
MATERNITY RIGHTS IN THE INDIAN WORKFORCE: A COMPARATIVE STUDY OF LEGISLATIVE REFORMS FROM 1961 TO 2020

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ABSTRACT

Maternity rights are a cornerstone of gender equality in the workplace, reflecting society's commitment to supporting working women through one of life's most significant transitions. In India, a country with abundant cultural traditions and a rapidly changing economic landscape, the evolution of maternity rights legislation indicates a compelling story of social progress and ongoing challenges. The research paper will comprehensively analyze legislative reforms affecting maternity rights in the Indian workforce from 1961 to 2020. The study will examine the need for the law and the importance of the individual features of Maternity Benefits. The study will trace the evolution of these rights and their impact on Indian working women by examining key legislation in the laws relating to maternity benefits.

Keywords: Gender equality, Gender discrimination, Maternity rights, Social Security, Workplace, Working women.

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INTRODUCTION

Traditionally, women have been primarily seen as domestic figures, while men have been associated with public life and economic activity. This outdated perspective has often led to the assumption that men are solely responsible for providing financially. However, the reality is that women constitute 50% of society; without her presence, nothing can work properly, and hence, they are the most important labor force. Therefore, giving women certain rights in difficult times becomes crucial to encourage them to participate more in the workforce.

In India, a developing nation with a patriarchal social structure, women's rights remain limited in many areas. For generations, women have performed unpaid labor such as housework, cooking, cleaning, and childcare. The concept of women working outside the home gained importance after India achieved independence. Factors like urbanization, industrialization, economic pressures, and new job opportunities led more women to seek paid employment beyond their households. However, this shift brought new challenges, including workplace discrimination and poor working conditions. Pregnancy emerged as a significant issue, with women often facing dismissal or feeling compelled to resign to care for their children. The responsibilities of childbirth and infant care have traditionally fallen primarily on women in most societies, including India.³

The Maternity Benefit Act of 1961 safeguards employment and gives protection during pregnancy. The foremost goal is to safeguard and maintain the dignity of motherhood, the health of the woman, the child's safety, and his well-being, further with the coming of new legislation, "The Code on Social Security 2020", which enlarges the ambit of the social security benefits covering all workers regardless of their employment status whether in organized, unorganized or in other sectors.

Recognizing that women are typically the primary caregivers for children and responsible for their postpartum health, with childcare responsibilities disproportionately falling on them within households, it is crucial to ensure they receive medically recommended periods of rest after giving birth. In this context, we aim to examine how legislation impacts the ease and opportunities for women to work in India. The Maternity Benefits Act of 1961 was established to prevent childbearing and child-rearing responsibilities from hindering young mothers'

³ Aditi Jogvanshi, "Rights of the Working Woman as a Mother - an Analysis", *Manupatra*, May 25, 2022, available at: <https://articles.manupatra.com/article-details/Rights-of-the-Working-Woman-as-a-Mother-An-Analysis> (last visited on Sept. 24, 2024).

workforce participation. Traditionally, women have assumed the primary childcare role, even when they have partners or spouses. For working women needing more adequate caregiving support, this often impedes their ability to work effectively. The law requires “employers to offer paid leave to address this issue and provide female employees with the necessary time and space for a new child.” While well-intentioned, it is essential to scrutinize the socio-economic implications of this legislation. As with any law, particularly those designed to benefit specific groups, ensuring no negative consequences undermine the statute's positive intent is paramount. Without such assessment, laws risk becoming ineffective, offering nothing more than an empty promise of equality.⁴

HISTORICAL BACKGROUND OF MATERNITY BENEFIT LAWS IN INDIA

In the past, pregnancy and childbirth were viewed as periods of incapacity for female workers, particularly in the weeks before and after giving birth. As wage labor became prevalent in the industrial sector, some employers began dismissing women workers when pregnancy interfered with their regular duties. This situation forced many women to choose between their jobs and having children. Some opted for unpaid leave to keep their positions, while others pushed themselves to maintain productivity during pregnancy, risking the health of both child and mother. To address these challenges, the concept of maternity benefits emerged. The aim was to support women workers in fulfilling their social role of bearing and raising children without compromising their health or losing wages. This approach sought to balance the demands of work with the needs of motherhood, recognizing both as essential aspects of women's lives.

A. PRE- INDEPENDENCE PERIOD:

The Bombay Maternity Benefit Bill, introduced in 1929 in the Bombay Legislative Council, marked India's first legislation addressing working women's rights.⁵ This pioneering law, however, had complex implications. Bombay was chosen for this legislation due to its status as India's textile hub, boasting a high concentration of textile industries and a significant female workforce. The bill's introduction, while progressive, led to unintended consequences.

⁴ Rajya Lakshmi and Neeru Vasisht, “Human Capital- Impact Assessment of Amended Maternity Benefits Act, 2017” 9 *Scholarly Research Journal for Interdisciplinary Studies* Online ISSN 2278-8808 (2021).

⁵ Mihir Madhekar, Aayush Khurana, et.al., “An Overview of the Maternity Benefits Act in India and Comparison with Select Countries” 7 *IJRAR* 2349-5138 (2020).

Following the bill's proposal, "there was a noticeable decline in women's employment in the sector." This reduction was primarily attributed to two factors: the introduction of the Maternity Benefit Bill itself potentially increased costs for employers and new restrictions prohibiting women from working night shifts.

These developments highlight the often paradoxical nature of such legislation, where attempts to protect workers can sometimes result in reduced employment opportunities. Dr. Babasaheb Ambedkar was "a strong supporter and propagator of Maternity Benefits. He was seen defending the idea of Maternity Benefits for the Bombay legislature."⁶

During the pre-independence period, labor legislation in India was heavily influenced by colonial perspectives, "as it had to balance various interests, including those of the colonial state, British capital, Indian businesses, nationalist trade unionists, and philanthropists" from both Britain and India. A British government-appointed physician, Lady Doctor Barnes, conducted a study on high infant mortality rates. She advocated for maternity benefits, citing several factors contributing to "infant deaths, such as inadequate medical care and nursing, poor sanitation, industrial employment of married women, and births occurring in unhygienic workplace environments." However, mill owners opposed these initiatives. They argued that such measures would hinder their ability to compete with countries like Japan and Britain. These industrialists viewed social welfare legislation as serving British industrial interests and potentially undermining the Indian textile industry. They considered maternity benefits an additional financial burden on top of existing cotton taxes and feared it could lead to the collapse of the textile sector.⁷

Despite the views of several stakeholders at that time, the revised bill placed the onus of maternity benefit payments solely on employers. Facing opposition from employers who deemed this unfair, the bill was further amended. Instead of a general tax on all factories, it imposed a tax only on those employing women workers. The bill was then passed. Following the 1929 Royal Commission on Labour's recommendations, similar bills were enacted in other provinces. Subsequently, the central government introduced several legislations with a limited scope, such as "the Mines Maternity Benefit Act (1941), The Employees State Insurance Act

⁶ Savari-adivasi bahun and dalit women conversing, *available at*: <https://www.dalitweb.org/?p=3430> (last visited on Sept. 24, 2024).

