husband's family, are portrayed as equal or even greater than men and are regarded as equivalent to God.”

### ANALYSIS AND SUGGESTIONS

In the corporate sector, female employees who are expecting are seen as a burden or a liability. The reason for this thinking is that as per the Maternity Benefit Act, the employer has to grant a paid leave to that employee for six months and he also has to fill that gap created by employing another person during that period. Therefore, the employer considers this situation a financial liability and prefers not to employ a pregnant woman or fire her in the early stages of pregnancy. This is a clear violation of the statutory right that has been granted to a pregnant woman by the Act and also a violation of her Fundamental Right. Why should a woman be punished for reproducing? She has done no wrong in giving birth to a child. Even though the Parliament has tried its best to protect women from such wrongs, it has failed to do so. They are still facing discrimination based on their gender and reproductive status. The major reason for this discrimination is that the entire burden of paying wages to a pregnant employee is put on the employer. An amendment can be made in the Act in which the burden of the employer is shared either by the central or state governments or the employee itself. If the state and the central government both contribute a certain percentage, say 50%, to the maternity benefits, then the financial burden that is created on the employer would be reduced and they would not intend to lay off an employee as soon as they are informed that she is expecting. Another situation in which the employee can also contribute is when she is employed as a normal employee who is not pregnant, a fund should be created in which she contributes a certain percentage, which is not very high, say 10-15% of her salary for future maternity benefits and that fund can be used to pay her

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<sup>10</sup> 2023 LiveLaw (Mad) 15

when she is on maternity leave. This solution seems logical since the pregnant woman as such is unable to contribute to the company, the employer would be satisfied in paying less to her and the gap would be filled by the fund created. Some women may not prefer this option but looking at the prevailing situation in our country, it is better than being sacked and not receiving anything.

In order to ensure that the act is being implemented, the government should not only limit the duty of the inspectors to receiving complaints and enquiring into them. It should also broaden the scope of their duty to continuously inspect the establishments in the area in which they are appointed. They should ensure that the female employees who are expecting are granted the maternity leave that they are entitled to and the wages are paid to them. No employer should lay off a pregnant woman under their inspection. The inspector should not only inspect the complaints that they receive but all the establishments in their territory. This would increase accountability.

