

# **Legal Framework For Maternity And Childcare Benefits In India**

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## **Abstract**

In contemporary society, women have demonstrated their capabilities across diverse sectors, challenging the earlier societal norms that confined their role to household chores and childcare responsibilities. When the women started gaining employment outside their homes, numerous challenges including discrimination, unfavourable working conditions emerged. The pregnant women either had to leave or were dismissed from their jobs. In the initial section of the paper, the need and the historical evolution of maternity benefits have been discussed. To safeguard the rights of women, the Indian Constitution provides various rights and privileges including Right to Equality (Article 14), the the right to social equality in the employment (Article 16), a sufficient means of livelihood( Article 39a), equal pay for equal work ( Article 39d) and humane working conditions and maternity leave (Article 42). The Maternity Benefit Act, 1961 was the first Act passed in independent India to protect the employability and ensure the rights of working mothers. However, it had only limited coverage and the employers had a tendency to hire fewer women. This paper attempts to analyse the provisions pertaining to maternity and child care benefits and ends with suggestions that could further ensure comprehensive protection of women.

## **Introduction**

Women have been an integral part of our culture since ancient times and their status has evolved significantly from being restricted to the domestic space of the household to becoming key contributors in the workforce. Bestowed with nature's gift of motherhood, it is the most beautiful and transformative phase in the life of a woman. However, it poses a challenge in front of working women to make a balance between the conflicting demands of health, family and work-life domains. With the emergence of the system of wage labour in the industrial settings, some employers tended to dismiss the women from their jobs when they believed that the maternity was affecting their ability to perform their regular duties. Therefore, many female workers either had to go on leave without receiving any pay or had to bear a heavy strain to keep their efficiency during the periods of pregnancy.

With a view to protect women from these hardships, the concept of maternity benefits came into existence. These provisions take into account financial independence, adequate healthcare treatment and the recovery time required by a woman. The maternal leave refers to a paid leave wherein the employer is liable to provide an amount equivalent to the employee's average daily wage for the duration of her actual absence.<sup>1</sup> The following arguments highlight the importance of maternity benefits:

1. The maternity leave allows a woman to take some time off to look after the child and to physically recover from childbirth. Various studies have indicated a positive correlation

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<sup>1</sup> <https://www.lawctopus.com/academike/the-need-for-maternity-benefits-for-women-employee/>

between maternity leave and improved physical as well as mental health. A study in the American Economic Journal: Economic Policy observed the health data on mothers in Norway both before and after paid maternity leave became mandated by law in 1977 and it was found that those women who gave birth after the implementation of law experienced improved overall health as they approached middle age. The women involved in low-income jobs were less likely to smoke or experience high blood pressure and were more likely to exercise regularly. A review in the Harvard Review of Psychiatry highlighted that the paid maternity leave is also closely associated with increase in paediatric visits and the timely administration of immunizations.

2. The provision of maternity benefits helps in reducing the gender bias by explicitly protecting the rights of all women in the reproductive age to participate in the workforce without any form of discrimination. It encourages women to pursue professional careers and helps to empower them, thereby breaking stereotypes that only a man can be a bread earner. Thus, the maternity benefits provide equality of opportunity by enabling the workers to raise families in conditions of security.
3. Maternity benefits recognize new parenthood by providing support and resources during the period surrounding childbirth. It acknowledges the adequate care a mother as well as a child requires and further extends to offer postpartum support such as access to nursing breaks and affordable postnatal healthcare.
4. The maternity leave fosters a strong bond between the mothers and their newborns during the crucial earlier months of life. This stage of a baby's life is essential for nurturing a child's holistic development and their journey to become a flourishing adult.
5. Maternity benefits safeguard the working women's rights to remain self-reliant and economically independent by ensuring financial security without any fear of losing her job due to motherhood. With the provision of maternity benefits, women can return to their work and continue working towards promotions.
6. Maternity benefits are positively correlated with reduced infant mortality rates. An empirical study conducted by McGill University and the UCLA Fielding School of Public Health revealed that for each additional month of paid maternity leave offered in low- and middle-income countries, infant mortality is reduced by 13%.<sup>2</sup>

