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The easiest labyrinth, the long ignored medicine of MOMS-THE MATERNITY BENEFIT ACT 1961.

Saswati Mishra

From matters of primary custody to child support, legal provisions have increasingly recognized and reinforced the mother's rights, aiming to provide the child with a secure and nurturing upbringing.

As soon as the child gets into the womb, he/she starts exercising her/his legal rights, be it be Article 21 of the Indian Constitution, section 20 of the Hindu Succession Act 1956, The Transfer of Property Act, section 88, 106, 89, 90, 92 of Bhartiya Nyaya Sanhita 2023 deals with safety of an unborn child who could be prone to miscarriage and death of the unborn child.

It is interesting to note that the law delivers a stellar of balance by creating provisions that safeguards both to the new life and to the life giver.

The Maternity Benefit Act 1961, a legislation that shields a woman from all the possible risks of financial dependency without curbing her right to a dignified life under article 21¹ of the Indian Constitution. The Orissa High court under the bench of Justice Sashikanta Mishra in the case of *SwarnaLata Dash v. State of Odisha & Ors*², where the petitioner was denied of her sanction of her maternity leave which was denied, held that-

“If a woman employee is denied this basic human right it would be an assault on her dignity as an individual and thereby offend her fundamental right to life guaranteed under Article-21 of the Constitution, which has been interpreted to mean life with dignity.”³

Maternity relief is in itself a fundamental right guaranteed under the constitution as held in the case of *Bandhua Mukti Morcha v. Union of India*.⁴ The noble provisions mentioned under the directive principles of the state policy under art 39 and 42 emphasize the role of the state in upgrading the policy systems always in the favour of its citizens. Especially art 42 which deals with the importance of maternity leave in a woman's life. The Maternity Benefit Act applies to

¹ INDIA CONST. art. 21

²

³ <https://www.livelaw.in/high-court/orissa-high-court/orissa-high-court-maternity-leave-aided-school-employee-human-dignity-right-to-life-article-21-constitution-233339>

⁴ *Bandhua Mukti Morcha* case is (1984) 3 SCC 161, AIR 1984 SC 802.

the whole of India and the place where she must be working where in order to seek the maternity leave must have worked for not less than 80 days in 12 months in either a government or private organisations, establishments and commercials, etc.⁵ Here establishment includes factories, mines, plantations, equestrian, acrobatics and other performances.

The whole procedure of seeking maternity benefit starts with the prior notice of the applicant to her authority in writing, mentioning the requisites about her leave. The woman has to specify the date from which she will be on leave and it should cross more than 8 weeks from the date of expected date of delivery. She needs to mention the name of her nominee in case of her death as well. If a woman misses out following the procedures, she shall be barred from attaining the benefits under the act. This act has an exception where the whole concept of 80 days doesn't apply to the women who have immigrated from the state of Assam.

Section 5(5) of the MBA 1961 enables women to work from home even after the completion of their maternity leave, provided its mutually decided and if the nature of work permits to be done in that manner she shouldn't be restricted from working from home.

The act per se jots down the various leaves applicable to various women in the branches of motherhood. Everyone gets a different leave on the basis of the ambit of procedures taken up for child birth.

A mother can seek leave days for 26 weeks up to two children. It's upon her discretion if she wants to avail the leave in fragments but the days before her delivery must not exceed 8 weeks.

A mother having 2 children already can seek a leave for not more than 12 weeks having not more than 6 weeks of pre delivery leave.

A mother who has adopted a child below the age of 3 months shall get 12 weeks leave from the date of handover of the child.

In case a mother opts for surrogacy or is a commissioning mother she shall be given a leave of 12 weeks for the same.

According to section 6 of the MBA 1961, a mother who has gone through a miscarriage such as to which seeks immediate healthcare shall be given 6 weeks of maternity leave from the date of production of the evidence for the same.

In case a woman wishes to go for tubectomy she shall be granted 2 weeks leave from the date of her operation under section 9(A) of the act.

Amongst every such provisions the law prioritizes the health of every woman gets a comfortable environment before and after delivering her child.

