
MATERNITY BENEFIT PROVISIONS AND GENDER EQUALITY: A SOCIO-LEGAL STUDY OF THE CODE ON SOCIAL SECURITY, 2020

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*“I measure the progress of a community by the degree of progress which
women have achieved.”*

- Dr B. R. Ambedkar

ABSTRACT

The Maternity Benefit Act of 1961 enacted under Article 42 of Constitution, provides for maternity benefits, providing protection, leave, and financial benefits to pregnant and childbearing women workers during maternity at their workplace. With changing times, statutory leave periods, workplaces infrastructure and crèche facilities have also become inadequate. Therefore, in 2017, an attempt was made to align it with the realities of the contemporary workplace and international standards through amendments. The duration of maternity leave was increased, and further advantages were provided for adoptive mothers and commissioning mothers. In 2020, this Act was repealed and replaced by the Code on Social Security, 2020, under which women working in the unorganized sector and gig workers were also included. Although the Sanhita, 2020 took a necessary step towards inclusive labour reform, the Act still fails to fully address the persistent gender-based inequalities in employment due to socio-legal barriers to gender equality (such as financial burden on employers, lack of awareness, lack of crèches and infrastructure, lack of coverage in the unorganised sector, and lack of paternity leave). This research paper contributes to increasing women's labour force participation in India at the national level, providing access to quality employment, fair wages, and equal opportunities, and to achieving SDG 5: Gender Equality at the international level. It also provides guidance for legal scholars, economists, policymakers, and legislators in advancing more balanced and equitable employment frameworks.

Keywords: Article 42, gender equality, The Code on Social Security, 2020, Maternity Protection Convention, major barriers.

1. Introduction

After independence, women increasingly entered employment in factories, institutions, and government offices. However, they lacked adequate rest at the workplace during pregnancy, nor any financial security in case of job loss due to childbirth. Employers often dismissed pregnant women employees or refused to rehire them after delivery, making motherhood a barrier to women's working lives. Therefore, in 1961, the M.B Act was originally enacted to ensure safeguard the welfare and rights of working women in India. The Act aims to provide pregnant and lactating women's workers with protection, leave, and financial benefits during maternity at their workplace. Which was founded not solely on social and economic factors but also on constitutional and international factors. Article 15, Clause 3 of the Indian Constitution (The Constitution of India, 1950.) states, "The State is authorised to implement protective or advantageous measures for women and children." Article 42 mandates the State to furnish maternity aid. As a member of the ILO, India is required to uphold gender equality by legal measures in accordance with the Maternity Protection Conventions of 1919¹ (Maternity Protection Convention, 1919, 1919) and 1952 (Maternity Protection Convention (Revised), 1952). The 2017 amendment providing 26 weeks of leave is also an attempt to move towards the ILO's latest Convention 183 (2000)² (Maternity Protection Convention, 2000). In November 2025, the regulations concerning maternity benefits were integrated into the Code on Social Security, 2020. Nonetheless, this has not fully succeeded in attaining gender equality.

In 2017-18, India's FLFPR was a modest 23.3%, which is already very low globally. The FLFPR refers to employed or actively looking employment women. However, by 2023-24, the FLFPR showed a sharp improvement, rising to nearly 42%, largely driven by increased economic activity among rural women. (MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, 2024) In rural areas, the projected worker population ratio (WPR) is projected to increase from 48.1% in 2017-18 to 62.1% in 2023-24, while in urban areas it is projected to increase from 43.9% to 49.4%. In India, the WPR for men is projected to increase from 71.2% in 2017-18 to 76.3% in 2023-24, while the WPR for women is projected to increase from 22.0% to 40.3%.³ This rural surge is not due to maternity-related policies but rather to

¹ Maternity Protection Convention, 1919 (No. 3).

² Maternity Protection Convention, 2000 (No. 183).

