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PARENTS OF SURROGATE CHILD ENTITLED TO MATERNITY AND PATERNITY BENEFITS: “DR POOJA DOSHI VS STATE OF MAHARASHTRA, 2019”.

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ABSTRACT :

As the constitution guarantees the equality of all genders, recent developments in the acknowledgment and acceptance of "other gender" have sparked discussions about expanding rights and regulations to include the LGBTQ community. A long examination of labor regulations and maternity rights is one of these topics. When a mother is working, maternity benefits are offered to maintain the dignity of motherhood by ensuring the well-being of both the mother and her child. Thus, the Maternity Benefits Act of 1961 is applicable to businesses with more than 10 employees, including factories, mines, plantations, stores, and businesses; it may also be expanded to include other businesses by state governments.

According to Article 39(e) and (f) of the Indian Constitution, the state must make sure that the policies protecting the health and vitality of workers, men, women, and children are in place. that they refrain from engaging in labour that is not suited to their age or strength due to financial obligations. Surrogate moms and mothers who adopt a child older than three months are not referenced in the Maternity Amendment Bill 2017, despite there being provisions that discuss the act's intention to promote natural justice. Therefore, there is no provision for mothers in these categories.

This article illuminates the status of maternity and paternity benefits in the case of being parents of a surrogate child with help of the famous case of DR POOJA JIGNESH DOSHI VS STATE OF MAHARASHTRA.

INTRODUCTION :

The Latin word "surrogatus," which means "assigned to act in the place of," is the source of the English word "surrogate." A woman who agrees to carry the baby and go through gestation is necessary for the surrogacy process. The couple who requested the child is then given the child after birth. The lady who is carrying it only serves as a gestational carrier. In the well-known practise of surrogacy, a woman consents to become pregnant with the intention of carrying the child to term and giving birth to it. She won't raise the child; instead,

she'll deliver it to the person that signed the deal. She may be the biological mother of the child (the more conventional kind of surrogacy), or she could act as a gestational carrier and carry the pregnancy to term after receiving an embryo implant.

The division bench of the High Court of Bombay (Court) reaffirmed that even in the case of the birth of a child by surrogacy, the parents who have lent the rights to maternity leave and paternity leave would apply to sperm and ova, respectively. The case was *Dr. Pooja Jignesh Doshi v. The State of Maharashtra and Another* [Writ Petition No. 1665 of 2015,¹ decided on 3 July 2019]. In its decision in *Dr. Mrs. Hema Vijay Menon v. State of Maharashtra* [Writ Petition No. 3288, rendered on July 22, 2015],² the Court's division bench reiterated the law.

The aforementioned examples featured circumstances that existed before April 1, 2017, when the government inserted an express amendment to maternity benefits by the Maternity Benefit (Amendment) Act, 2017 (effective as of April 1, 2017), provision to the Maternity Benefit Act, 1961, stipulating that even a commissioning mother (i.e., a biological mother who uses her egg to create an embryo implanted in any other woman) shall be entitled to paid maternity leave of 12 weeks beginning on the day the child is handed over.³ A commissioning father is likewise entitled to paternity leave, according to a ruling by the High Court of Bombay. Paternity leave is now not statutorily required in India and is mostly an optional benefit.

FACTS OF CASE :

Because she was unable to have a second child and came to the conclusion that her son, who was delivered with her husband's approval, needed a sibling, the petitioner decided to use a surrogate. On November 5, 2012, the surrogate mother gave birth to a girl.

But before that, in light of the anticipated delivery date, the petitioner requested maternity leave in order to care for the surrogate child. The petitioner has been denied the same on the grounds that maternity leave for a surrogate kid is not permitted by the Leave rules and the policy controlling rules.⁴

¹ *Dr. Pooja Jignesh Doshi v. The State of Maharashtra and Another* [Writ Petition No. 1665 of 2015]

² *Dr. Mrs. Hema Vijay Menon v. State of Maharashtra* [Writ Petition No. 3288, rendered on July 22, 2015]

³ <https://theswaddle.com/know-your-rights-maternity-leave/>,

<https://www.icsi.edu/media/portals/22/Article%20on%20MBA%20Act,%202017.pdf>

⁴ <https://aishwaryasandeep.com/2022/02/26/landmark-judgments-on-maternity-benefits-act-1961/>

This led to the current writ petition under Article 21 of the Indian Constitution.