## **Labour Laws for Women in India**

1. **Factories Act, 1948:** The Factories Act was first enacted in the year 1881 under British colonial rule. Since 1881 to 1948, it has undergone several changes. The aim of this Act is to safeguard the interests of the workers and to ensure safety, welfare and hygiene at their places of work. The provisions under this Act includes
  - a. *Section 27* of the Act states that “no woman or child shall be employed for pressing cotton in any part of a factory in which a cotton opener is at work.”

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<sup>2</sup> [bcmj.org](http://bcmj.org)

*b. Section 48 of the Factories Act* provides that each factory with more than thirty working females and for children who are below the six years of age, a comfortable space should be given for childcare. The employers are responsible for providing the creche facility and appointing a well-trained woman to look after the infants of working females in the factory.

- 2. Employee State Insurance act, 1948:** The Employee State Insurance Act 1948 is an important social security law that provides a security of income in case of any emergency such as sickness, maternity, physical disability by protecting their interests and guaranteeing reasonably good medical care to workers engaged in factories registered under the Employees' State Insurance Corporation. This act covers the whole of India and applies to all factories including government factories employing 10 or more people and carrying on a manufacturing system with or without the use of power, as well as any other companies that the government may prescribe. *Section 46(1)(b)* of the ESI Act states that an insured woman can claim periodical payments in case of occurrence of confinement, mis-carriage, sickness arising out of pregnancy and premature birth of child.

The minimum work duration must be 70 days in the year preceding the year of pregnancy and the benefit is payable for three months which might further extend to one month, if required.

- 3. Maternity Benefit Act, 1961:** The Maternity Benefit Act was passed by the Government of India on December 12, 1961. It protects the employment of the woman at the time of her maternity and applies to establishments employing 10 or more employees. It aims to provide all the benefits to a working woman in a dignified manner so that she may overcome the “state of motherhood honourably, peacefully, undeterred by the fear of being victimised for forced absence during the pre or postnatal period”.<sup>3</sup>

- a. **Applicability:** Section 2 in the Maternity Benefit Act states that it extends to the whole of India and applies to every factory, mine, plantation, including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. Additionally, it applies to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a state in which ten or more persons are either employed or were employed in the past on any day of the preceding twelve months. The State Government may extend the provisions of this Act to any other establishments by obtaining prior approval of the Central Government and providing a notice of its intention to do so, which must be given at least two months in advance.

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<sup>3</sup> [Maternity Benefit Act, 1961](#)

- b. **Employer Obligation:** *Section 4* of the Act states that no employer shall employ a woman amid the half of year quickly following her delivery or miscarriage. Besides, a business might not influence a lady to do any work of arduous nature that meddles with her pregnancy or the normal development of the foetus, during the one month immediately preceding the six weeks before the date of her expected delivery.
- c. **Payments of benefits :** Under *Section 5*, every woman is entitled to and every employer is liable for the payment of Maternity benefits at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day. However, the maternity benefits can be claimed by a woman only when she has actually worked in an establishment of employer for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery. The maximum period for which any woman will be given Maternity benefits shall be 84 days and in case a woman dies during this period, then the Maternity benefit shall be payable only for the days up to and including the day of her demise. Similarly, if a woman passes away during childbirth or within six weeks following delivery, leaving a child behind, the employer will be liable to offer maternity benefits for the six week period. However, if the child also dies during the said period, then the benefits will be provided for the days up to and including the date of death of the child.
- d. **Duration of leave:** The Act states that a woman is entitled to receive leave for twelve weeks, out of which, not more than six weeks shall precede the date of her expected delivery.
- e. **Notification for claiming benefits:** A woman eligible for maternity benefits must provide a written notice to her employer, specifying her maternity benefit and the other amounts due. If the woman is pregnant then she has to specify the date from which she will be absent from work. During the period of receiving benefits, she is not permitted to work in any other establishment. The amount of benefits for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on the production of such proof whereas the subsequent due amount has to be paid within 48 hours of the production of proof of childbirth.
- f. **Other provisions of the Act**  
*Section 8* provides every eligible woman will also be entitled to receive from her employer a medical bonus of one thousand rupees if no pre-natal confinement and post-natal care is provided for by the employer free of charge

*Section 9* states that in case of miscarriage, a woman is entitled for leave with wages equal to the rate of maternity benefit for a period of six weeks starting from the day following miscarriage.