³ Government of India, "Periodic Labour Force Survey (PLFS)-Annual Report [July 2023 – June 2024]" (Ministry of Statistics and Programme Implementation). available at: https://www.mospi.gov.in/sites/default/files/press_release/Press_note_AR_PLFS_2023_24_22092024.pdf (last visited on April 12, 2026).

economic necessity, subsistence activities, and government programmes like the MNREGA. In Cities, the vast majority of women work on a piece-rate basis or within the unorganized sector, a sphere largely outside the labour protections of the M. B. Act. In urban areas, structural constraints persist, including childcare gap, rigid job structures, high commute times, and workplace bias. According to a 2023 study by NITI Aayog, nearly 40% of urban mothers who exit the workforce after childbirth find it difficult to return within the first two years (Parnava Ghosal, 2024).⁴ Regionally, women's participation in agriculture has increased significantly—from 57% in 2017-18 to 64.4% in 2023-24—reflecting a growing reliance on informal and unpaid labour rather than an increase in formal jobs (Finance, 2025).⁵ Inadequate support at the workplace upon returning from leave makes the 'motherhood boon' seem more like a 'motherhood penalty' than a 'blessing'. Women face slower career growth, wage stagnation, and reduced job opportunities after childbirth, exacerbating gender inequality.

Objectives:

- i. To study the key provisions regarding maternity benefits;
- ii. To analyse the effectiveness of the Code in promoting gender equality;
- iii. To study the main barriers to achieving gender equality under the Code;
- iv. To offer suggestions for reforms to implement gender equality.

Research Questions:

- i. What major legal changes have occurred in women's rights since 1961 maternity benefits law came into effect?
- ii. Have women employed in both official and informal sectors received equitable access to this Act?

⁴ Parnava Ghosal, Dr Swati Chauhan, et.al ., "Impact of the Maternity Benefit (Amendment) Act, 2017 on Women's Workforce Participation in India (2014–2024)" available at: <https://iisppr.org.in/impact-of-the-maternity-benefit-amendment-act-2017-on-womens-workforce-participation-in-india-2014-2024/> (last visited on April 21, 2025)

⁵ Ministry of Finance, Department of Economic Affairs, **Government of India**, "Economic Survey 2024-25", Chapter 12, p. 369 (2025).

- iii. Do companies exhibit reluctance in providing equal employment chances to women because of maternity leave policies?
- iv. Does the code genuinely enhance gender equality in the workplace, or has it only persisted as a superficial legal provision?

Methodology:

Study is based on the doctrinal method of research.

2. Legal Framework and Key Statutory Provisions Promoting Gender Equality Through Maternity Benefits –

A. International framework and key provisions -

Sustainable development goals: 5 gender equality - The United Nations' SDG-5 seeks to eradicate gender inequality by guaranteeing equal rights and opportunities for women and girls globally. This goal is not limited to equal rights but also focuses on ensuring women's full participation in all spheres—social, economic, political, and legal. SDG-5, adopted by the United Nations, aims to eliminate gender inequality by empowering all women worldwide. This includes women's economic empowerment, equal opportunities at the workplace, maternity rights, representation in leadership, and protection from violence. The Act of 1961 is an important tool in advancing the economic and social objectives of SDG-5.

The Maternity Protection Convention is an international labour standard developed by the ILO to safeguard the safety, health, economic stability, and employment rights of pregnant and breastfeeding female workers. The convention underwent three revisions. The M. P. Convention of 1919 was the inaugural international agreement on maternity protection, which established the basis for maternity leave, wage safeguarding, and lactation leave. It stipulated 12 weeks of maternity leave.⁶ In 1952, an amended version of the Convention, the M. P. Convention of 1952,⁷ enhanced maternity leave, medical care, and employment security. Leave is a minimum of twelve weeks,⁸ encompassing mandatory postnatal leave, with enhanced benefits and safeguards. The contemporary norm of the M.P. Convention was implemented in

⁶ Maternity Protection Convention, 1919, art. 3.

⁷ Maternity Protection Convention (Revised), 1952 (No. 103).

⁸ Maternity Protection Convention (Revised), 1952, art. 3

2000. It stipulates a minimum of 14 weeks of maternity leave.⁹ Monetary advantages will be allocated pursuant to Article 6. Leave benefits, as specified in Articles 4 and 5, shall be supplied through mandatory social insurance, public funds, or in accordance with national laws and established practices. No employer shall incur personal liability for the direct expenses associated with any monetary advantages granted to an employed woman.¹⁰ Article 8 forbids termination of employment on the grounds of pregnancy or childbirth and ensures compensated breastfeeding breaks.¹¹ Article 9 forbids employment denial, wage reduction, or workplace discrimination based on pregnancy and additionally prohibits the requirement of a pregnancy test or certificate during job applications.