⁷ Premila, "Let's Talk Compliance – Maternity Benefit Act – Tracing the History," *Aparajitha*, Jan. 29, 2020, *available at*: <https://aparajitha.com/lets-talk-compliance-maternity-benefit-act-tracing-the-history/> (last visited on Sept. 24, 2024).

(1948), The Plantations Labour Act (1951), The Working Journalists (Conditions of Service), and Miscellaneous Provisions Act (1955).”

B. POST-INDEPENDENCE PERIOD: After India’s independence, the Maternity Benefits Act of 1961 was enacted on 12th December 1961. In India, Articles 39(e) and 39(f) enshrined under the Directive Principles of State Policy of the Constitution of India provide, “The state shall, in particular, direct its policy towards securing the health and strength of workers, men, and women.”⁸ Under Article 42, “the State shall make provision for securing just and humane conditions of work and maternity benefits.”⁹ The Indian Parliament passed the Maternity Benefit Act of 1961 to protect and support working women during and after childbirth. This law aims to regulate women's employment in specific workplaces around the time of birth and provides maternity and other related benefits. The Maternity Benefit Act of 1961 was passed with the view that not only all those legislations related to maternity existed from the pre-Constitution days but also the ILO’s mandate regarding maternity protection (ILO Maternity Protection Convention 103, 1952). The Maternity Benefit Act of 1961 is not India's only legislation providing maternity protection or benefits. Other maternity protection legislation includes “The Employees State Insurance Act of 1948 and The Central Civil Services Rules of 1972.”

ANALYSING THE PROVISIONS OF THE ACT OF 1961

The Act of 1961 aims to control women's employment and protect and support working women during and after childbirth. This law seeks to regulate women's employment in specific workplaces around the birth of a child and provides maternity and other related benefits. The Act was enacted to improve working conditions.

a. APPLICATION OF THE ACT: The act applies to establishments, such as a “factory, mine, or plantation, including any such establishment belonging to the government and to establishments where people are employed for the exhibition of equestrian, acrobatic, and other performances. It also applies to every shop or establishment where ten or more people are employed or were employed on any day of the preceding twelve

⁸ The Constitution of India, art. 39.

⁹ The Constitution of India, art. 42.

months provided that the State Government may, with the approval of the Central Government, after giving not less than two months' notice of its intention to do so. This Act shall also apply to any other establishment or class of industrial, commercial, agricultural, or otherwise establishments.” Further, the act does not apply “to any factory or other establishment to which the provisions of the Employees State Insurance Act, 1948 (34 of 1948) apply.”¹⁰

The Act further imposes an obligation on the employee “not to employ knowing women workers in any establishment during the six weeks immediately following the day of her delivery or her miscarriage or medical termination of pregnancy. No woman shall work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.” And if the employed woman makes such a request, then she must not be allowed to do any work -

- “which causes ill effects on her pregnancy or the normal development of the foetus or
- any work which is arduous or which involves long hours of standing, or which in any way
- any work which is likely to cause her miscarriage or otherwise adversely affect her health”.¹¹

The female employee is entitled to get the maternity benefits that the employer has to provide her at the average daily wage rate.¹² Here, the woman will get leave at most eight weeks before her delivery and can take the rest afterward. She will be entitled to be paid for eight weeks immediately, and the rest of the week will be paid upon providing proof of delivery.

- b. DURATION OF LEAVE:** According to the Maternity Benefit Act 1961, “a woman is entitled to maternity benefit if she has worked in an establishment for not less than

¹⁰ The Maternity Benefit Act 1961 (53 of 1961), s. 2.

¹¹ The Maternity Benefit Act 1961 (53 of 1961), s. 4.

¹² The Maternity Benefit Act 1961 (53 of 1961), s. 5(1).

eighty days in the twelve months immediately preceding the date of her expected delivery.”¹³ The following durations are given in the act :

- The maximum benefit period is “twelve weeks; not more than eight weeks shall precede the expected delivery date.”
- In case there is a “miscarriage or medical termination, the woman is entitled to six weeks of maternity benefit and leave.”
- Illness out of pregnancy, if any, makes “the woman entitled to a leave of one additional month.”
- In the case of a “tubectomy operation, a woman on the production of proof is entitled to leave for a period of two weeks immediately following the day of her tubectomy operation.”

c. NOTICE OF MATERNITY CLAIM: The notice in a prescribed form “stating that the maternity benefit and any other entitled amounts should be paid to her or her nominee may be given in written form by the woman employed in an establishment who is entitled to avail the maternity benefit. This notice also confirms that she will not work in any establishment while receiving maternity benefits.” For pregnant women, the notice should specify the date of absence commencement, which cannot be earlier than six weeks before the expected delivery date. Women who didn't provide notice during pregnancy can do so as soon as possible after delivery. Upon receiving this notice, the employer must allow the woman to be absent from work during the maternity benefit period. The benefit amount before expected delivery is paid in advance upon providing prescribed proof of pregnancy. The amount for the subsequent period is paid within “48 hours of delivering” prescribed evidence of childbirth. Failure to give notice doesn't disqualify a woman from receiving maternity benefits or other entitled amounts if she's otherwise eligible. In such cases, an Inspector may, independently or upon the woman's application, order the payment of such benefits or amounts within a specified timeframe.¹⁴

d. MEDICAL BONUS: In addition to maternity leaves, every woman who is entitled to maternity benefits shall also receive “a medical bonus of thirty-five hundred rupees from

¹³ The Maternity Benefit Act 1961 (53 of 1961), s. 5(3).