*Section 10* states that a woman suffering illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall be entitled to take a maximum of one month leave with wages at the rate of maternity benefit upon providing the prescribed proof.

Section 11 provides every woman who resumes work after giving birth to a child two additional breaks of the prescribed duration for nursing the child until the child attains the age of 15 months.

## **Evaluation of Maternity Benefits Act,1961**

1. **Duration of Maternity Leave:** The International Labour Organization's Convention No. 183, 2000 suggested the minimum duration of maternity leave to be 14 weeks whereas the Recommendation No. 191 suggested it to be of at least 18 weeks to ensure the well-being of both the mother and child. This reflects the need for extending the duration of maternity leave to ensure safe motherhood.
2. **Limited Applicability :** The Maternity benefit Act, 1961 had a limited applicability because it excluded the majority of the Indian women engaged in the unorganised sector, as they often work in unstructured conditions and cannot meet the legal requirement of providing proof of 80 days of employment as mandated by the law.
3. **Gaps & coverage:** The Maternity Benefit Act mandates that the employers must maintain registers and the inspectors have the authority to investigate employers upon receiving complaints. Any failure to comply with these rules may result in the employer being either subject to imprisonment or a fine which might extend to ₹500. Despite these provisions, the lack of proper check on implementation led to either delays or inadequate maternity benefits. The penal provisions were not stringent enough to create fear among the offenders. A study ( 2011) conducted by V. V. Giri National Labour Institute revealed that most of the women workers availed of or were provided maternity leave for less than 12 weeks or less of maternity leave with pay did not receive the mandated leave of 3 months. Furthermore, out of all the women interviewed during research, merely 4% claimed receiving nursing breaks in between their working hours.<sup>4</sup>
4. **Lack of Awareness:** The Maternity Act, 1961 did not provide any provision on the part of employers to inform women about maternity benefits at the time of her joining. A study

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<sup>4</sup> [effectiveness of Maternity Act](#)

conducted by B .Chandra Mohan Patnaik, Mitu Agarwal and Ipseeta Sarpathy among the 200 married working women of the semi urban areas of Bhubaneswar, Odisha revealed that only 28.09% of respondents were fully aware about the Maternity Benefit Act 1961 and 68.09% were partially aware about it. 43.95% of women believed that their organization partially provided for maternity benefits whereas 36.05% believed that their organization did not provide any kind of maternity benefits to them.<sup>5</sup>

5. **Inclusivity:** The Act lacked inclusivity as it did not grant adoptive mothers the equal rights as biological mothers, even though both mothers have equal right to motherhood and require a considerable amount of time to look after the needs of babies.

### **Maternity Benefit (Amendment) Act 2017**

1. **Duration of Paid Maternity Leave:** One of the key amendments of the 2017 Act is increase in the paid maternity leave for women working in any firm with 10 or more workers from 12 weeks to 26 weeks. However, the duration of paid maternity leave will be 12 weeks in case of women having two or more children (i.e. six weeks prior and six weeks after the expected date of delivery). Furthermore, women have to avail the benefits of maternity leave eight weeks prior to the estimated due date.
2. **Work From Home:** The Maternity Benefit Amendment Act also has a provision enabling new mothers to opt for “work from home” provision after the expiry of 26 week leave period, depending on the job role and parameters established through mutual agreement between the employer and the employee.
3. **Surrogacy and Adoption:** As per the provisions of the amendment act, both the surrogate mothers as well as mothers adopting a child below the age of three months are entitled to 12 weeks maternity leave.
4. **Creche Facility:** All organisations with 50 or more employees are required to provide a mandatory creche facility. During the working hours, the female employee shall be permitted to visit the creche four times during the day. These visits must incorporate the rest period of the female employee.
5. **Employer’s obligation:** The employer is required to provide a written and an electronic notice of maternity benefits and company policy to all female employees. Under Section 12, any dismissal of a pregnant woman is illegal, and the employer can be held liable for the same. If an employer fails to provide maternity benefits to the woman or dismisses her on account of absence from work during her maternity leave, he shall be punished for a minimum period of 3 months and maximum for a year along with a fine of minimum ₹2000 and maximum ₹5000.

