

## Maternity Benefits (Amendment) Act, 2017

### Why in news?

Recently, the Supreme Court has agreed to hear a Public Interest Litigation (PIL) which challenges the Section 5(4) of the Maternity Benefit Act, 1961 of being discriminatory on adoptive mothers

### What is the section 5(4) of Maternity Benefits (Amendment) Act, 2017?

- Sec 5(4) was not in the original act of 1961 and was later inserted in the amendment act, 2017.
- It states that a woman who legally adopts a child *below the age of 3 months* or a commissioning mother shall be entitled to maternity benefit for *12 weeks*.
- Commissioning mother refers to a surrogate mother and has been defined as a biological mother who uses her egg to create an embryo implanted in any other woman

*Under the act, a woman adopting a child older than 3 months gets no benefits*

### What are the issues with Sec 5(4)?

- **Adoptive mothers** - It is discriminatory and arbitrary towards mothers who adopt children above the age of 3 months.
- **Orphaned Children** - It is discriminatory against the orphaned, abandoned or surrendered children above the age of three months.
- **Discriminatory** - The act allow 26 weeks of paid leave for biological mothers whereas only 12 weeks for adopted mothers.
- **Incompatibility** - It is incompatible to the objective of the Maternity Benefit Act as well as the [Juvenile Justice Act, 2015](#).
- **Adoption procedure** - Due to the prevailing delays in adoption procedure, it is almost impossible for a mother to adopt a child less than 3 months old.

### What is the Maternity Benefits (Amendment) Act, 2017?

- It extends women's paid maternity leave from *12 to 26 weeks*.
- Of these, up to 8 weeks can be taken pre-delivery.
- Enterprises with 50 or more employees *must provide crèches*.
- They should allow the mother 4 crèche visits, daily.
- The costs of these benefits are to be borne *solely by employers*.
- It allows women to *work from home* after availing the maternity leave.
- Women with 2 or more children get reduced entitlements.

## What are the concerns with the Act?

- **Unorganised sector** - The Maternity Benefits Act, 2017 does not apply to the unorganised sector.
- Around 93% Indian women workers are in the informal sector.
- **Cost** - The high costs of maternity leave drive companies to discriminate against women in higher-level jobs.
- **Childcare** - Childcare is treated solely as women's responsibility.
- In India, central government employees get only 15 days of paternity leave.
- **Reduced roles** - A woman returning to work after a gap year due to maternity has to reconcile to reduced roles.

## What could be done?

- **Gap management structure** - Organizations need to build a gap management structure to handle maternity breaks.
- **Incentive to Employers** - Give employers an incentive to hire more women in form of tax benefits, or women centric schemes.
- **Attitudinal shift** - For true integration and inclusiveness of women at all levels, there needs to be an attitudinal shift and a reorientation of government policies at the implementation level.
- **Fund for women** - The Centre promises to set up a fund for women in the unorganised sector under the Code of Social Security, 2020.
- State governments should also set up and administer separate social security funds for unorganised workers.
- **Gender parity** - Men and women have to shoulder the responsibility of child care roles.
- **Economic right** - Redefine maternity as a fundamental economic right because women are bringing the nation's future workforce.

## References

1. [The Indian Express | Maternity Benefits to adoptive mothers](#)
2. [Indian Express | Maternity Benefits Act](#)