She further gets immunities from the basic life works which gives a risk to the health of a woman such as section 4 prohibits a woman from doing works of an arduous nature, any work

⁵ The Maternity Benefit Act of 1961

which demands a woman to stand for long hours, such a work that probably might intrude with the normal growth of uterus or with the pregnancy. It includes prevention of any work which enhances the risk of miscarriage.

Empathy and care towards a pregnant woman are the strongest root of our culture. A woman if in this condition is made to suffer by taking her job away that shall be against the rule of justice. Thus, the Act ensures that no woman is suspended from her job on the ground of her pregnancy. If in case a woman is subject to such a dismissal, she can file an appeal within 60 days of receiving such an order. She is additionally rather capable of seeking her medical bonus and nursing breaks. Nursing mothers refer to those mothers who are breastfeeding their child. She is entitled to 2 nursing breaks until her child turns 15 months. The Allahabad High Court has held in the case of *Saroj Kumari vs. State of U.P. And 5 Others*⁶ that-

"It is a harsh reality that but for such provisions many women would be compelled by social circumstances to give up work on the birth of the child if they are not granted leave and other facilitative measures...Child birth has to be construed in the context of employment as a natural incident of life and the provisions of the Maternity Benefit Act are required to be construed in that perspective,"

Further the same court has observed that –

"These provisions have been made by Parliament to ensure that the absence of a woman away from the place of work occasioned by the delivery of a child does not hinder her entitlement to receive wages for that period or for that matter for the period during which she should be granted leave in order to look after her child after the birth takes place."

One unique and new system of working has been added in the latest amendment of the act in 2017. That is the Creche Services u/s- 11A of the act. Any establishment with a member of more than 50 employees shall have a creche facility within the circumference of the working place where the mother shall be allowed a visit of 4 times every day including the rest period. The creche should not be at an unsafe place such as an open drain, pits, or garbage bins near the centre. The minimum spacing for a child must be of 10-12 sq.ft.per child.

If any person is seen contravening the safeguards of a woman by dismissal or suspension for her maternity leave, that person can be fined up to Rs.500 or 3 months of imprisonment or both.

The Supreme Court in the case of *Dr. Kavita Yadav v. Secy, Ministry of Health and Family Welfare*⁷ observed that-

⁶ Saroj Kumari vs. State of U.P. And 5 Others; 2023 Live Law (AB) 100;

<https://www.livelaw.in/news-updates/allahabad-high-court-woman-entitled-maternity-leave-after-birth-child-maternity-benefit-act-1961-224254>

⁷ Dr. Kavita Yadav v. Secy, Ministry of Health and Family Welfare ; 2023 LiveLaw (SC) 701;

<https://www.livelaw.in/supreme-court/supreme-court-ruling-maternity-benefits-contractual-employment-maternity-benefits-act-235483>

“Section 12(2(a)) of the Maternity Benefit Act, 1961 contemplates entitlement even for an employee who is dismissed/discharged during her pregnancy. Thus, inbuilt in the statute itself there is a provision for extending benefits for a period beyond the term of employment. What the statute contemplates is the entitlement of medical benefit which accrues by fulfilment of condition under section 5 and benefit can travel beyond the term of employment also and it’s not co-terminus with the employment period.”

The Supreme Court has time and again reminded the the importance of the act and the role of women such as it was held in the case of *Dr. Mandeep Kaur v. Union of India & Ors.* That –

"Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. ...the benefits under the Act shall be provided to the women (muster roll) employees of the Corporation who have been working with them on daily wages⁸,"

CONCLUSION

It is a high time that the society starts highlighting these issues and help women in getting aware about their issues and the procedure of seeking redressal, especially by creating campaigns, advertisements etc., it shall not only foster the fundamental rights of the mother but also shall save the child’s fundamental rights.

⁸ *Dr. Mandeep Kaur v. Union of India & Ors*; <https://www.livelaw.in/news-updates/contractual-workers-also-entitled-to-benefits-under-the-maternity-benefits-act-himachal-pradesh-hc-read-judgment-160056>