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

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