¹⁴ The Maternity Benefit Act 1961 (53 of 1961), s. 6.

her employer “if no pre-natal confinement and post-natal care” are provided for by the employer free of charge.”

e. DISMISSAL DURING ABSENCE OF PREGNANCY: It is improper or illegal “for an employer to discharge or dismiss a woman in her absence from work or due to such absence, nor can they unfavorably alter any of her service conditions.” Suppose a woman is discharged or dismissed during pregnancy and is entitled to maternity or other benefits at that time under the act; then, in that case, such action does not negate her right to these benefits. However, in cases of gross misconduct, the employer may deprive her of these benefits through a written order. Any woman “deprived of maternity benefit or medical bonus, or both, or who is discharged or dismissed during or because of her absence as per this Act's provisions” has the right to appeal. This appeal must be made within sixty days of receiving the order of deprivation, discharge, or dismissal to a prescribed authority whose decision will be final.

f. NURSING BREAKS: After the woman joins back, she is entitled to “two breaks for child nursing till the child attains the age of one and a half years.”¹⁵

g. INSPECTOR: Every Inspector appointed is considered “a public servant as defined in section 21 of the Indian Penal Code (45 of 1860)”.¹⁶ Any woman “who believes her maternity benefits or other entitled amounts have been improperly withheld, discharged, or dismissed during or due to her absence from work” may file a complaint with the Inspector. Similarly, anyone claiming that payments have been withheld may also complain. The Inspector can investigate such complaints or initiate inquiries independently and may order its release if he is satisfied that the employer has wrongfully withheld the payment and injustice has been done to the woman. In unjust discharge or dismissal cases, the Inspector can issue appropriate orders based on the circumstances. Anyone unsatisfied with the Inspector's decision can appeal to the prescribed authority within “thirty days of receiving the decision and the prescribed authority's decision on appeal, or Inspector's decision if no appeal is made is final.” The Collector can recover any amount payable as land revenue arrears based on a certificate issued by the Inspector.¹⁷

¹⁵ The Maternity Benefit Act 1961 (53 of 1961), s. 11.

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

¹⁷ The Maternity Benefit Act 1961 (53 of 1961), s. 17.

h. FORFEITURE OF RIGHT: If “a woman works in any establishment during a period, she is permitted to be absent under section 6 of the Maternity Benefit Act 1961; she forfeits her claim to maternity benefits for that period”.

i. PENALTY: An employer who fails to pay maternity benefits to an entitled woman or who discharges or dismisses the woman during the time of pregnancy or on any day when she is on leave from work concerning her pregnancy period or in connection to it then as per the Act's provisions he will be entitled to face penalty or punishment. This includes “imprisonment for a minimum of three months, extendable to one year, and a fine ranging from two thousand to five thousand rupees. However, the court may impose a shorter imprisonment term or only a fine if sufficient reasons are recorded in writing. For any other contravention of this Act or its rules, where no specific penalty is provided elsewhere in the Act, the punishment may include imprisonment of up to one year, a fine of up to five thousand rupees, or both.” In cases involving unpaid maternity benefits or other amounts, the court shall, “in addition to the penalty, recover such benefits or quantities as if they were fines and pay them to the entitled person.”¹⁸

The Maternity Benefit Act has undergone several amendments since its inception. In 1972, it was modified to continue coverage until employees became eligible for benefits under the Act of 1948. The circus industry was included in 1973. In 1976, the Act's scope was extended to “women in factories or establishments covered by the ESI Act,” even if their wages exceeded the specified entitlement. The 1988 amendment expanded “the Act to shops or establishments with ten or more employees and increased the maternity benefit rate.” In 1995, additional leave provisions were introduced: six weeks for medical termination of pregnancy, two weeks for tubectomy, and one month for related illnesses. The 2008 amendment introduced a medical bonus of Rs. 2500 (with potential increases up to Rs. 20000) for cases without free prenatal and postnatal care. This bonus was increased to Rs. 3500 in 2011. The 2017 amendments, responding to the ILO's Maternity Protection Recommendation of 2000, extended the maternity leave period to twenty-six weeks.¹⁹

¹⁸ The Maternity Benefit Act 1961 (53 of 1961), s. 21.

¹⁹ Premila, “Let's Talk Compliance – Maternity Benefit Act – Tracing the History,” *Aparajitha*, Jan. 29, 2020, available at: <https://aparajitha.com/lets-talk-compliance-maternity-benefit-act-tracing-the-history/> (last visited on Sept. 24, 2024).

EMPLOYEES STATE INSURANCE ACT, 1948 AND MATERNITY BENEFITS

The Employees' State Insurance Act of 1948 is one of the most important social security laws. It contains “six ESI benefits” that injured employees can avail of and should arise during employment to enable workers to access them. These include “medical benefits, sickness benefits, maternity benefits, dependants benefits, disablement benefits, and other benefits.”

All insured female employees under the Act of 1948 can avail of maternity benefits in cases of pregnancy or confinement. The Confinement²⁰, in this case, means “labor, which results in the birth of a living child or birth after 26 weeks of pregnancy, whether the child is living or not.” Under the Act of 1948, the maternity benefit is payable to insured female employees for “three months but may be extendable for one more month,” depending on medical advice. In such cases, “the compensation amount is the employee's total wage, payable only if the employee contributes for 70 days in the preceding year.”

KEY HIGHLIGHTS OF THE MATERNITY BENEFIT (AMENDMENT) ACT 2017

The Act of 1961 was amended in 2017, and the Maternity Benefit (Amendment) Act 2017 took effect on April 1, 2017. The key highlights of the act were:

- **DURATION OF LEAVE:** According to the Maternity Benefit Amendment Act 2017, “a woman is entitled to maternity benefit if she has worked in an establishment for not less than eighty days in the twelve months immediately preceding the date of her expected delivery.” The following durations are given in the act :
 - The maximum benefit period is “twenty-six weeks, and no more than eight weeks shall precede the expected delivery date.”
 - For women having “two or more surviving children,”
 - a. The maximum period is 12 weeks,
 - b. Pre-delivery leave is up to 6 weeks.”

