

**LEGISLATION PERTAINING TO  
MATERNITY BENEFITS**

**Report No. 27**

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## **Legislation Pertaining to Maternity Benefits**

The Pakistan Law Commission in its meeting held on 20 June 1998 discussed and approved certain amendments in the laws/rules pertaining to maternity benefits admissible to working women. The Commission expressed the view that the sums/figures prescribed in various statutes require review so as to be rationalised, in keeping with the changes that have occurred and the rate of inflation. The Commission further emphasised upon the need for uniform application and effective enforcement of the law/rules. The Commission examined and approved the following report:

### **Introduction**

The provision of maternity benefits to working women is an important condition of service/employment, the absence of which puts such women at a disadvantageous position vis-a-vis their male counterparts. The right to maternity benefits is enshrined in several international human rights instruments and ILO conventions. Says the Universal Declaration of Human Rights, "motherhood and childhood are entitled to special care and assistance" [1]. The Declaration further states that Member States must ensure that everyone gets "just and favourable condition of work" [2]. The International Covenant on Economic, Social and Cultural Rights 1966 provides for special protection to be accorded to mothers during a reasonable period before and after child birth, including paid leave or leave with adequate social security benefits [3].

## **The Law**

The Constitution of Pakistan directs the State to ensure "maternity benefits for women in employment" [4]. Legislation exists for implementing this important directive. Thus, under the Civil Servants Rules [5], maternity leave is admissible to a female civil servant on full pay for upto 3 months, outside the leave account. Such leave may not be granted for more than 3 times in the career of such civil servant. Such restriction, however, does not apply to a female civil servant employed in a vacation department. Maternity leave, again, may be granted in continuation of, or in combination with, any other leave, admissible to a civil servant.[6] Similarly, the West Pakistan Maternity Benefit Ordinance 1958 which applies to the whole of Pakistan provides that women employed in an establishment, whether industrial, commercial, or otherwise, shall be paid wages during maternity leave for 12 weeks i.e. 6 weeks before and 6 weeks after delivery. Violation of the law is made punishable with fine. Rules have been framed for carrying out the purposes of this Ordinance.[7] The Mines Maternity Act 1941 also provides for 12 weeks paid maternity leave.[8] The Act also prohibits the employment of or work by pregnant women in a mine during specified period before and after delivery.[9]

## **Suggestions for Reform**

A careful examination of the relevant maternity benefit laws reveals certain gaps and loopholes, which need to be addressed and resolved. The legislation needs a comprehensive review with a view to modernise its provisions in the light of changes and developments that have occurred, particularly the rate of inflation and the rising cost of living. Accordingly, the Pakistan Law Commission proposes the following amendments:

- (1) The Mines Maternity Benefit Act is fairly old and the sums and figures mentioned therein particularly the amount of wages payable, as maternity benefits need to be rationalised. The sum of "twelve annas"[10] payable per day as paid maternity leave was prescribed long ago and is too inadequate. This amount must be enhanced and fixed at the rate of half of the monthly wages payable to a working woman.
- (2) Maternity benefits permissible both under the Mines Maternity Benefit Act and West Pakistan Maternity Benefit Ordinance should be made payable only twice during the service tenure of a woman worker. Similarly, Rule 13 of the Revised Leave Rules 1980 applicable to civil servants should also be amended and maternity leave admissible therein thrice should be reduced to two times. And for the sake of uniformity, the same principle should apply to all Federal and Provincial Government agencies/corporations.
- (3) The penal provisions prescribed for contravention of the law also need to be reviewed as the sums mentioned as fine i.e. rupees 500[11] is too inadequate to deter an offender from committing a breach of the law. The penalty may, therefore, be enhanced to rupees 20,000.
- (4) In addition to legislative measures the Government should also take necessary steps, in collaboration with non-government organisations, professional bodies and the media, to ensure the effective implementation of the law.

## References

1. Article 25
2. Article 23
3. Article 10
4. Article 37(e)
5. Made u/s 18 of the Civil Servants Act 1973
6. Rule 13 of the Revised Leave Rules 1980, ESTA Code 1989, p 703
7. The West Pakistan Maternity Benefit Rules 1961
8. Section 5
9. Section 3
10. Section 5
11. Section 13 of the Maternity Benefit Act and section 9 of the WP maternity benefit Ordinance.

## **Draft Amendment**

An Act further to amend "The Mines Maternity Benefit Act 1941.

Whereas it is expedient further to amend the Mines Maternity Benefit Act 1941 (XIX of 1941) for the purposes hereinafter appearing.

It is hereby enacted as follows.

1. Short title and commencement.- (1) This Act may be called the Mines Maternity Benefit (Amendment) Act 1998.  
  
(2) It shall come into force at once.
2. Amendment in section 5 of the Act.- (1) In section 5 of this Act, the words "twelve annas a day for everyday" be deleted and substituted by the words "half of the monthly wages".

(2) A further proviso shall be added as under:

Provided further that this benefit shall be admissible only twice during the service of a working woman.

3. Amendment in section 13(1) of the Act.

In section 13(1) of this Act the words "five hundred" be substituted by the words "twenty thousand".

### Statement of Objects and Reasons

The provision of maternity benefits to working women is an important condition of service/employment, the absence of which puts working women at a disadvantageous position vis-à-vis their male counterparts. The rates payable i.e. twelve annas per day as maternity benefit fixed in 1954 are too inadequate. The Pakistan Law Commission, therefore, seeks to rationalise such rates. The amendment further seeks to restrict the payment of maternity benefits to two terms, to achieve the objectives of Government policy on family planning. The penalty of Rs 500/- prescribed, as penalty also needs to be rationalised, hence, enhanced to Rs 20,000/-.

## **Draft Amendment**

An Act further to amend the "West Pakistan Maternity Benefit Ordinance 1958".

Whereas it is expedient to amend the West Pakistan Maternity Benefit Ordinance 1958 for the purposes hereinafter appearing.

It is hereby enacted as follows:

1. Short title and commencement.- (1) This Act may be called the West Pakistan Maternity Benefit (Amendment) Act 1998.

(2) It shall come into force at once.

2. Amendment in section 4 of the Ordinance 1958.

In section 4 of the Ordinance 1958, after the existing proviso a further proviso shall be added as follows:

Provided further that this benefit shall be available only twice during the service tenure of a working woman.

3. Amendment in section 9 of the Ordinance 1958.

In section 9, sub-section 1, for the words "five hundred", the words "twenty thousands" shall be substituted.

### Statement of Objects and Reasons

The provision of maternity benefits to working women is an important condition of service/employment, the absence of which puts working women at a disadvantageous position vis-à-vis their male counterparts. This draft amendment proposed by the Pakistan Law Commission seeks to limit the benefit of maternity benefit two terms in the service career of a working woman, so as to achieve the objectives of Government policy on family planning, and further seeks to rationalise the amount specified as penalty for breach of law.

## **Amendment in the Revised Civil Servants Leave Rules 1998**

Whereas it is expedient to amend the Revised Civil Servants Leave Rules 1980.

It is hereby amended as follows:

1. Short title and commencement.- (1) These rules may be called the Revised (Amendment) Leave Rules 1998.
  - (2) They shall come into force at once.
2. Amendment in Rule 13 of the Revised Leave Rules 1980.
  - (1) In sub-rule 2 of rule 13, the word ‘three’ shall be substituted by the word ‘two’.
  - (2) In sub-rule 3 of rule 13, the word ‘third’ be substituted by ‘second’.