B. National framework and key provisions-

The Indian Constitution guarantees - Every citizen equality before the law¹², prohibits discrimination based on sex¹³, and ensures equality of opportunity in public employment¹⁴. Clause 3 of Article 15 mandates that the State shall provide particular arrangements for women and children. These rights are enforced by the Supreme Court under Article 32 and by the H.C. under Article 226. Specific DPSP have been adopted, assigning responsibilities to the States concerning maternity benefits and gender equality. Clause (a) of Article 39 stipulates that all citizens will be afforded sufficient means of livelihood; Article 42 prescribes equitable and humane working conditions along with maternity benefits. Considering these specific requirements, the Member of Parliament incorporated maternity benefits into the S.S. Code, 2020.

In *K. Umadevi v. Tamil Nadu* (K. Umadevi v. Tamil Nadu, 2025)¹⁵, the Supreme Court affirmed that maternity leave is a constitutional right under Article 21. The Court elucidated that maternity benefits are not contingent upon the number of children a woman has; the leave may extend to 26 weeks for the first two children and 12 weeks for any further children. The Court noted that international treaties, including the UDHR, CEDAW, international accords on sexual offence rights, and the ILO framework on maternity protection, encompass a broad range of reproductive rights, including maternity benefits. Therefore, maternity leave is a

⁹ Maternity Protection Convention, 2000 (No. 183), art 4.

¹⁰ Maternity Protection Convention, 2000 (No. 183), art 6.

¹¹ Maternity Protection Convention, 2000 (No. 183), art 10

¹² Indian Constitution under art. 14.

¹³ Indian Constitution under art. 15.

¹⁴ Indian Constitution under art. 16.

¹⁵ 2025 INSC 781

fundamental aspect of maternity benefits and, as such, represents a crucial element of personal liberty under Article 21.

3. The Maternity Benefit Act of 1961¹⁶

(The Maternity Benefit Act, 1961), amended in 2017, was enacted in 1961. The objective is to regulate the working conditions of women in specified workplaces throughout the pregnant and postnatal periods and to ensure maternity and related benefits. The Act applies to workplaces with a minimum of ten employees, including factories, mines, plantations, stores, and other establishments. According to subsection 2 of section 2, this Act is inapplicable to any factory or facility already governed by the Employees' State Insurance Act, 1948. Section 4 stipulates that no woman may be allowed to work in any establishment for six weeks following childbirth or miscarriage. The M. B. Act of 1961 has been abrogated pursuant to Section 164 of the SS Code, 2020 (The Code on Social Security, 2020).

The Code on Social Security, 2020, is a comprehensive statute resulting from the consolidation of nine pre-existing labour laws. It includes nine primary labour statutes—such as the Employees' Provident Fund (EPF), Employees' State Insurance (ESI), maternity benefits, gratuity payments, and regulations for unorganised workers—thus providing coverage to all employees in both organised and unorganised industries. It encompasses the subsequent nine principal labour statutes: ECA, 1923; ESI Act, 1948; EFP Act, 1952; EE Act, 1959; M.B. Act, 1961; POGA, 1972; CWWF Act, 1981; BOCW Cess Act, 1996; UWSS, 2008.

Chapter VI (Sections 59 to 72) of this Code has stipulations for maternity benefits. Per Section 1(4) and Schedule 1 of the Code, these provisions shall be applicable to any shop or establishment employing ten or more individuals at any point during the prior twelve months, in addition to any other shops or establishments designated by the relevant government periodically. Section 142 of the Code requires Aadhaar-based identification to access maternity benefits. The Act of 1961 did not have any provisions pertaining to Aadhaar.