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<sup>5</sup> [researchgate](#)

## Implementation & Challenges

The Amendments made to the Maternity Act would bring women in the workforce closer to workplace equality by extending more time to recover, flexible work arrangements and creche facilities. However, there is still the presence of multiple disadvantages in the Act.

- **Demand-side consequences** : With increase in the duration of the leave, The Amendment (2017) places greater financial burden on employers when hiring women. The employer has to pay the entire amount for 26 weeks which might disincentivize him from hiring women. In order to assess the effect of the amendment , a survey was conducted by LocalCircles among startups and SMEs which revealed that 49% of the startups either hired less or no women in the last 12 months. <sup>6</sup> Additionally, a study conducted by Teamlease critically highlighted the shortcomings of the Government’s reimbursement for up to seven weeks of wages. In order to qualify for the incentive, women should have earnings below ₹15,000. Since the Employees State Insurance Corporation covers employees with income of ₹21,000 or less, the ₹15,000 threshold might exclude such women earning ₹21,000 or less but are employed in non-implemented areas where the employer has to bear the entire cost.<sup>7</sup>
- **Lack of clarity over timings:** While the Act mandates creche facilities for establishments with 50 or more employees, it doesn’t specify the allotted time per visit. This lack of clarity raises concerns that the burden on mothers can be increased if the employer imposed an unfair time limit. Further, the report prepared by V.V. Giri National Labour Institute (2018) revealed that the creche provisions made in the amendment have overlooked the physical and monetary costs of transporting children to and from worksites, negatively affecting the uptake of the provisions.<sup>8</sup>
- **Coverage:** The amendment led to more inclusivity by providing maternity benefits to surrogate and adoptive mothers. However, it covers only women who adopt a baby of three months. It discriminates against the babies who might be slightly older and have similar needs. They also require an adequate amount of time to adjust and establish a strong bond with their new mothers.
- **Reinforcing patriarchal norms** : This Amendment has further reinforced the gender related norms where women by default are expected to either quit or take leave to look after the babies. However, the emotional development of the newborn requires the presence of both parents. Since the provisions for maternity benefits were restricted to only government employees, it is challenging for the corporate employees to establish a healthy work-life balance. A study conducted by Future Generali India Life Insurance Company Limited and Market Xcel revealed that 85% of fathers reported that they felt they were not able to achieve work-life balance. With approximately 68% of Indian fathers working 6

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<sup>6</sup> [localcircles.com](http://localcircles.com)

<sup>7</sup> [mint.com](http://mint.com)

<sup>8</sup> [indiaspend.com](http://indiaspend.com)



days in a week, they put their own health on a backseat as they do their best to spend time with their families.<sup>9</sup>

## **Maternity Benefits vis-a-vis other countries**

Different countries follow varying maternity policies in terms of the span of maternity leave, parental leave, childcare support facilities, percentage of paid fee etc . The countries with the longest maternity leave and paid weeks off include Bulgaria (58.6 weeks), United Kingdom( 52 weeks) , Norway (49 weeks) and Sweden(480 days). Out of 193 countries in the United Nations, Papua New Guinea,

Palau, Tonga , Suriname , Nauru, The Marshall Islands, Micronesia do not have any provision of paid parental law.<sup>10</sup> In this section, we will compare the maternity benefits in a few selected countries around the world.