²⁰ The Employees' State Insurance Act of 1948, (34 of 1948), s. 2(3)

- In case of death:
 1. If the woman dies during the benefit period, payment stops on the day she dies.
 2. If the woman dies during or shortly after her delivery:
 - a) an entire benefit period will be applied if the child survives.
 - b) if the child also dies, payment stops on the day of the child's death.
- Adoption and Commissioning Mothers: For women adopting a child under three months or commissioning mothers, the maternity benefit period is 12 weeks from receiving the child.²¹
- If the nature of work done by a woman can be converted into work-from-home, then she can avail of that option even after she completes her maternity period.²²
- **CRECHE FACILITIES:** Every Establishment with “fifty or more employees” must provide a crèche facility as a separate entity or integrated with shared facilities within a prescribed distance. Women employees are permitted four visits to the crèche daily, including their allocated rest intervals. Furthermore, every establishment must inform each female employee in writing and electronically about all the benefits available under this Act at the time of her initial appointment.²³
- **ADVERSE EFFECT OF THE MATERNITY BENEFIT (AMENDMENT) ACT 2017:** The impact of increasing the period of maternity leave from 12 weeks to 26 weeks has increased by almost 117% maternity leave from previous act leaves of 12 weeks. The recent amendments to the Maternity Benefit Act, while intended to support working women, have inadvertently led to some unintended consequences in the private sector. Some employers now view women of childbearing age as potential liabilities due to the obligation to provide extended maternity leave and benefits for up to 26 weeks. This perception has resulted in a reluctance to hire women, as employers see them as a financial burden. The increased costs associated with full-wage payments during maternity leave have raised concerns about overall production expenses. This financial

²¹ The Maternity Benefit Amendment Act 2017 (6 of 2017), s. 5(4).

²² The Maternity Benefit Amendment Act 2017 (6 of 2017), s. 5(5).

²³ The Maternity Benefit Amendment Act 2017 (6 of 2017), s. 11A.

apprehension among employers may lead to a preference for hiring male workers, potentially reducing employment opportunities for women. Industries that predominantly employ women workers face challenges, as the enhanced maternity benefits could result in significant financial losses. In some cases, this has led to discriminatory practices where employers are either hesitant to hire women or may even ask them to leave just before maternity to avoid additional liability. These unintended effects highlight the complex balance between providing necessary support for working mothers and maintaining equal employment opportunities for women in the workforce.

PERSPECTIVE OF THE EMPLOYEE	PERSPECTIVE OF THE WORKING WOMEN
In India, employers bear the entire financial burden of maternity leave without government assistance. This includes the cost of paid leave and the expenses associated with hiring and training temporary staff to cover absent employees.	Pregnancy poses significant challenges to achieving work-life balance. Without adequate leave provisions and administrative support, women often prioritized home responsibilities over professional commitments, with job resignation becoming the only viable option.
Organizations have to establish and maintain on-site childcare facilities, which entails significant infrastructure investment and the additional cost of employing trained personnel to manage these crèches. These cumulative expenses represent a substantial financial commitment for employers in supporting their female workforce through maternity.	Discrimination in various aspects of their professional lives due to motherhood. They are denied leadership responsibilities, and even it is widespread that many employers don't hire women as employees to avoid giving maternity benefits.

The employers find female employees a burden at the time of their pregnancy as the organization is meant to earn profit and not to bear the extra expenses of the employee.	While some large companies provided on-site childcare facilities to support breastfeeding mothers upon their return to work, many organizations lacked such amenities, making infant feeding challenging. This maternal discrimination took a significant toll on women's physical and mental well-being, resulting in financial penalties and career setbacks that undermined their talents for the sake of motherhood.
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MATERNITY BENEFITS UNDER THE CODE ON SOCIAL SECURITY, 2020

The Code on Social Security, 2020, has been enacted to “amend and consolidate the laws relating to social security to extend social protection to all employees and workers, either in the organized or unorganized or any other sectors. The Code has vital provisions concerning social security benefits to workers, including gig workers.” India’s obligation to provide a comprehensive social security cover for the workers may be traced to several provisions enshrined in the Constitution of India, which include, among other things, “securing equal pay for equal work for both men and women; directions about the State’s responsibility for making adequate provisions for assistance in cases of unemployment, old age, sickness, and disablement; for securing just and humane conditions of work.”

The Code on Social Security 2020 subsumed “the Maternity Benefit Act 1961 and the Maternity Benefit (Amendment) Act 2017 with some modifications.” Now, there is no hassle as to which act to go for; now, maternity rights can be availed of as per the provisions provided under the Code. The Code on Social Security, 2020, now includes organized and unorganized sectors. Maternity rights are given under Chapter VI of the Code, covering sections 59-72. The key highlights of the provisions covered under sections 59- 72 are as mentioned below :

- Employers are prohibited from allowing women to work within six weeks of their expected delivery date, miscarriage, or pregnancy termination.²⁴
- If a woman chooses to work during the abovementioned period, she must be assigned non-strenuous tasks.
- To be eligible for maternity benefits, a woman must have worked for at least 80 days in the 12 months preceding her expected delivery date.²⁵
- The maximum maternity benefit period is 26 weeks, no more than eight weeks before the expected delivery date.²⁶
- For women with two or more living children, the maximum benefit period is 12 weeks, no more than six weeks before the expected delivery date.
- If a woman dies during the maternity benefit period, benefits cease on the date of death. However, if she dies after childbirth, benefits are payable for the entire period.²⁷
- If possible, employers should offer work-from-home options to women even after their maternity leave ends.²⁸
- Women are entitled to Rs. 3,500 if the employer does not provide free pre-natal and post-natal care.²⁹
- Upon returning to work, women are entitled to two breaks for nursing until the child reaches 18 months of age.³⁰
- In case of miscarriage or medical termination of pregnancy, women are entitled to 6 weeks of maternity leave and benefits.
- Women are entitled to an additional month of leave for pregnancy-related illnesses.
- An employer is prohibited from terminating a woman's employment during her maternity benefit period. If such an unlawful dismissal occurs, the woman remains entitled to her full maternity benefits.
- Workplaces with over 50 employees must provide a crèche facility. Female employees are permitted to visit this facility four times per day.³¹

²⁴ The Code on Social Security, 2020 (26 of 2020), s. 59(1).