MATERNITY BENEFIT ACT :

Maternity benefits are a significant step toward achieving gender equality, particularly in the workplace. There is a great need for these advantages because they support both the mother's and kid's healthy growth as well as the safe delivery of the infant. In 1961, the Indian parliament established maternity benefits legislation. The most recent amendment to the law was made in 2017, extending maternity leave from 12 to 26 weeks and adding several new perks, including access to childcare facilities, the opportunity to work from home, and maternity benefits for adoptive mothers and commissioning mothers. The act has significantly advanced since the modification, although it is still far from ideal.

The numbers of female workers covered under the act are still very few and it seems as if there is not much awareness about the maternity benefits, especially about the amendment. There is one strange clause in this act which is often criticized that the maternity leave will remain 12 weeks for females who have 2 or more children. The courts have taken a very liberal view when dealing with maternity benefits cases. They have applied the act in expanded form since it is social legislation and have granted relief to a large number of female workers. This project discusses the provisions of the Maternity Benefit Act, of 1961 and its 2017 amendment.

Motherhood is a beautiful and the most natural phenomenon in a woman's life. The employer should be sympathetic and considerate towards an employed pregnant lady. The employer must realize the physical and mental difficulties which a working woman would face at the workplace, during both pre and post-natal phases. Maternity benefits should be provided to every woman, which is the amount payable to her at the rate of the average daily wage for the period of her actual absence. Maternity benefits are important for a woman to give quality time to her child without worrying about whether she will lose her job and her source of income. Women should be able to withdraw themselves from the workforce during late pregnancy until a few weeks after the birth of a child to preserve their health and take care of their child. During this period, they also need some income for medical expenses, etc., therefore a law should be made for maternity benefits so that women can ensure their

productivity as well as reproductivity. The existence of such a law is very important for women's rights and women's economic security.

MATERNITY BENEFIT ACT, 1961 :

The Maternity Benefits Act, of 1961 was enacted by the Indian government to provide women with a level playing field and an equitable environment in workplaces. This act is aimed at securing the well-being of women. To "control the employment of women in certain establishments for specific periods before and after childbirth and to provide for maternity benefit and certain other advantages," according to the act's objectives. The Maternity Benefits Act, social justice ideals, and DPSPs all work to improve the social standing of women.

The cost of conferring benefits on female employees is overwhelmed and outweighed by the benefits arising from it. This was reiterated by the Delhi High Court in *Dr. Ankita Baidya vs. Union of India & Ors.*⁵ The Court noted that the Maternity Benefit Act, being in the nature of a piece of social welfare legislation, its reach and sweep has to be as expansive as possible, rather than limited by any pedantic considerations of word or phrase⁶.

The Maternity benefit act extends to the whole of India and covers female employees in any shop or establishment employing 10 or more persons. The definition of establishment includes factories, mines, plantations, and establishments where people are employed for the exhibition of equestrian, acrobatic, and other performances⁷. Further, casual and daily wage workers are also covered by the Act. A woman is eligible for maternity benefits if she has been employed for 80 days or more in the 12 months preceding delivery.

According to the original act, a female employee is entitled to 12 weeks of maternity leave. These weeks cannot exceed six weeks before the due date. An employee is entitled to leave for six weeks after a miscarriage⁸ or medical termination of pregnancy under the Maternity Benefit Act, and they are also granted two weeks of leave following a tubectomy operation⁹.

⁵ *Dr. Ankita Baidya vs. Union of India & Ors*

⁶ Jadon, M. S. and Bhandari, A. (2019) "Analysis of the Maternity Benefits Amendment Act, 2017 and its Implications on the Modern Industrial Discourse", *Christ University Law Journal*, 8(2), pp. 63-84. doi: 10.12728/culj.15.4.

⁷ Maternity Benefit Act, 1961 (Act 53 of 1961) s. 3(e)

⁸ Maternity Benefit Act, 1961 (Act 53 of 1961), s. 9

⁹ Maternity Benefit Act, 1961 (Act 53 of 1961), s. 9A

A female employee who has a pregnancy-related ailment is also entitled to a maximum of one month of extended leave¹⁰.

According to the act¹¹, a female employee who is on maternity leave must be compensated at the rate of her average daily income by her employer. Additionally, when on leave due to a miscarriage, a tubectomy, or a pregnancy-related sickness, the average daily wage must be paid. Additionally, a mother is entitled to two nursing breaks per working day and a medical bonus¹² of 3500 rupees till her child is 15 months old¹³.