1. **Canada-** A maximum of 15 weeks of Employment Insurance maternity benefits is provided to pregnant women which can start as early as 12 weeks before the expected date of birth and can end as late as 17 weeks after the actual date of birth. The maternity benefits received by the woman are equal to 55% of the average weekly insurable wage and up to a maximum of \$650 per week. Parental benefits are provided to the parents of newborn or newly adopted children are provided under either *Standard parental benefits*(paid for a maximum of 35 weeks at a weekly benefit rate of 55% of the claimant's average weekly insurable earnings) or *Extended parental benefits* (paid for a maximum of 61 weeks at a weekly benefit rate of 33% of the claimant's average weekly insurable earnings.)<sup>11</sup>
2. **Belgium-** Belgium provides maternity leave to self employed, unemployed and employed pregnant females. However, the amounts, and duration differ among these categories. For an employed or unemployed female, maternity leave lasts for 15 weeks( 17 weeks in case of multiple births) whereas if a self-employed woman have been registered with a health insurance fund for at least six months, and have paid social security contributions for at least two trimesters, the self- employed female is entitled to receive a paid maternity leave for 12 weeks(13 weeks in case of multiple births). The benefits are paid by the Sickness Insurance Fund. Employed females are entitled to a monthly amount of 82% of salary for the first 30 days and 75% of salary (subject to ceiling) from the 31st day onwards whereas the unemployed female receives a basic payment equivalent to the amount of your unemployment benefits and an allowance of 19.5 % of the gross salary ceiled for the first 30 days followed by reduction in allowance to 15 % of the gross salary ceiled from the 31st day onwards.<sup>12</sup> The government also provides specific relief packages from government funds

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<sup>9</sup> [timesofindia.com](https://timesofindia.com)

<sup>10</sup> <https://www.skuad.io/blog/guide-to-maternity-leave-in-countries-around-the-world>

<sup>11</sup> <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/maternity-parental.html>

<sup>12</sup> <https://settlinginbelgium.be/en/social-security/birth-of-a-child>

for unemployed women. Additionally, a father is entitled to a 15 days paternity leave which must be taken within the four months following the birth.

3. **United Kingdom-** Female employees are entitled to a total of 52 weeks of maternity leave, which can be taken from 11 weeks before the due date and up to 52 weeks after the birth. The first 26 weeks of the leave is known as 'Ordinary Maternity Leave' and the remaining 26 weeks is known as 'Additional Maternity Leave'. The eligible employees can claim Statutory Maternity Pay (SMP) for up to 39 weeks of their maternity leave. The rate of SMP is 90% of the employee's average weekly earnings for the first 6 weeks and then a flat rate for the remaining 33 weeks. The UK also provides paternity leave, where eligible employees can take up to 2 weeks of paid leave, which can be taken within 56 days of the child's birth. Additionally, the eligible parents can claim up to 30 hours of free childcare per week for 3-4 years old children and tax-free childcare support for children under 12 years of age.

In comparison with the above discussed countries, the UK is often considered to have one of the most generous policies for maternity benefits providing maternity leave of 52 weeks. In terms of financial benefit, while the selected countries provide a specific percentage of salary, the Maternity Act of India provides 100% of an employee's base salary during the time of leave. India has a stringent approach by incorporating fines and imprisonment up to one year, as opposed to other countries which primarily resort to civil suits when dealing with employers who deny employee's maternity benefit rights. In the UK, Belgium and Canada, multiple provisions grant paternal as well as parental leaves reflecting a shared responsibility of both parents in child-rearing. In contrast, there is no such independent legislation to govern the laws of paternity leave in India. Only the Government employees are entitled to a 15 days or extended paternity leave for a male employee under the Central Civil Services (leave) Rules, 1999.