²⁵ The Code on Social Security, 2020 (26 of 2020), s. 60(2).

²⁶ The Code on Social Security, 2020 (26 of 2020), s. 60(3).

²⁷ The Code on Social Security, 2020 (26 of 2020), s. 63.

²⁸ The Code on Social Security, 2020 (26 of 2020), s. 60(5).

²⁹ The Code on Social Security, 2020 (26 of 2020), s. 64.

³⁰ The Code on Social Security, 2020 (26 of 2020), s. 66.

³¹ The Code on Social Security, 2020 (26 of 2020), s. 67.

- Women who adopt a three-month-old or younger are entitled to 12 weeks of maternity leave.
- Section 72 of the Code on Social Security 2020 provides for Inspector- cum - facilitator as same as Inspector in Maternity benefit act 1961. “Any woman who believes she has been improperly denied maternity benefits or other entitled amounts who has been discharged or dismissed during or due to her absence from work may file a complaint with the Inspector-cum-Facilitator.” This right extends to any working woman claiming her rights have been denied unlawfully. Upon receiving such a complaint, the Inspector-cum-Facilitator may conduct or order an inquiry. They can make it through a written order if they are satisfied that payment has been wrongfully withheld. In cases of unjust discharge or dismissal, the Inspector-cum-Facilitator may issue orders deemed appropriate given the circumstances. Any person dissatisfied with the Inspector-cum-Facilitator's decision may appeal to an authority as prescribed by the relevant Government within thirty days of receiving the order. The decision of this appellate authority, or that of the Inspector-cum-Facilitator if no appeal is made, shall be considered final.
- Section 133 Code on Social Security 2020 provides that if an employer fails to offer maternity benefits, penalizes the woman, dismisses her, or reduces her rank, he shall be liable for “imprisonment for a term which may extend to six months or with a fine which may extend to fifty thousand rupees, or with both. Further, under Section 134, where the same person commits the same offense again, failure to pay maternity benefit which under this Code he is liable to pay, he shall, for such second or subsequent offense, be punishable with imprisonment for a term which may extend to three years but which shall not be less than two years and shall also be liable to a fine of three lakh rupees.”
- According to section 142 of the Code, any worker or employee in the unorganized sector who wants to avail of maternity benefits must use an “Aadhar number” to prove her identification. Such provisions were not included in previous acts.
- Prior opportunity before prosecution is given under section 137 of the Code, which provides that the Inspector-cum-Facilitator or another designated officer, as determined by the Central or appropriate government, must provide

employers with a written notice before initiating prosecution. This notice will outline the specific violations and set a deadline for compliance. If the employer complies within the given timeframe, prosecution will not proceed. However, suppose the same type of violation occurs again within three years. In that case, the employer will not be given this opportunity, and prosecution will be initiated as per the relevant provisions of the Code.

THE MATERNITY BENEFIT ACT, 1961	THE MATERNITY BENEFIT (AMENDMENT) ACT 2017	THE CODE ON SOCIAL SECURITY, 2020
• Duration of Paid Leave is 12 weeks, and a maximum of 6 weeks can be taken before the expected delivery date. • Coverage: women employed in factories, mines, plantations, shops, and establishments with ten or more employees. She must have worked for the employer for at least 80 days in the 12 months preceding the expected delivery date. • Wage Calculation is based on average daily wage. • Two weeks leave with wages for tubectomy operation, additional one month leave for	• Duration of Paid Leave: 26 weeks for the first two children and 12 weeks for the third child. • Coverage: Extended to all establishments, including the private sector. • Introduces duration of paid leave for adoptive mothers:12: weeks of paid leave from the date of adoption (for a child under three months). • Introduces duration of paid leave for commissioning mothers:12: weeks of paid leave from the date the child is handed over. • Allows for work-from-home arrangements	• Maintains 26 weeks as per the 2017 amendment. • Extends coverage to all employees, including those in the unorganized sector. • Introduces the concept of 'wages,' which includes basic pay, dearness allowance, and retaining allowance. • Includes provisions for maternity benefits for gig workers and platform workers. • Establishes a Social Security Fund to benefit unorganized, gig, and platform workers. • If an employer fails to offer maternity

illness out of pregnancy, delivery, etc. • Medical bonus of 3500 rupees (before it was 1000 rupees). The employer provides no pre-natal confinement or post-natal care. • Any woman aggrieved may file a complaint with the inspector, who will investigate the case and decide. An appeal can be raised if the inspector's decision is not satisfied within thirty days of the prescribed authority's decision; the decision of the prescribed authority shall be final, and if no appeal is raised, then the inspector's decision shall be final. • If the employer didn't give maternity benefits to entitled women, he would be liable for imprisonment for a minimum of three months, extendable to	after the leave period if the nature of work permits. • Creche Facilities are mandatory in establishments with 50 or more employees. • Two nursing breaks during working hours until the child attains the age of fifteen months. • Employers shall inform women in writing and electronically about maternity benefits at appointment.	benefits, penalizes the woman, dismisses her, or reduces her rank, he shall be liable for "imprisonment for a term which may extend to six months or with a fine which may extend to fifty thousand rupees, or with both. In case of a second or subsequent offense, it is punishable with imprisonment for a term which may extend to three years but which shall not be less than two years, and the person shall also be liable to a fine of three lakh rupees. • An employee in the unorganized sector who wants to avail of maternity benefits must use an "Aadhar number" to prove her identification. • Concept of prior opportunity before prosecution is introduced in the Code. • Inspector-cum-Facilitator will
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one year, and a fine ranging from two thousand to five thousand rupees.		investigate the complaints.
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JUDICIAL PRONOUNCEMENTS:

The Rajasthan High Court recently, in *Minakshi Chaudhary v. Rajasthan SRTC*³², clarified that all female employees are entitled to “180 days of maternity leave under the Maternity Benefit Act 1961.” In this case, the court held that the provision of only 90 days of maternity leave to be granted to the female employees of Rajasthan State Road Transport Corporation (RSRTC) under Regulation 74 of the RSRTC Employees Service Regulations, 1965 instead of 180 days as mandated by the Maternity Benefits Act, 1961 (post the 2017 amendment) is arbitrary discrimination and violation of fundamental rights under “Articles 14 and 21 of the Constitution of India.” The High Court observed that “The care that Indian mothers receive before and after they have a child is ingrained in our Indian culture. Therefore, even at the workplace, having the same care makes sense. This is possible only when proper and adequate Maternity Leave is allowed.”. This judgment reflects social justice, equality, and dignity of maternity and women.