According to the Act, a woman cannot be fired for taking a leave of absence in accordance with its requirements, nor can she be denied benefits under the Act due to procedural errors¹⁴. Giving notice of termination or dismissal on a day when it will expire while an employee is on maternity leave is also illegal. It's important to keep in mind that the act gives the State Government the authority to apply the Act to any other establishment.

A woman has sixty days to challenge a decision if she is denied maternity benefits or a medical bonus, or fired or demoted while on maternity leave or because of it. She may do this by approaching an Inspector appointed in accordance with the Act. If she disagrees with the Inspector's orders, she has thirty days to file an appeal with the designated authorities. If she disagrees with the Inspector's rulings or there is a more significant legal issue, she may also launch a lawsuit within a year.

According to the ruling in the B. Shah Case, "While interpreting helpful pieces of legislation like the Maternity Benefits Act, emphasis must be provided to its intentions, which in this case happen to provide much-needed social justice to women employees employed in particular work facilities. The Court went on to say that such Acts must be construed in accordance with the Beneficent Rule of Construction concept because they effectively fall under the ambit of Article 42 of the Constitution.¹⁵ With the help of this building rule, the female worker would be able to maintain her standard of living while also compensating for

¹⁰ Maternity Benefit Act, 1961 (Act 53 of 1961), s. 10

¹¹ Maternity Benefit Act, 1961 (Act 53 of 1961), s. 5(1)

¹² Maternity and work, available at <https://paycheck.in/labour-law-india/maternity-and-work>

¹³ Maternity Benefit Act, 1961 (Act 53 of 1961), s. 11

¹⁴ Maternity Benefit Act, 1961 (Act 53 of 1961), s. 12

¹⁵ <http://burnishedlawjournal.in/wp-content/uploads/2021/07/Analysis-of-the-Maternity-Benefits-Amendment-Act-2017-By-ANSHUL-GUPTA.pdf>

lost energy, and caring for her infant while maintaining her work efficiency and production levels.

The purpose of offering such perks is to maintain working women's productivity, which is advantageous to the long-term interests of both employers and employees.¹⁶

MATERNITY BENEFIT AMENDMENT ACT, 2017 :

The 2017 revisions to the Act are the result of groundbreaking actions conducted by labour justice unions and women's rights organizations to include female laborers. The Central Civil Services (Leave) Rules, 1972 (CCSL Rules), which for the first time implemented a "Six Months Paid Leave Policy" for Central Government Employees, and the provisions of the Sixth Central Pay Commission (For Maternity and Child Care Leave) are two of the major amendments that were made.¹⁷ In 2000, the International Labor Organization (ILO) created the Maternity Protection Convention, which stipulated that women must be given at least 14 weeks of maternity leave. Furthermore, one of the Sustainable Goals identified by the UN is Maternal Health.¹⁸ The Universal Declaration of Human Rights article 25(2) states that mothers and children have a right to special care and assistance.

If the establishments are covered by section 2 of the Act, the Act, which went into effect on April 1, 2017, applies to all women workers who are employed in both the organized and unorganized sectors. The changes will benefit the 1.8 million women who work in the organized sector¹⁹.

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¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ United Nations, Sustainable Goals, Goal 3: Ensure healthy lives and promote well-being for all at all ages; UNITED NATIONS, (Jan. 1st, 2016) available at: <http://www.un.org/sustainabledevelopment/health/>

¹⁹ Jaya Sharma Singhania, An analysis on maternity benefit act, available at http://jsacs.com/image/AN_ANALYSIS_ON_MATERNITY_BENEFIT_ACT.pdf

The Maternity Benefit Act of 1961 has undergone the following modifications:

- The maternity benefit term was extended from 12 to 26 weeks for mothers with two living children.
- 12 weeks of maternity benefits for both "commissioning mothers" and "adopting mothers."
- The option to "Work from Home," which may be used following the 26-week vacation term.
- Mandatory availability of crèche (daycare) services for businesses with 50 or more employees.

According to the original act, the maternity benefit should not be used before six weeks have passed since the due date. This is changed in the amendment to eight weeks. The maternity leave will only be available for 12 weeks for women with two or more children, and they must apply for it at least six weeks prior to the due date.

The law also grants 12 weeks of maternity leave to mothers who are commissioning new officers as well as women who legally adopt infants under 3 months old.²⁰ A biological mother who utilizes her egg to conceive a surrogate kid is known as a commissioning mother. The start date for calculating the 12-week maternity leave will be the day the child is given to the commissioning or adoptive mother.²¹

Every business is required to provide a woman with printed and electronic information about the maternity benefits that are available to her at the time of her appointment. The Act also grants working women a unique chance to work from home. Within 500 meters of the institution, women employees have access to crèche services. Additionally, a woman is permitted a total of six breaks, with nursing breaks totaling two and the number of crèche visits being four.

