THE CODE ON SOCIAL SECURITY (AMENDMENT) BILL, 2021

By

DR. HEENA VIJAYKUMAR GAVIT, M.P.

A BILL

to amend the Code on Social Security, 2020.

Be it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Code on Social Security (Amendment) Bill, 2021.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In section 2 of the Code on Social Security, 2020 (hereinafter referred to as the Code), after clause (25), the following clause shall be inserted, namely: —

“(25A) ‘doctor’ means registered gynaecologist practicing in any registered hospital or maternity center;”.

3. In section 59 of the Code, after sub-section (4), the following sub-section shall be added, namely: —

“5. (1) Every pregnant woman during the pregnancy period shall be entitled to half day paid leave as pre-maternity benefit for every routine health check-up or medical tests as may be prescribed by a doctor subject to a maximum of five half days paid leave in a month:

Provided that if a pregnant woman undergoes medical tests prescribed by doctor on the day of routine health check-up, such woman shall be eligible to avail two half days paid leave on the same day.

(2) Every pregnant woman entitled to pre-maternity benefit under sub- section (1) shall furnish the prescription of doctor and payment receipt of laboratory to avail the benefit in such manner as may be prescribed.”.

4. In section 60 of the Code,—

(i) in sub-section (3), —

(a) for the words “twenty-six weeks” the words “thirty-four weeks” shall be substituted;

(b) before the first proviso, the following proviso shall be inserted, namely: —

“Provided that the maximum period entitled to maternity benefit by a woman having two or less than two surviving children shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery.”

(ii) for sub-section (4), the following sub-section shall be substituted, namely: —

“(4) A woman who legally adopts a child below the age of five years or a commissioning mother shall be entitled to maternity benefit for a minimum period of twelve weeks which may extend upto a maximum of twenty-six weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.”.
STATEMENT OF OBJECTS AND REASONS

Convention on the Elimination of All Forms of Discrimination against Women recognizes right to work as an inalienable right of all human beings. In order to safeguard these rights, one of the appropriate measures called upon to be introduced is maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances. The Constitution has not given express recognition to the fundamental right to work. However, article 41 encapsulates right to work as a Directive Principles of State Policy. The right to work is inherent to a life with dignity and should be read with articles 14, 15, 16 and 21 of the Constitution to understand the nature of the obligation of the State in order to ensure the effective realization of this right.

Greater gender equality enhances economic productivity and improves development outcomes for the next generation while making institutions and policies more representative. The Bill seeks to achieve the goal set under article 41 of the Constitution by securing the right to work for women without adversely affecting their inherent reproductive right to bear children. It shall be noted that with forty-eight per cent of Indian population being female, such provisions will assist in post-natal care of the children born to a working mother reducing the strain on working force thereby improving the Gross Domestic Product (GDP) through women participation.

Every pregnancy is special and every pregnant woman should receive special care. Any pregnant woman can develop life-threatening complications with little or no advance warning, so all pregnant women need access to quality ante-natal services to detect and prevent life-threatening complications during childbirth.

The Code on Social Security, 2020 was enacted to provide benefits of continuous paid leave pre and post-delivery. But this Code doesn’t cover the paid leave required by a pregnant woman for regular visits for health check-ups and for other related services. In many cases, many working pregnant women either defer or do not go for regular check-ups as they cannot afford half day or day off or they are denied leave to undergo visit to doctors.

The World Health Organization (WHO) in its research has also recommended that babies must be exclusively breastfed for six months. Such dietary exclusiveness for new-born baby has advantages like lower risk of gastrointestinal infection for the baby. The Bill seeks to introduce such a well-crafted maternity leave provision to reduce infant and child mortality in consonance with the research posited by the WHO. Thus, the present provision has resulted in women workforce in India unwillingly working till their ninth month of pregnancy to ensure safe nutrition to their progeny.

The Law Commission of India in its 259th Report has also suggested that “Provision of maternity benefits should be made obligatory on the State and not left to the will of the employers and should cover all women.” It is the primary duty of the State to ensure equality amongst its citizens. As the legal guardian responsible for the safety and security of all its citizens, the State is duty bound under the Preamble and Chapter III of the Constitution to provide equal opportunity and equal protection under law.

Furthermore, the Supreme Court of India in the case of Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Another AIR 2000 SC 1274 held that “...the employer to be considerate and sympathetic towards working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honorably, peaceably, undeterred by the fear of being victimized for forced absence during pre or post natal period...”. However, the Maternity Benefit Act, 1961 has been repealed by the Code on Social Security, 2020.
The need is also to ensure that women are not treated unequally or have to make exception with their child’s health, thereby making State accountable for fulfilling its responsibility towards them.

The Bill, therefore, seeks to amend the Code on Social Security, 2020 with a view to provide for:

(a) every pregnant woman during the pregnancy period shall be entitled to half day paid leave as pre-maternity benefit for every routine health check-up or medical tests as may be prescribed by a doctor subject to a maximum of five half days paid leave in a month;

(b) extension of maternity benefit from “twenty-six weeks” to “thirty-four weeks”;

(c) extension of maximum period entitled to maternity benefit by a woman having two or less than two surviving children from “twelve weeks” to “twenty-six weeks”; and

(d) extension of maximum period entitled to maternity benefit by a woman who legally adopts a child below the age of five years or a commissioning mother from “twelve weeks” to “twenty-six weeks” from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

Hence this Bill.

NEW DELHI; HEENA VIJAYKUMAR GAVIT

November 17, 2021.
ANNEXURE

EXTRACT FROM THE CODE ON SOCIAL SECURITY, 2020

(36 OF 2020)

3. In this Act, unless the context otherwise requires,—

Definitions.

(25) “dock work” means any work in or within the vicinity of any port in connection with, or required for, or incidental to, the loading, unloading, movement or storage of cargoes into or from ship or other vessel, port, dock, storage place or landing place, and includes—

(i) work in connection with the preparation of ships or other vessels for receipt or discharge of cargoes or leaving port;

(ii) all repairing and maintenance processes connected with any hold, tank structure or lifting machinery or any other storage area on board the ship or in the docks; and

(iii) chipping, painting or cleaning of any hold, tank, structure or lifting machinery or any other storage area in board the ship or in the docks;

59. (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

Employment of, or work by, women prohibited during certain period.

(4) The period referred to in sub-section (3) shall be—

(a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;

(b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 62.

Explanation. — For the purposes of this section, the expression “any work of arduous nature” shall mean any work which involve or require strenuous effort or is difficult and tiring in nature.

60. (1) Subject to the other provisions of this Code, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, and any period immediately following that day.

Right to payment of maternity benefit.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the expected date of her delivery:

Provided that the maximum period entitled to maternity benefit by a woman having two or more surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:
Provided further that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided also that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

Explanation.— For the purposes of this sub-section, “child” includes a stillborn child.

(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.
LOK SABHA

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