The court, referring to the Supreme Court of India judgment in the case of *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*³³, observed that the equitable right provided under the maternity benefits legislation was extended to all women employees, regardless of their nature of employment, whether in the organized or the unorganized sectors. In the following case, the “Doctrine of Social Justice and Article 11 of the UN Convention on the Elimination of all Forms of Discrimination against Women” were considered.

In *Smt. Archana Pandey V. State of M.P & others*³⁴, “The question was whether the petitioners, contractual employees, were entitled to the benefit of maternity leave.” The high court, after considering the various judgments, believed that “when it comes to granting her the

³² *Minakshi Chaudhary v. Rajasthan SRTC*, 2024 SCC OnLine Raj 2779.

³³ 2000 SCC(L&S) 331.

³⁴ WRIT PETITION NO.15523 of 2016.

benefit of facilities required to give birth to a child, the employer is duty bound under the Constitution to provide her all the amenities and that the Court sees no reason as to why the benefit of Maternity Benefit Act should not be given to a woman contractual employee. The respondents are directed to grant maternity benefits to the petitioner.”

In the leading case, the *Union of India and Ors. vs. M. Asiya Begum*³⁵, the question that arises is whether women are entitled to maternity leave for their second delivery when they give birth to twins in their first delivery. The Hon’ble Madras High Court held that various points needed to be considered factually and legally so that the results would not lead to maternity harassment, and hence, in this case, the court held that maternity benefits could not be granted to a woman in their second delivery.

The Maternity Benefit (Amendment) Act of 2017 has served as a notable encouragement and empowerment for women in the workforce in India. This landmark legislation provides for maternity leave and creche facilities by establishments. Specifically, the Act has “increased paid maternity leave from 12 weeks to 26 weeks, of which no more than eight weeks shall exceed the expected delivery date.” Additionally, it provides for “work from home” for the period and conditions mutually agreed upon by the employer and the woman, depending on the nature of work assigned to her.

However, there have been violations, as evidenced by various court orders. These include arbitrary extension of probationary periods, denial of promotion, termination from employment, and employers asking for resignation from fixed-term employment. These cases highlight the understanding gaps, implementation, interpretation, and enforcement-related issues and challenges, leading to non-compliance, imposition of penalties, reputational loss to organizations, and discouragement among the women workforce.

LABOR MARKET TRENDS VIS-A-VIS MATERNITY BENEFITS IN INDIA

The impact of the progressive measures relating to maternity benefits is reflected in the Periodic Labour Force Survey (PLFS), released by the Labour Bureau in October 2023. The data shows a considerable increase in the women workforce participation rate, from “ 23.3%

³⁵ WA No. 4343 of 2019 (Madras High Court).

in 2017-18 to 37% in 2022-23.” Furthermore, the female labor force participation rate in urban areas has risen to 25.6% from January 2023 to March 2024³⁶, indicating an overall increasing trend. The recent report provides that the Labour Force Participation Rate (LFPR) in India is 45.1%, whereas in rural areas, males are 57.9%, females 35.5%, and in urban areas, males are 59.0%, females 22.3%.³⁷

The Periodic Labour Force Survey (PLFS) for July 2023 to June 2024, released by the Labour Bureau, showed little change in the overall unemployment rate, which remains at 3.2%. While there was a slight increase in agricultural workers, the manufacturing sector showed no job growth compared to previous years. However, the survey revealed significant improvements in women's workforce participation, addressing earlier criticisms of the government regarding unemployment and female job rates. The Labour Force Participation Rate (LFPR) in rural areas rose from “50.7% in 2017-18 to 63.7% in 2023-24” and in urban areas from “47.6% to 52%. Male LFPR increased from 75.8% to 78.8%”, while female LFPR saw a substantial jump from 23.3% to 41.7%. Notably, LFPR among Muslim women rose from 15% in 2021-22 to 21.4% in 2023-24, with similar increases observed among Hindu, Sikh, and Christian women. The unemployment rate decreased in both rural (5.3% to 2.5%) and urban areas (7.7% to 5.1%) since 2017-18. Male unemployment fell from 6.1% to 3.2%, matching the decrease in female unemployment from 5.6% to 3.2%. These figures suggest an overall improvement in employment trends across various demographic groups in India, particularly for women.³⁸

According to the World Economic Forum's Global Gender Gap Report 2024, India ranks 129 amongst 146 countries.³⁹ Women's economic participation and opportunities in India have shown a modest improvement. They have performed relatively well in political empowerment, ranking 65th. However, India's overall performance in Southern Asia is worrying, as it has only closed 64.1% of its gender gap in 2024. This has resulted in an overall rank of 129th, slightly lower than its 2023 rank of 127th. Only the Maldives and Pakistan rank lower in the region.

³⁶ Government of India, “Periodic Labour Force Survey (PLFS)” (Ministry of Statistics and Programme Implementation, January 2023- March 2024).

³⁷ Government of India, “Periodic Labour Force Survey (PLFS)” (Ministry of Statistics and Programme Implementation, July 2023- June 2024).

³⁸ “Unemployment Rate Stagnant, Reveals Government Survey,” *The Hindu*, Sept. 24, 2024, available at: <https://www.thehindu.com/business/Economy/unemployment-rate-stagnant-reveals-government-survey/article68678636.ece> (last visited on Sept. 25, 2024).

³⁹ Cherry Gupta, “World Economic Forum Reveals Top 10 Countries Closing the Gender Gap in 2024: Check, Where Does India Rank?”, *The India Express*, June 24, 2024, available at: <https://indianexpress.com/article/trending/top-10-listing/top-10-countries-closing-gender-gap-2024-india-rank-9411023/> (last visited on Sept. 25, 2024).

The report analysis shows an improvement in women's participation in the labor market, which has increased in recent years.