SURROGACY AND THE LAWS ON MATERNITY BENEFITS :

High courts in India have been debating an intriguing legal issue for the past few years: is maternity leave due to a woman employee who has given birth through surrogacy? Five high courts have ruled on cases involving this topic: the Madras High Court, Kerala High Court, Delhi High Court, Bombay High Court, and Chhattisgarh High Court. They have all

²⁰ <https://www.dailyexcelsior.com/all-about-maternity-benefit-act/>

²¹ <http://www.nationalistonline.com/blog/empowering-women-through-welcome-changes-in-maternity-leave-law/>

consistently ruled that a woman employee is entitled to this maternity leave regardless of how her child was delivered.

It's interesting to compare how they phrased the question and then responded. The high court is wrestling with the following issues as a result of the issues posed by all of these cases: Is surrogacy merely a product of technology? Is it something that the law did not foresee and is therefore not covered by the statute governing maternity benefits? Does it imply that our ideas of "motherhood" need to change? And what does the legislation governing maternity benefits actually aim to achieve?

Here, I try to compare and contrast the various stances the five high courts have taken on these issues. Even when the later judgments quote the older ones, applying precedent in this way is not automatic. In a judgment, judges express their opinions on a matter, and this influences how they answer subsequent questions. In the context of discussions around the Surrogacy (Regulation) Bill, 2016²², how judges see surrogacy would also be important.

The Bombay Maternity Benefit Act, passed in the province of Bombay in 1929, was the country's first maternity benefits law. 12 additional state or provincial statutes were subsequently passed before being merged into the Maternity Benefit Act of 1961. (Chhachhi 1998). The 1961 act, which is applicable to all factories, mines, plantations, circuses, and other establishments with more than 10 employees, ensures that female employees of such establishments will receive at least six weeks of paid time off following childbirth, miscarriage, or termination of pregnancy. A proposal to extend this time frame is now being considered.

The Madras High Court's 2013 decision in *K Kalaiselvi v. Chennai Port Trust*²³, which seems to be the first case to address the topic of maternity leave in the context of children born through surrogacy, was made in 2013. The Kalaiselvi case verdict from Justice K. Chandru is succinct and to the point. According to him, paying maternity benefits in accordance with the Port Trust's leave policies is neither improper nor unlawful per se. The court determined that there was no justification for denying such leave, even though there is no mention of

²² The bill text is available

at <http://www.prsindia.org/uploads/media/Surrogacy/Surrogacy%20%28Regulation%29%20Bill,%202016.pd>

²³ <https://indiankanoon.org/doc/28691523/>

surrogacy specifically because the regulations relating to maternity are construed to mean and cover surrogacy as well.

The following case, decided in June 2014, was *P Geetha v. the Kerala Livestock Department*²⁴, which was determined by the Kerala High Court. The court spends much time debating how to define motherhood legally in light of recent technological advancements like surrogacy. Contrary to natural births, when motherhood is truth, and adoption, where legal fiction declares someone to be the child's mother, surrogacy is both and neither. Despite not being born of the mother, the child has her genetic makeup, therefore it is not solely a legal fiction. At the end of the case, the high court chose to quote a few sermons from Oprah Winfrey and snippets of text from Richard Dawkins and Charles Darwin's works rather than offering a thorough definition of motherhood. The Kerala High Court, although noting and adopting the *Kalaiselvi* case, still restricts the benefits to those made accessible by the relevant legislation and, even then, disallows leave benefits related to the mother's health because a surrogate mother does not actually give birth to the child.

The claim that maternity benefits were exclusively intended to safeguard the woman's and the child's health and safety is unequivocally rejected by the Delhi High Court in its ruling in *Rama Pandey v. Union of India (2015)*²⁵, handed down in July 2015. The judge who rendered the decision in this case, Justice Shakti Chandra, bases his justification on the understanding of "maternity" as encompassing not just giving birth to a child biologically but also through adoption and surrogacy. To understand what surrogacy means in law and, consequently, what implications it has on the term "maternity" for the purposes of receiving maternity benefits, he does this by not only looking at the applicable rules but also other laws and the Supreme Court's decision in *Baby Manji Yamada v. Union of India (2008)*. Both the *Kalaiselvi* and *Geetha* examples are mentioned, but more so to support the argument than to agree with it entirely.