### **National Food Security Act, 2013**

The National Food Security Act was passed by the Indian Parliament on 12 September, 2013 with an aim of providing subsidised food grains to 75 percent of the rural population and 50% of the urban population through the Public Distribution System. Under this Act, the priority households category receive foodgrain @5kg per person per month and the Antyodaya Anna Yojana families receive food grains @35kg per family per month at highly subsidised prices. Additionally, it offers various provisions for the welfare of pregnant women, lactating mothers, and children who need nutritional support. **Section 4** of the Act states that the Central Government must provide all the pregnant and lactating mothers a free meal at local Anganwadi and maternity benefit of worth ₹6,000 in instalments. These requirements are carried out under Pradhan Mantri Vandana Yojana. Furthermore, **Section 5** of the Act stipulates that all children between the age group of six months to six years are entitled to receive a free meal at an Anganwadi and all school-age children up to eighth grade will get a free meal. If any public employee or authority fails to provide the relief

recommended by the District Grievance Redress Officer, he may be fined up to ₹5000 by the State Commission.

Thus, the National Food Security Act, 2013 is a radical public policy intervention to protect people against malnutrition, food insecurity and hunger. In 2022, the total number of persons covered by the Act was 8010.78 lakhs. During 2014-2021, several initiatives such as digitisation of ration cards and de-duplication process has enabled States/UTs to weed out around 42.8 million ineligible/bogus ration cards.<sup>13</sup>

However, despite the ten years of food security being a legal right, the Family Health Survey, 2015-16 (NFHS-4) and NFHS-5, 2019-21 indicates that the incidence of anaemia has increased by 1.8 percentage points among pregnant women, by 3.9 percentage points among all women in the reproductive age and by 5 percentage points among adolescent girls. This could be attributed to low per capita allocation of resources. For instance, based on the population projection released by Census of India(2019), the allocated amount for children in the age group of 0 to 6 years is ₹1,790 which is insufficient when it comes to preventing malnutrition or diseases caused by it.

<sup>14</sup>Additionally, it failed in recognizing the need for a diversified food basket as suggested in the National Nutrition Policy, 1993.

## **Maternity Benefit Government Schemes in India**

The maternal well-being of a woman has a significant impact on the future generations. It encompasses the aspects of both physical as well as mental health and a wide range of socio-economic factors which influences the accessibility and the quality of healthcare. In order to reduce the Maternal Mortality Ratio(MMR) and ensure decent healthcare facilities for mother and the newborn, various initiatives have been taken by the government.

**Janani Suraksha Yojana (2005)** : The Janani Suraksha Yojana is an intervention program for safe motherhood and sponsored by the Central Government of India. The aim of JSY is to reduce the maternal and neonatal mortality by advancing institutional conveyance to poor and pregnant women in India. It provides cash assistance and two free antenatal checkups, upto a maximum of two live births, to pregnant women who have attained age of 19 or above and belongs to Below Poverty Line (BPL) families. Based on the performance in institutional delivery rates, States are divided into High Performing States and Low Performing States.

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<sup>13</sup> [National Food Security Act, 2013](#)

<sup>14</sup> [nls.ac.in](http://nls.ac.in)

**Table: Cash Assistance Structure**

Category	Rural Areas	Urban Areas
Low Performing States	Mother's Package - ₹1400 ASHA'S Package - ₹600 Total - ₹2000	Mother's Package-₹1000 ASHA'S Package-₹400 Total-₹1400
High Performing States	Mother's Package -₹700 ASHA'S Package-₹600 Total-₹1200	Mother's Package- ₹600 ASHA'S Package- ₹400 Total- ₹1000

Since the introduction of JSY in 2005, the percentage of institutional deliveries in India has increased significantly from 39 per cent in 2005-06 (NFHS-3) to 89 in 2019-21 (NFHS-5). According to a study (2016) conducted by Ruchi Jain, Sonalde Desai and Reeve Vanneman, JSY has led to an increase in utilisation of maternal healthcare services in two rounds of the India Human Development Survey (IHDS) — conducted in 2004-05 and 2011-12 .<sup>15</sup> However, there are certain flaws that still persist with regards to the timely delivery of benefits. In 2020, official records revealed that out of 21,665 deliveries in government institutions, only 16,743 women received cash assistance, indicating 23% did not receive the assistance. In 2022, about 5,000 women awaited for their cash assistance in Indore district.<sup>16</sup> The major reason for such delays was inadequate supervision on part of block medical officers, zonal medical and district programme manager and the complex multilayer process of data entry on the portal.