GOVERNMENT INITIATIVES RELATING TO MATERNITY BENEFIT

The Government of India recognizes the challenges and hurdles faced by working women. The laws have been enacted to curb the situation, but it is mainly for the women working in the formal sectors. The Government has adopted many schemes regarding maternity benefits, which are as follows:

- **The National Maternity Benefit Scheme (NMBS)** was “launched on August 15, 1995, as part of the National Social Assistance Programme (NSAP).” Initially, it started under the Ministry of Rural Development. Afterwards, it was transferred to the Ministry of Health & Family Welfare in 2001-02. NMBS provided “a cash benefit of Rs. 500 to women from households below the poverty line, aged 19 and above, for their first two live births. This assistance covered both pre-delivery and post-delivery periods.” The scheme, operational since 1995, aimed to provide financial support to needy women during pregnancy and even in cases of child mortality. NMBS was later replaced by an improved program called "Janani Suraksha Yojana" (JSY) to enhance its reach and effectiveness.⁴⁰
- **Janani Suraksha Yojana (JSY)**, a safe motherhood intervention, was introduced in April 2005 as a central scheme under the “National Rural Health Mission (NRHM),” replacing the previous “National Maternity Benefit Scheme (NMBS).” JSY aims to reduce neonatal mortality and maternal by uplifting institutional deliveries among underprivileged pregnant women across all Indian states and union territories.⁴¹ The program offers a comprehensive package for safe motherhood, including nutrition support, complete antenatal care, institutional delivery services, and postnatal check-ups. JSY scheme categorizes states into “low-performing states (LPS) and high-performing states (HPS) based on their pre-program levels of institutional deliveries.” A vital feature of the scheme is the introduction of Accredited Social Health Activists

⁴⁰ Ministry of Rural Development, India, *available at*: <https://nsap.nic.in/circular.do?method=faq#> (last visited on Sept 25, 2024).

⁴¹ National Health Mission, India, *available at*: <https://nhm.gov.in/index1.php?lang=1&level=3&lid=309&sublinkid=841> (last visited on Sept 25, 2024).

(ASHAs), frontline health workers who facilitate the program's implementation. JSY provides monetary assistance to eligible beneficiaries for delivery and post-delivery care, aiming to incentivize the use of healthcare services and improve maternal and child health outcomes among vulnerable populations throughout India.

- **The Vande Mataram Scheme**, launched on February 9, 2004, is a voluntary initiative under the Federation of Obstetric and Gynecological Society of India (FOGSI) and private clinics. Its primary goal is “to reduce maternal mortality and morbidity by leveraging the extensive resources and specialized workforce available in the private sector for obstetric care.” The scheme also aims to improve access and acceptance of family planning methods through enhanced counseling during antenatal and postnatal check-ups. Under this voluntary program, FOGSI members are encouraged to provide free outpatient services for antenatal and postnatal check-ups and family planning services on the 9th of each month. They also refer women requiring treatment for complications to pre-identified centers. As of the latest available data, 1,653 volunteer doctors are participating, with 492 nursing homes and maternity homes enrolled across 69 districts. State governments have been instructed to support participating doctors by providing Vande Mataram boards for their clinics, raising community awareness about the scheme, and supplying essential items such as Iron Folic Acid tablets, Tetanus Toxoid injections, condoms, and oral contraceptives for free distribution. These supplies are provided by district administrations using funds and resources from the Reproductive & Child Health (RCH) Programme. The Vande Mataram Scheme exemplifies a public-private partnership approach to improving maternal health outcomes. It offers a range of services, including free antenatal and postnatal check-ups, nutritional counseling, and breastfeeding support, all aimed at ensuring safer motherhood experiences for women across India.⁴²
- **The Pradhan Mantri Matru Vandana Yojana (PMMVY)** is a crucial initiative by India's Ministry of Women and Child Development to support pregnant women and lactating mothers from disadvantaged backgrounds. Initially launched in 2017, the scheme has evolved into PMMVY 2.0 under the 'Mission Shakti' initiative as of April 2022. It now provides financial assistance for the first two living children, focusing on girl children, offering ₹5,000 for the first child and ₹6,000 for the second if it's a girl.

⁴² Government of India Health and Family Welfare, India, available at: <https://eparlib.nic.in/bitstream/123456789/511197/1/12314.pdf> (last visited on Sept 25, 2024).

The cash incentive program for childbirth and care is structured in two parts. For the first child, the incentive is provided in two installments. The first installment of Rs. 3,000 is given upon pregnancy registration and completion of at least one antenatal checkup within six months of the last menstrual period at an approved healthcare facility. The second installment of Rs. 2,000 is provided after the child's birth is registered and the child has received all required vaccinations up to 14 weeks of age, as per the Universal Immunization Programme. This is contingent on registering the pregnancy, completing at least one antenatal checkup within six months of the last menstrual period, registering the girl child's birth, and ensuring the child receives all due vaccinations up to 14 weeks of age. In cases of miscarriage or stillbirth, the beneficiary is eligible to apply as a new beneficiary for any future pregnancy. The scheme aims to compensate for wage loss partially, enabling adequate rest before and after childbirth while promoting positive attitudes towards girl children. PMMVY works with other programs like the Janani Suraksha Yojana to provide comprehensive support. However, women in regular government or public sector employment, or those receiving similar benefits elsewhere, are not eligible. Through this financial support, PMMVY seeks to improve maternal health outcomes and address gender disparities in Indian society.⁴³

- **The Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA)** scheme was launched by the government to provide high-quality antenatal care to pregnant women nationwide. This initiative focuses on preventive healthcare measures to promote the well-being of mothers and their unborn children. Under this program, expectant mothers can access a comprehensive package of essential preventive healthcare services at designated Pradhan Mantri Surakshit Matritva Clinics. These services are available on the 9th day of every month, ensuring regular and timely care throughout pregnancy. The PMSMA's primary goal is to encourage and support healthy lifestyles that positively impact maternal and fetal health outcomes.⁴⁴

From the schemes mentioned above, it can be understood that the Government is trying to benefit women on a larger scale, but the problem is that although the schemes are there,

⁴³ Ministry of Women and Child Development, India, available at: <https://www.myscheme.gov.in/schemes/pmmvy> (last visited on Sept 25, 2024).

