

Original Paper

ISSN: 2321-1520

‘Maternity Benefits for *Mompreneurs*’ With Special Reference to Indian Constitution

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Received Date: 10-6-2017

Published Date: 15-9-2017

Introduction

"The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, has given its ex-post facto approval for amendments to the Maternity Benefit Act, 1961 by introducing the Maternity Benefit (Amendment) Bill, 2016 in Parliament.

The maternity benefit Act 1961 protects the employment of women during the time of her maternity and entitles her of a ‘maternity benefit’ – i.e. full paid absence from work – to take care for her child. The act is applicable to all establishments employing 10 or more persons. The amendments will help 1.8 million (approx.) women."¹

Many women in India are unaware of their rights under the Article 42 of the Indian Constitution and under the Maternity Benefit Act of 1961.

The entrepreneur is a person who has enterprising quality, takes initiative and establishes an economic activity or enterprise. Women Entrepreneurship" means an act of business ownership and business creation that empowers women economically increases their economic strength as well as position in society. Women-entrepreneurs have been making a considerable impact in all most all the segments of the economy. According to Government of India, a woman entrepreneur is defined as "an enterprise owned and controlled by a woman and having a minimum financial interest of 51% of the capital and giving at least 51% of employment generated in the enterprise to women."²

Work and home are typically seen as two different sides of a coin, and more so when the person in question is a woman professional. Every day we hear stories of women taking on leadership roles and in the same extent we come across instances of women pulling out of jobs due to family

responsibilities.

A lot has been done – and much still remains to be done – to retain women talent in the workforce. Typically the marriage and family phase takes the woman force away from work. The corporations are doing their bit by extending maternity leaves, allowing work from home or flexi shifts etc. The central government too is considering a proposal to extend mandatory maternity leaves. a quiet army of mompreneurs (mom + entrepreneurs) are working from their homes or humble offices and making a mark for themselves. Gone are the times when ‘mompreneurs’ was a glorious terms for women running boutiques, salons, selling home grown products or retailing apparels, jewelry and interiors décor stuff. Many of the Female Entrepreneurs come from a strong emerging trend called "**Mompreneurs**". Thus came a ‘**Mompreneur**’, someone who is described by Wikipedia as a female business owner who is actively balancing the role of mom and entrepreneur,. The term ‘Mompreneur’ was conceptualized by Patricia Cobe and Ellen H. Parlapiano (Parlapiano&Cobe, 2006³) over a decade ago. There are however many challenges faced by Mompreneurs. These include starting ventures with lack of appropriate knowledge, resource constrains, stereotypes, balancing work and life, and limited networking opportunities, with additional responsibility of managing children.

Look around and a new breed of up-market, polished, savvy women are leading their small or mid-sized businesses in the domain of IT, product development, business development, HR, skilling, accountancy, off-shore jobs, education and related fields.

A random search on any local search engine or special networking site will list a number of such professionals and also list such networks and related events. Before you realise the impact of this movement, you’ll be surprised to know that more than thousand successful and profitable small and mid-sized businesses are being run by mothers, who are multitasking to keep their world and yours too going.

A prominent such network is Mompreneurs India which was founded in 2014 and in just two years has followers to the tune of 25,000 and more than 250 paid members. Its founder Chetana Misra is all buoyed with this growth and says that women now are far more confident about their skills and abilities than ever before.

"Women have huge potential, but certain responsibilities can limit them taking on regular jobs or career. That is when this idea of connecting mompreneurs service providers and service seekers came in. This idea flourished well and it has been observed that our members grow from places to places.⁴"

Maternity Benefit Act 1961

The Maternity Benefit Act, aims to regulate of employment of women employees in certain establishments for certain periods before and after child birth and provides for maternity and certain other benefits.

The Act extends to the whole of India and is applicable to:

1. Every factory, mine or plantation (including those belonging to Government) and

2. An establishment engaged in the exhibition of equestrian, acrobatic and other performances, irrespective of the number of employees, and
3. To every shop or establishment wherein 10 or more persons are employed or were employed on any day of the preceding 12 months.

The State Government may extend the Act to any other establishment or class or establishments; industrial, commercial, agricultural or otherwise.

However, the Act **does not apply** to any such **factory/other establishment** to which the provisions of the **Employees' State Insurance Act are applicable** for the time being.

But, where the factory/establishment is governed under the Employees' State Insurance Act, and the woman employee is not qualified to claim maternity benefit under section 50 of that Act, because her wages exceed Rs. 3,000 p.m. (or the amount so specified u/s 2(9) of the ESI Act), or for any other reason, then such woman employee is entitled to claim maternity benefit under this Act till she becomes qualified to claim maternity benefit under the E.S.I. Act.