Additionally issued in July 2015, the Bombay High Court's decision in *Dr. Hema Vijay Menon v. State of Maharashtra (2015)*²⁶ attempts to define motherhood legally. It offers a solid and convincing defence for an extended conception of motherhood in the context of maternity benefits, and it was written by Justice Vasanthi Naik. Naik doesn't cite experts or

²⁴ W.P.(C). No. 20680 of 2014 (H)

²⁵ <https://indiankanoon.org/doc/125365715/>

²⁶ WRIT PETITION NO. 3288 OF 2015

other sources to support her claims about the nature of maternity. Her argument that maternity leave should take into account not just the physical but also the emotional and psychological components of pregnancy, particularly the relationship between the mother and child, is supported by logic (and perhaps real experience).

The Chhattisgarh High Court's 2017 decision in *Sadhna Agrawal v. State of Chhattisgarh*²⁷ is the most recent ruling on this subject. It bases its interpretation on the Constitution as well as the text. It states that Article 21 protects the right to life, which includes the right to motherhood. However, certain broad generalizations about parenting being the most natural thing for women are wrong. The approach appears to suggest that the maternity benefits law is a paternalistic act of kindness to women and not something necessary to allow them to participate in the workforce without seriously jeopardising the needs of the child and their own physical, emotional, and psychological needs. This is true even though these relate to observations made by the Supreme Court (*Municipal Corporation of Delhi v Female Workers [Muster Rolls] 2000*).²⁸

Prior to the implementation of the Act, the surrogacy industry—or, as it is more widely known, the "baby-making industry"—was booming in India due to a lack of suitable regulatory safeguards. It had become a \$2.3 billion/year flourishing industry thanks to hospitals.

The Surrogacy Bill²⁹ was introduced in India in 2016 and passed on December 18, 2018, two years later. The historic legislation sought to stop the spread of commercial surrogacy in India, a then-rising trend. By imposing such rules, the legislation attempted to achieve the benevolent objective of giving children to only those couples who were unable to conceive them.

JUDGEMENT OF THE CASE :

The issue is no longer *res Integra* (the term *res Integra* is used to describe those legal issues that have not been decided, which are unaffected by dictum or decision), but rather a legal issue that is not covered by the authority of a previous case, allowing a judge to reach a

²⁷ W.P.(S). NO. 4927/2016

²⁸ *Municipal Corporation of Delhi v Female Workers [Muster Rolls] 2000*).

²⁹ <https://prsindia.org/billtrack/the-surrogacy-regulation-bill-2019>

decision solely on the basis of principle. Res Integra, to put it simply, is something that has not been determined or settled. The Delhi High Court held in Rama Pande v. The Union of India on July 17, 2015, that parents who borrowed ova and sperm may be entitled to leave even in the event of a conventional birth. This ruling was cited by the Dench Bench of this Court in its ruling on Writ Petition No. 328 of 2015 Drs. Hema Vijay Menon Vs. The state of Maharashtra.³⁰ Both maternity and paternity leave is due to the mother.

As was already said above, a mother would also include a surrogate mother or a mother who commissions a kid. Any alternative interpretation would defeat the purpose of giving a mother who has given birth to the kid maternity leave.

In light of the aforementioned ruling, the Court determined that the petitioner was qualified for maternity leave for the surrogate child. As requested by the petitioner, it was ruled that the petitioner's various leaves be changed to maternity leave.

The finalized Division Bench judgment states that the applicant would be qualified for maternity leave.

Because the Paid Leave and Half Pay Leave attached to it must be recorded as maternity leave for the purpose of a leave account and because the stated leave received by the Applicant occasionally is converted into maternity leave,³¹ the applicant is entitled to receive the assistance requested in terms of the prayer [C].

CRITICISM OF MATERNITY BENEFIT ACT :

Women who labour in unorganised groups are not covered by the Act. Only a tiny minority of women will gain from the law, which ignores the vast majority of women who work as contract workers, farmers, and independent contractors. The unorganised sector employs around 90% of working women, who are not protected by the 1961 Act. The Law Commission of India suggested in 2015 that all women, even those employed in the unorganised sector,³² be included in the 1961 Act's provisions. In the unorganised sector, women may work as domestic helpers, seasonal employees, agricultural laborers, or construction workers. They might work for many employers and frequently work in ad hoc settings. Due to these circumstances, individuals might not be able to demonstrate their

³⁰ Drs. Hema Vijay Menon Vs. State of Maharashtra.