All women protected by the Code are entitled to maternity benefits equivalent to their average daily salaries for the duration of their work absence, with the employer obligated to disburse this amount. Section 60(2) stipulates that women are entitled to a maximum of 26 weeks of maternity leave; however, if a woman has two or more surviving children, the maximum leave

¹⁶ The Maternity Benefit Act, 1961 (Act 53 of 1961).

permitted is 12 weeks. Section 60(4) provides 12 weeks of maternity benefits to women who legally adopt a child under three months of age or to commissioning mothers. In the recent case of *Hansanandini Nanduri v. Union of India*,¹⁷ the Supreme Court annulled this prohibition. The Court determined that adopted mothers are entitled to 12 weeks of paid maternity leave, irrespective of the child's age.

Women experiencing health issues related to pregnancy, childbirth, premature birth, miscarriage, etc., shall receive an additional month of maternity benefits. Section 60, Clause 5 stipulates provisions for 'Work from Home'.

Women are allowed to two additional childcare breaks every day until the child attains 15 months of age. Section 67 mandates the provision of crèche facilities for female employees in all establishments to which this Chapter applies, provided there are 50 or more employees, or another quantity as determined by the Central Government. Female employees are authorised to attend the crèche four times daily. Section 64 requires the disbursement of a medical bonus to female employees eligible for maternity benefits, specifying that if an employer fails to offer complimentary prenatal and postnatal care, the employee is entitled to a medical bonus of ₹3,500. This Act prohibits removal from service during the maternity benefits period and permits the filing of complaints over any disruption in the receipt of these benefits.

Role of Judiciary:

In *B. Shah v. Presiding Officer, Labour Court, Coimbatore*,¹⁸ the S.C. determined that the term 'week' refers to a cycle of seven days, inclusive of Sundays. The Court underscored that the law's aim is to guarantee extensive protection during maternity. This decision elucidated the computation of benefits and guaranteed that women obtain their complete entitlement without capricious exclusions. This approach to benefit calculation is advantageous for both female employees and employers.

In *Air India vs. Nargesh Mirza*¹⁹, the the rule ending a woman employee's job upon becoming pregnant for the first time was declared unreasonable and contrary to Article 14.

¹⁷ Writ Petition (Civil) No. 960 of 2021.

¹⁸ AIR 1978 SC 12.

¹⁹ AIR 1978 SC 12.

In *Dr. Kavita Yadav vs. Secretary, MoHFW & Others*,²⁰ the Court said that women are entitled to comprehensive maternity benefits under the M.B. Act, 1961, regardless of whether their employment contract concludes before or during maternity leave, provided they meet the eligibility criteria of having worked for 160 days in the preceding 12 months.

In *Satakshi Mishra vs. State of Uttar Pradesh*²¹, the Allahabad High Court examined whether a specific interval is necessary between the births of the first and second child to qualify for maternity benefits under the Maternity Act, 1961. The Court determined that Act does not stipulate any specific interval between the birth of the first and second child for the provision of maternity benefits. Thus, the Court determined that the Act's provisions supersede the conflicting regulations in the financial handbook, granting the petitioner maternity leave without the requirement of a two-year interval. Therefore, the aforementioned clause is useful in promoting gender equality regarding maternity benefits; nonetheless, it possesses several restrictions, which are outlined as follows:

4. Major Barriers

The Code legally empowered women's rights, but its impact is limited. Some of the major obstacles to achieving gender equality under this Act are described below:

1. Employer-funded model- Maternity benefits are entirely paid by the employer. This results in employers avoiding hiring women and newly married women facing discrimination.

2. Lack of paternity leave - The Code provides maternity leave only for women. provides leave only for women. The lack of paternity leave undermines gender equality by creating the perception that caregiving is primarily women's responsibility, which impacts their careers in the workplace.

3. 50-employee limit on crèche facilities - Code provide crèche facilities was a commendable step, limiting its scope has hindered the achievement of gender equality. Most of India's workplace structure is based on small establishments and micro-enterprises, making crèche

²⁰ (2024) 1 SCC 421.

²¹ WRIT No. 5114 of 2022

facilities practically impossible for women. The 50-employee requirement is against the gender equality goal (SDG-5).

4. Dependence of women in the unorganized sector on government schemes - The Code covers women in the unorganized sector and gig workers under sections 109 and 114, but their benefits depend on the government's formulation of the scheme. According to the PLFS report, approximately 90% of working women are in the unorganized sector, and the lack of government schemes excludes them from the benefits. This directly perpetuates gender inequality. This is a major barrier to structural inequality, as women in this group are most at risk of losing their jobs during maternity.