⁴⁴ Available at: <https://nhm.gov.in/index1.php?lang=1&level=3&sublinkid=1308&lid=689> (last visited on Sept 25, 2024).

awareness is not there. However, many benefited from the schemes, and data stated how much amount had been disbursed to how many beneficiaries. The involvement of private sector doctors in PMSMA indicates an effort to leverage all available resources to improve maternal care. Apart from seeing the Government initiatives, it cannot be denied that the implementation of any legislation takes time, and it takes time for the schemes to come into the knowledge of the public at a large scale; this is the researcher's perspective that there are loopholes in the system, the schemes are there although beneficiaries are taking advantage of it still they faced problems in going through the process. It is the dark reality of society.

CONCEPT OF PATERNITY BENEFITS IN INDIA

The Central Civil Services (Leave) Rules of 1972 allow eligible male government employees to take “15 days of paternity leave within six months of their child's birth or adoption. “To qualify, employees must have worked for their employer for “at least 80 days in the 12 months before the child's birth.” This is the only legislation that talks of paternity leave. But the judiciary, with time, has said that there is a crucial need to adopt paternity benefits legislation for society's welfare and positive impact, giving the child's father the same love and affection from the initial stage of his birth as he gets of his mother. There is no legislation on paternity benefits for private sector workers in India, so there is a quick need for such legislation to regulate all the workers on the same footing regarding paternity benefits.

Justice L Victoria Gowri, in referring to the wisdom of the ancient Indian text 'Neeti Sastra, said, "One who gives birth, one who initiates, one who imparts knowledge, one who provides food and protects from fear - these five are considered as fathers.” So, the father plays a crucial role in giving warmth to the child at an early age, just as the mother does.

The Madras High Court has significantly observed paternity leave in India. As the traditional joint family system has nearly disappeared and nuclear families face unprecedented challenges, the court emphasized that policymakers should now recognize paternity leave as a fundamental human right for the child, whether prenatal or postnatal. This right should extend to both biological and adoptive parents, acknowledging the

changing family dynamics in modern Indian society and the importance of parental involvement in a child's early life.⁴⁵

Swiggy, a prominent online food delivery company, has introduced a comprehensive gender-neutral childcare and parenthood policy for all its full-time employees. The policy grants “26 weeks of leave to primary caregivers and 15 days to secondary caregivers, regardless of gender, sexuality, or family structure. This inclusive approach extends to adoptive mothers, single parents, and LGBTQ+ parents through various means of becoming parents.”⁴⁶ The company aims to provide flexibility for employees to balance family needs and career demands while fostering career growth. Swiggy's Vice President of Human Resources, Girish Menon, emphasized that the policy covers every stage of parenthood to ensure a stress-free experience for employees. Beyond leave, the policy includes “additional benefits such as ergonomic seating, reserved parking, travel support, wellness sessions, and ongoing bonding leave. The company also offers adoption benefits, fertility care support, and leave for miscarriage recovery.” This move follows a similar policy implemented by Zomato, another food delivery company, highlighting a growing trend towards more inclusive and supportive workplace practices. However, there is no such central paternity benefits legislation in India.

CONCLUSION

Pregnancy is a significant life event for working women, often leading them to grapple with the question of whether they can continue their jobs or leave the workforce. This dilemma of having to choose between their professional aspirations and personal responsibilities can be a source of significant stress and anxiety. Various maternity schemes have been introduced to support women and their children during pregnancy and address this challenge. These schemes aim to alleviate the stress and negative thoughts that expectant mothers may experience, ultimately promoting their health and well-being. One such initiative is allowing fathers to take leave for a few days, enabling them to provide hands-on parental care for the newborn. This

⁴⁵ “Govt Should Make Law for Mandatory Paternity Leave, Including Private Sector: High Court,” *The Economic Times*, Aug. 22, 2023, available at: <https://economictimes.indiatimes.com/news/india/govt-should-make-law-for-mandatory-paternity-leave-including-private-sector-high-court/articleshow/102930959.cms?from=mdr> (last visited on Sept. 26, 2024).

⁴⁶ “Swiggy Unveils New Parenthood Policy, Gives Primary Caregiver 26 Weeks Leave”, *The News Minute*, Feb. 07, 2020, available at: <https://www.thenewsminute.com/atom/swiggy-unveils-new-parenthood-policy-gives-primary-caregiver-26-weeks-leave-117741> (last visited on Sept. 27, 2024).

gives the mother a conducive environment to focus on breastfeeding and helps the child receive parental attention during the critical initial stages.

The maternity benefits offered by these schemes play a crucial role in helping working mothers find a balance between their careers and their responsibilities as parents. By providing financial and logistical support, these benefits ensure that women do not have to leave their professions out of necessity, preventing their children from experiencing the potentially detrimental effects of a lack of parental care. The maternity benefits law in India has been instrumental in empowering Indian mothers to maintain a healthy equilibrium between their professional

The coverage of maternity benefits legislation could be expanded beyond establishing ten or more employees. Extending the protections to smaller establishments would ensure more women benefit from the maternity provisions. The legislation mandate for crèche facilities in establishments with 50 or more employees could also be enhanced. Lowering this threshold and providing financial assistance to set up quality creche services would greatly support working mothers. Medical research on mental health during pregnancy is abundant in India, but it is seen that it remains untreated. The low rates of maternal mental health care highlight the urgent need to improve “the recognition and treatment of mental disorders during pregnancy and the postpartum period.” Hence, there is a need to explicitly define “illness” mentioned in the Act to include both physical and mental illness.

Furthermore, there is a keen need for central paternity benefit legislation to be introduced in India, as paternity benefits play a very vital role in enabling to care for their newborn child properly, and it will balance the stress and hardship the woman suffers at the time of pregnancy before and after delivery of the child. At the very initial stage of childhood, there is a need for care for both child and mother. The paternity leave not only provides care to the child alone, but the mother who has given birth to a child who goes through a difficult and painful stage of pregnancy and experiencing the new change will get time to heal herself without worrying about the child's care.

The enforcement mechanisms must be strengthened to address violations, such as arbitrary probation extensions, denial of promotions, and terminations during pregnancy or maternity leave. Empowering labor inspectors and increasing penalties for non-compliance could help curb these issues. Awareness campaigns targeting employers, HR professionals, and the general public would also be beneficial. Such initiatives could help bridge the understanding

gaps and improve the overall implementation of the Act. Finally, strengthening data collection and reporting requirements would better track the impact of the Act and inform future policy decisions.