³¹ <https://www.whatishumanresource.com/Maternity-Benefit-Act-1961>

³² https://prsindia.org/files/bills_acts/bills_parliament/2016/PRS%20Legislative%20Brief%20_4.pdf

eligibility under the 1961 Act, which requires them to have worked continuously for 80 days in the year preceding the delivery.

The Amendment increased the length of maternity leave from the previous 12 weeks to 26 weeks. However, mothers who have two or more living children are not covered by this increase in maternity leave. These ladies will only be eligible for 12 weeks of leave. Under such social welfare Acts, India does not permit the public distribution of benefits.

Therefore, the expense of paying benefits must be covered by the employer, which might severely limit working women's future employment opportunities. With such a mishmash, the financial burden on the employer only grows. As a result, the employer may try to engage in undesirable activities like layoffs and retrenchments or may try to avoid paying for childcare and the subsequent taxation on such expenses, which may be detrimental to women's employability interests. One broad guiding principle in ILO recommendation no. 67 argues that income security should be arranged as far as feasible on the basis of mandatory social insurance, which is in direct conflict with the employer-liability principle.

Even while the goal of social laws is to improve access to justice, promote reasonability, and advance public welfare, these fundamental elements of the grand legislative intent have not been realized in the majority of these laws that have been passed. The inability of the weak and oppressed group of women to utilise these laws continues to be a barrier.

Although the Maternity Benefits Act promotes gender inclusion, preconceptions can be seen in the Act. For instance, India does not mandate paid paternity leave, in contrast to modern nations like Norway, Sweden, Ireland, and many others.

CONCLUSION :

Even while the legislature played a crucial role in passing laws like The Maternity Benefits Act of 1961, for millions of women across the nation, sufficient access and execution remain a pipe dream. According to the ruling in *B. Shah v. Presiding Officer, Labor Court, Coimbatore*, and the revised provisions in The Maternity Benefits Amendment Act, 2017, it is clear that women need to receive extra benefits, especially when they are vulnerable, and that society should continue to advance to the point where we can guarantee a better living environment and space for every member of our diverse community.

Given that India is both a developing country and a rising superpower, it is impossible to ignore the importance of women's empowerment for a nation's political, social, and economic progress. Strong laws like the Maternity Benefits Act must be followed by a strategic application of laws in their implementation by independent bodies in order to achieve the desired effect.³³

The division bench of the High Court of Bombay (Court) reaffirmed that even in the case of the birth of a child by surrogacy, the parents who have lent the ova and sperm would be entitled to maternity leave and paternity leave, respectively. The case was *Dr. Pooja Jignesh Doshi v. The State of Maharashtra and Another* [Writ Petition No. 1665 of 2015, decided on 3 July 2019].

The aforementioned cases involved events that occurred before April 1, 2017, when the government, through the Maternity Benefit (Amendment) Act, 2017 (effective as of April 1, 2017), added an explicit provision to the Maternity Benefit Act, 1961, stating that even a commissioning mother (i.e., a biological mother who uses her egg to create an embryo implanted in any other woman) shall be entitled to paid maternity leave of 12 weeks starting from the date the child is given over to the mother. A commissioning father is likewise entitled to paternity leave, according to a ruling by the High Court of Bombay. Paternity leave is now not statutorily required in India and is mostly an optional benefit.

The Surrogacy (Regulation) Bill safeguards the rights of the child born through surrogacy and prohibits the exploitation of the surrogate mother, making it a morally and ethically sound piece of legislation. It aims to establish a national surrogacy board, state surrogacy boards, and the appointment of suitable authorities for surrogacy regulation.

The couple who wants to become a surrogate must first present persuasive reasons for wanting a child through surrogacy. They must be Indian citizens, although they may also be non-resident Indians, people of Indian ancestry, or Indian citizens who reside abroad. Due to the possibility of infertility from various surrogacy procedures, the surrogate must be married and have a kid. Surrogacy is not an option available to single women, but widows and divorced women may qualify if they acquire a certificate of recommendation from the National Surrogacy Board. The surrogate mother is offered a 16-month insurance policy to

³³ <https://blog.iplayers.in/analysis-implementation-maternity-benefit-amendment-act-2017/>

cover all of her medical requirements in the event of an emergency or other issues. In order to perform surrogacy-related treatments, surrogacy clinics must be registered with the relevant authority.