**Pradhan Mantri Matru Vandana Yojana (2017):** Pradhan Mantri Matru Vandana Yojana is a centrally-sponsored direct benefit transfer scheme that provides a cash incentive of ₹ 5000 directly to the accounts of the pregnant woman and lactating mothers for the first live birth. This scheme covers women aged 19 or above employed in the unorganised sector.

Since its inception, the scheme faced criticism for being limited to the first live birth. However, in FY 2021-22, the scheme merged with the newly restructured Mission Shakti scheme and is a part of the Samarthya sub-scheme for economic empowerment of women. Now, it extends cash transfers to families with a second live birth, in case of a girl child. For the first live birth, a total of ₹5,000 will be given in two instalments and a one-time lump sum of ₹6,000 for the second live birth in case it is a girl.

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<sup>15</sup> [Ncaer.org](http://Ncaer.org)

<sup>16</sup> [timesofindia.com](http://timesofindia.com)

The PMMVY has covered 2.01 crores women nationally, disbursing a total amount of ₹8,722 crores. The data indicates its under budgeting and how it has failed to cater to all targeted beneficiaries. While the estimated eligible population of Pregnant women and Lactating mothers was 128.7 lakhs in 2017-18, the target set by the Government was 51.70 lakh, which was merely 40% of the eligible population. Further, in 2020 more than 50% of the registered beneficiaries did not receive the benefits and there was a 9% decline in enrolment. In 2022, a total of 2.79 crore beneficiaries were benefited with a coverage of barely 23% of total births.<sup>17</sup>The number of pregnant women who received the third PMMVY instalment was just 13% of the annual births.

## **Social Security Code, 2020**

With the aim of unifying labour laws, the 2nd National Commission on Labour recommended the restructuring of current labour laws into 4 to 5 groups. As a result, the Code on Social Security, 2020 received the approval of the President on 28 September 2020. The Code consolidated then existing nine laws including the Maternity Benefit Act, 1961 in one integrated Code. The Code aims to regulate the organised as well as unorganised sectors and extend social security benefits across different organisations. The current Maternity Benefit Act is modified by Chapter VI of Social Security Code, 2020.

According to Section 60 of the Code, every woman who has worked for a minimum of 80 days in the twelve months immediately preceding the date of her expected delivery is entitled to 26 weeks of maternity leave. Maternity benefits under this Code apply to every establishment including Government institutions and to every shop or establishment which employs or employed 10 or more employees in the preceding 12 months. The Social Security Code has assimilated the previous provisions and further introduced several new modifications. Following are the changes made in the new Code:

1. A common creche facility has been introduced wherein, any establishment with 50 or more employees may avail common creche facility of the Central Government, State Government, municipality, private entity, provided by non-Governmental organisation or by any other group of establishments who may collectively pool their resources for setting up of common creche. The creche facility should be within a prescribed distance. This resolves one of the biggest constraints of employers by reducing cost per establishment.
2. An employer has to provide intimation in writing electronically to every woman about the details on every benefit available to her under the Maternity Benefit chapter of the Code.
3. The new Code has raised penalties to prevent employers from breaching it and to ensure the successful implementation of regulations that protect the rights of mothers. Under Section 133 of the Code, any employer who fails to provide maternity benefit to which a woman is entitled to, will find themselves punished with imprisonment for a term which

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<sup>17</sup> [idronline.org](http://idronline.org)

may extend to six months or with a fine which may extend to ₹50,000, or with both. In case an employer repeats the offence again, the imprisonment for a term may further extend to three years and shall also be liable for 3 lakhs rupees.