5. For years, a societal perception has persisted that the obligation of caring for the family and children lies with the mother. A significant number of women exit the workforce due to familial and childcare responsibilities. Section 142 mandates Aadhaar for benefits; yet, numerous female employees lack the necessary documentation, so excluding the most vulnerable women from these advantages.

6. An inclusive social security framework is absent due to the omission of specific reproductive rights for transgender individuals.

7. Socio-Cultural Barriers – For years, a societal perception has persisted that the obligation of caring for the family and children lies with the mother. A significant number of women exit the workforce due to familial and childcare responsibilities.

8. Long 26-week leave – Sometimes, 26 weeks of leave hinders women's advancement. This 26-week leave disrupts skill continuity; many organisations do not provide the same responsibilities upon return; many women are relegated to less important roles.

9. Weakness in monitoring, grievance procedures, and enforcement - The deficiencies in the monitoring system and grievance redressal process constitute a significant impediment to the proper execution of the Act. In numerous states, labour inspection systems are understaffed, inadequately trained, and resource-deficient, hindering consistent enforcement of legal compliance. A significant number of female employees are unaware of the procedures or locations for submitting grievances. The lack of a confidential grievance forum instills fear of job loss, inhibiting individuals from voicing their concerns despite their entitlements. Law

enforcement agencies are deficient in essential technology resources and capacities for digital surveillance, data acquisition, and prompt intervention. The Maternity Benefit Act's aim of ensuring a safe, equitable, and just workplace for women remains unfulfilled in the absence of rights access and effective enforcement.

5. Findings and Suggestions:

1. Since the enactment of the Code, several legal changes have occurred in women's rights—extending maternity leave to 26 weeks, providing crèche facilities, and granting leave to commissioning and adopting mothers. These are commendable achievements under this Code, but some shortcomings remain, preventing gender equality from being fully achieved. These shortcomings should be addressed.

2. Women employed in both the formal and informal sectors have not enjoyed equitable access to this Code. Following the Hon'ble Supreme Court's ruling that maternity benefit constitutes a basic right, comprehensive provisions ought to be incorporated into the Code.

3. Employers exhibit hesitance in offering equal work chances to women owing to the substantial burden of maternity leave on their operations. Employers hesitate to offer equal work chances to women because of the significant burden associated with maternity leave. For India to attain genuine gender equality via maternity leave, it is essential to substitute the employer-funded model with a social insurance/shared funding model, in accordance with international standards. A dedicated financial resource, termed the 'National Maternity Benefit resource', ought to be instituted at either the central or state level.

4. The stipulation in Section 60(5) is quite restrictive, delineating the type of employment permissible post-maternity leave and permitting remote work contingent upon mutual consent between the employer and the employee. The legislation should mandate that a woman may submit a written request, and the employer is required to provide a valid justification for any refusal.

5. Comprehensive awareness initiatives must be implemented to enlighten women about their rights, particularly those in rural and informal sectors who are little informed.

6. The state should encourage small and medium-sized businesses (SMEs) to provide maternity benefits by providing monetary rewards or assistance for successfully complying with the Act's

provisions. Small and medium-sized business employers should be given tax breaks or subsidies.

7. The government needs to improve monitoring and enforcement of maternity benefits. The government should establish a digital monitoring portal and establish a Maternity Benefit Redressal Cell in each district, where women can lodge complaints online or offline. It should also release annual data reports on maternity benefits through the National Statistical Office.

6. Conclusion:

India can realise its Viksit Bharat 2047 vision by enhancing the economic involvement of women workers and ensuring they have access to a safe and dignified work environment. Maternity protection is a crucial component of this objective. The Code represents a notable advancement for working women; nonetheless, for the majority of Indian women in informal employment, the legislation has minimal to no effect. India ought to implement a multifaceted strategy. Maternity support should evolve from a restricted legal entitlement to an extensive framework that safeguards, empowers, and elevates all working women in India, irrespective of their location, geography, or socio-economic level.

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