What Is Maternity Benefit?

Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of the average daily wage for the period of her actual absence.

Period for Which Benefit Allowed

The maximum period for which any woman shall be entitled to maternity benefit shall be 12 weeks in all whether taken before or after childbirth. However she cannot take more than six weeks before her expected delivery.

Prior to the amendment of 1989, a woman employee could not avail of the six weeks' leave preceding the date of her delivery; she was entitled to only six weeks leave following the day of her delivery. However, by the above amendment, the position has changed.

Revised Maternity Benefit Act, March, 2016.

The Prime Minister Narendra Modi on August 10 gave its ex-post facto approval for amendments to the Maternity Benefit Act, 1961 by introducing the Maternity Benefit (Amendment) Bill 2016. Under the revised maternity benefit act, following amendments have been incorporated.

The Indian Laws Of Maternity Benefits

The principle of gender equality is laid down in the Indian constitution in its preamble, Directive Principles, Fundamental Rights and Fundamental Duties. The Constitution not only grants the rights to equality for women, but also explains that the state or any other person will not discriminate the women. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Within the framework of our laws, democratic polity, development policies, Plans and programmes have aimed at women's advancement in different spheres.

1. Constitutional Privileges

Article 14:-Equality before law for women.

Article 15 (i):-The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 15 (3):-The State to make any special provision in favour of women and children.

Article 16:-Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

2. Acts Related To Maternity Benefits

(i) National Food Security Act, 2013

NFSA provides various types of benefits to pregnant women. These benefits are explained in the different sections of the Act. For the fulfilling these benefits it is the duty of central government to provide such things.

- Section 4 (a):- free meal during pregnancy and also six months after the child birth through
- Section 4 (b):- six thousand rupees in instalments.
- Section 5(1):- every child up to the age of fourteen shall have the following entitlements for his nutritional needs:-
- Age 6 months to 3 years :- appropriate food
- Age 3 years to 14 years or till class VIII :- 1 mid-day meal everyday (except holidays)

Maternity Benefits with Special Reference to Mompreneurs.

The category *Keeping Going* represents the Basic Social Process of how self-employed mothers manage their multiple life roles so that they can continue on with their entrepreneurship. Self-employed women with children are motivated to manage their multiple roles by a strong sense that they are living their values (to which their hopes for the future contribute). In other words, self-employed women with children see entrepreneurship as a means to living their values in the present and to laying the groundwork for their envisioned future. In order to "stay the course" amid changing demand experiences of "balance" among their multiple roles, self-employed women with children engage very deliberately and effortful in a (basic social)

Process of Keep Going. They make use of supports and resources from a necessary base of feeling supported and develop creative strategies to help them manage their multiple roles, making choices and adapting based on their long-term vision which is shaped by core values, and by remembering the push factors that led to the choice of entrepreneurship in the first place. There is a remembering [of] the pull to entrepreneurship as a means to living [their] values in the present and, together with an envisioning [of] the future, to build and move towards a hoped-for future. Figure 1 provides a visual overview of the theory. I will next describe participant profiles, followed by a description of the overall context *Being a Mother Entrepreneur*.

The critics point out that the new law will benefit only a minuscule percentage of women employed in the organized sector while ignoring a large demographic toiling in the country's unorganized

sector such as contractual workers, farmers, casual workers, self-employed women and housewives. According to Sudeshna Sengupta of the Right to Food Campaign, India sees 29.7 million women getting pregnant each year.

"Even if the law is fully implemented," the activist told IPS, "studies show that it will benefit only 1.8 million women in the organized sector leaving out practically 99% of the country's women workforce. If this isn't discrimination, what is? In India, women's paid workforce constitutes just 5% of the 1.8 million. The rest would fall within the unorganized sector.

Kavita Krishnan, secretary of the All India Progressive Women's Association, opines that maternity benefits should be universally available to all women, including wage earners and entrepreneurs.

"But the act ignores this completely by focusing only on women in the organized sector. In India most women are waged workers or do contractual work and face hugely exploitative work conditions. They are not even recognized under the ambit of labour laws. The moment a woman becomes pregnant she is seen as a liability. The new law has no provisions to eliminate this mindset," The Mompreneurs who work from home, be it Tiffin-providing business or IT services, they are equally eligible for the maternity act benefits.

Another glaring flaw in the new legislation, say activists, is that it makes no mention of paternity leave, putting the onus of the newborn's rearing on the mother. This is a blow to gender equality, they add. Global studies show lower child mortality and higher gender equality in societies where both parents are engaged in child rearing. Paternity leave doesn't just help dads become more sensitive parents, show studies, it extends a helping hand to new moms coming to grips with their new role as a parent.