4. The duties of enforcing the provisions of the Code have been given to Inspector-cum-Facilitator who has the power to inquire into complaints of non compliance of the provisions and pass orders that they deem fair. The Inspector-cum-Facilitator has the authority to visit any office and evaluate employees concerning the employer's provisions of maternity benefits. The employer is required to give information regarding the names, addresses and payments made to the employed women. Further, the Code mentions that if it is proved that the offence was committed due to any negligence or with the consent of any officer (director/ secretary or any other officer), then these officers shall also be held liable and will be punished accordingly.
5. Before initiating the prosecution proceeding against the employer, he will be compulsorily given an opportunity to be in compliance with the relevant provisions by the way of written direction within a time frame and if the employer complies with such direction within such period then no such proceeding will be initiated against him. However, no such opportunity will be given if the employer violates the rules again within a period of three years. In such cases, the prosecution shall be initiated in compliance with the provision of chapter XII of the Code on Social Security, 2020.
6. Under Section 136 of the Code, no trade union or any voluntary organisation can file a complaint regarding the commission of an offence under this Act in any court of this competent jurisdiction. This power is only provided to the aggrieved woman and the Inspector cum-facilitator.

## **Way Forward**

- Despite various provisions, the Code lacks inclusivity. With over 90% of working women class only a few of them are within the purview of this Code. Thus, in order to ensure comprehensive maternal protection, the Code shall emphasise on broadening the coverage by addressing the maternity related provisions for every working woman.
- The Code appears to overlook an opportunity to introduce paternity leave and a chance to convey the message that childcare is a shared responsibility of both parents. Countries across the world such as Sweden encourage parents to divide the leave days between them by providing both parents a 480 days of leave with partial pay to care for their child whereas Lithuania provides 30 days leave to fathers. Certain private companies in India have established their own policies in this regard. For instance Zomato introduced a 26 week paid parental leave for all employees including surrogate and adoptive parents. Thus, a legislative framework for fathers working across various professions should be established to regulate their entitlement to paternity leave.

The provisions should be established such that either of the parents must be allowed to take leave, provided that the person applying for leave has to file an affidavit confirming that their partner will be at work while they take care of the child.

- Clause 59 (3) of the Social Security Code prohibits women from engaging in “work of arduous nature” during the prescribed period before her expected delivery. However, there is a need for a precise definition of arduous work so that employers can be held accountable for engaging female workers in hazardous work and ensure the effective implementation of the Code. Additionally, the legal provisions for addressing the violations can be included such as frequent evaluation of working conditions by Inspector-cum facilitators, fixation of hefty penalties and the provision for cancellation of employer’s license in case of negligence.
- Extending the provision of 12 weeks of leave to women adopting children under three months is arbitrary in nature. It could create a tendency among the adoptive parents to prefer infants up to three months of age which will be discriminatory against the older children. Moreover, babies of all ages require a certain amount of time to establish a bond with parents. discriminates against the babies who might be slightly older and have similar needs. Thus, it is suggested to expand the duration of maternity leave for the adoptive mothers.
- To improve the efficiency of welfare schemes and address delays of benefits caused by multiple steps, it is essential to simplify the online process which can lead to higher beneficiary registration and timely deliveries. Additionally, the officers shall be held accountable for any supervision lapses on their part.
- While provisions have been made to establish a creche facility for organizations having more than 50 employees, there is no official data on the extent of its compliance. Therefore, an auditing must be done to ensure that these facilities are available to the working women.

## **Conclusion**

The legal framework for maternity benefits and childcare has evolved significantly with the passage of time and emphasises greater importance of ensuring the safety of mothers and well-being of the children. With amendments brought in 2017, India became one of the few nations of the world to provide a considerable amount of leave. Further, the provision of various schemes and maternity provisions like childcare facility, option to work from home caters to the needs of modern-day mothers and ensures their holistic development. In order to tackle the compliance issues, the laws were further made stringent in 2020. Despite these amendments, there are certain flaws that overlook the comprehensive protection of women. In the present day, there is a need to universalize maternity benefits and to establish family-friendly laws that allow working parents to maintain job security as well as cherish parenthood with their newborns.





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