According to Dr. Mansi Bhattacharya, senior gynecologist and obstetrician at Fortis Hospital, Noida, Uttar Pradesh, there's no reason why fathers should not play a significant role in childcare.⁵ In order to stay the course as entrepreneurs while managing multiple life roles, self employed women with children need to experience feeling supported, and develop creative strategies to help them manage these roles, making choices and adapting based on a long-term vision which is shaped by core values and remembering the "push" factors that led to the choice of entrepreneurship in the first place.

Latest Development: (For working women)

On 9 Mar 2017, Loksabha passed the bill. Women working in the organized sector will now be entitled to paid maternity leave of 26 weeks, up from 12 weeks. The new law will apply to all establishments employing 10 or more people and the entitlement will be for only up to first two children. For third child, the entitlement will be for only 12 weeks.

The Union Cabinet, headed by Prime Minister Narendra Modi, and Rajya Sabha, on 11 Aug 2016, have approved the amendments to the existing maternity benefits laws that seek to double maternity leave for women from three months to six months for all companies that employ more than 10 people.

Once passed this law will come into effect immediately unless the law states a starting date. All

new mothers who are into 0–26 weeks of their maternity should automatically get covered under the 26 weeks benefits. E.g. a new mother who is into 4 months of her maternity and has already exhausted her maternity leave will also be entitled for 26 weeks leave benefit. For mothers who have already completed 26 weeks of maternity, crèche facility, work from home benefits will help.

Maternity Benefits for Mompreneurs in Constitution; Across the Globe.

According to the Office for National Statistics, there are 4.5 million self-employed people in the UK, a third of who are women. They make up 15 per cent of the overall workforce, up from 13 per cent in 2008 and 8.7 per cent in 1975. The shift has driven up employment figures during the recession and helped to hold down levels of unemployment. Since 2008, about two thirds of the 1.1 million extra jobs created have been freelance roles.

While some self-employed women would currently qualify for maternity allowance, the new proposals might look to mirror enhanced contractual maternity pay provided by some employers. The question for many about such a proposal would be how such benefits would be funded at a time when cutting costs is still very much on the government's agenda. It's also worth considering how these changes might affect employers who rely on independent contractors. We may see increases in the amount of maternity leave being taken by those workers if they are in receipt of better maternity pay.

This new initiative certainly correlates with the direction of government policies for employees, but potentially it could increase the strain that some employers argue they suffer as a result of increased family friendly legislation. The shared parental leave legislation, for example, is complicated and the additional administration involved could make it difficult for employers to manage. It could leave many employers anxious about potential claims of discrimination if they get things wrong or don't follow the right process, especially as compensation in discrimination cases is potentially unlimited.⁶

Self-employed Canadians can access Employment Insurance (EI) special benefits by entering into an agreement, or registering, with the Canada Employment Insurance Commission. There are five types of EI special benefits:

Maternity benefits are for mothers who give birth. These benefits cover the period surrounding the child's birth (up to 15 weeks). Maternal benefits are for any parent (specially mother) to care for their newborn or newly adopted child or children. Either parent can receive benefits, or they can share benefits between them (up to 35 weeks).⁷

Conclusion

Many women shared about the need to consciously remind themselves that they valued and saw value in their mothering work. There aren't a lot of pats on the back for doing a good job as a mom. Indian Constitution must provide a support system for mompreneurs. The mothering role is central to a mother entrepreneur's experience of entrepreneurship regardless of the type of business, the most recent definition and empirical evidence of "mompreneurship" places importance on the link between the business opportunity and the mothering role. It may be useful for some to

preserve a definition of a distinct sub-group of entrepreneurs identified as "mompreneurs" as those whose businesses are more obviously linked to the experience of having children, however it is important not to assume that mother entrepreneurs whose ventures are focused in less traditional industries have less attachment to the mothering role. Future studies need to carefully define the "mompreneur" or mother entrepreneur maternity benefits, and to delineate between the two so that findings are interpretable.

At the level of three wings of the government, i.e. Legislature, Executive and Judiciary there should be coordinate co-operation in the efforts made for the proper implementation of labour legislations. The Legislature should remove all the defects in the provisions of the labour laws pertaining to women workers The Executive should streamline in activities and implement and enforce the provisions concerning women workers. For those matter competent and trained personnel including lady inspectors to be engaged for better execution.

Thus, Women will be well –aware about their maternity benefits and will be able to fly high in the sky of opportunities that the world offers.

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(Footnotes)

