



## Maternity Benefit Act Of 1961

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### ABSTRACT

Maternity benefits are the support provided to women during pregnancy and after childbirth to help them care for their children. Recent studies in India show that the country is matching international standards set by global agreements. This paper provides a clear overview of maternity benefits in India, outlining the recommendations outlined in international rules. It also brings together all the recent research related to this topic in India and compares it with other countries. The paper includes real data and expert advice, plus some personal views. Its goal is to help people in the country understand the laws and benefits connected to maternity easily and straightforwardly.

Keywords: maternity, benefits, amendment, leave.

### INTRODUCTION

In most developed countries today, women make up a big part of the workforce. In India, about 23.6% of women aged 18 and older are working. Women who have babies or young children are part of the workforce, whether they work in formal jobs or informal jobs. There are policies in place that give parents time off work when they have a new baby or adopt a child. These policies help workers manage their careers and family duties. The main goal of these policies is to improve family life and keep careers going smoothly. Also, since women usually take on most of the child care in the early months, these policies help them give better care and attention to their children. This paper gives an overview of these policies.

Maternity Benefits are very important for a woman's career because they offer the support she needs to decide to have a family.

These laws are there to help parents during childbirth and support recovery before going back to work. They also give peace of mind by ensuring the mother gets benefits, job security, and pay during this time. In 2015, 80 countries around the world offered both Paternity and Maternity Leave. India has a long history of including Maternity Benefits in its legal system. Even though India has a central policy, many employers see it as a starting point and may offer more in terms of time off or payment. This paper is divided into five main parts. We start with a literature review on the topic, including the history of the subject and past and current changes to the law. We also give a general summary of the act and its benefits for quick reference.

Additionally, we look at the criticisms of the law and propose some solutions.

Since this research topic is quite broad, we used certain guidelines to decide what to include in this paper. We focused mainly on the basic law itself and studies that examine the impact of this law. We did not cover the human rights aspect of the topic. This is because there isn't enough detailed research available on this subject, and there may also be some personal opinions involved.

We also reviewed literature on maternity benefit laws in some Asian countries that are similar to India in terms of their economy.

We didn't cover all Asian countries because there isn't enough raw data available for analysis. This part of the review focuses on the differences in how these laws are approached and the possible changes that could be inspired by similar laws in other countries.

Our comparative review includes the following countries: Singapore, Malaysia, Thailand, Indonesia, and the Philippines.

Because of the large number of comparisons, we kept the comparison parameters limited.

The rest of the paper is structured as follows.

Section 1 is the introduction. Section 2 talks about the global situation of maternity benefits and policies, along with a detailed history of maternity policies and the act in India. Section 3 discusses the criticisms of the act in India and our suggestions. Section 4 compares the act in India with the mentioned countries. Section 5 includes the final thoughts and suggestions for future research.

## LITERATURE REVIEW

Experts say that protecting mothers is important for both fairness between men and women and for the economy to grow. Studies from the International Labour Organisation show that having enough time off for maternity leads to healthier pregnancies, helps more women work, and improves how children develop in their early years. Indian academics stress that despite the Act's many advantages, its actual application is still lacking. The lack of understanding among female employees and employers, the financial strain on small businesses, and the exclusion of informal workers are all frequently mentioned in the literature. Some writers advocate for a universal maternity program based on social insurance, like those seen in Europe.

## OVERVIEW OF THE ACT

Section 4: Employment of, or work of, women prohibited during certain periods.

Section 5: Right to payment of maternity benefits.

Section 7: Payment of Maternity Benefits in case of the death of a woman.

Section 8: Payment of Medical Bonus.

Section 9: Leave for miscarriage, etc.

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Section 10: Leave for illness arising out of pregnancy, delivery, premature birth of a child, miscarriage, medical termination of pregnancy or tubectomy operation.

Section 11: Nursing Breaks.

Section 12: Dismissal during absence of pregnancy.

Section 13: No deduction of wages in certain cases.

Section 14: Forfeiture of maternity benefits

## **WHO CAN AVAIL**

The inclusion of men under maternity benefits is considered crucial in India due to the changing family pattern and sharing of parenting responsibilities. As it stands today, the law, referred to as the Maternity Benefit Act, 1961, extends paid leave, financial assistance, and job security only to women who are pregnant or have just delivered a baby. It categorically states that maternity benefits would extend to women alone and hence, men cannot claim them under any circumstances. The law seems to view maternity from the physical aspect, where it characterises this as an experience that only women go through; hence, maternity benefits apply only to them.

Even though men cannot get maternity benefits, India does provide some assistance to fathers in the form of paternity leave.

While in the government sector, males can take 15 days of paid leave before or after the birth of a child; no law in the private sector requires this, though some companies offer fathers between 5 and 30 days off to tend to their newborn babies. Still, no official law requires all workers to have paternity or parental leave, thus demonstrating one of the lapses in the rules.

Many countries around the world have begun to provide similar benefits to both parents so that child-rearing responsibilities might be shared more equally between men and women.

The Indian system reinforces traditional gender roles by granting maternity benefits to women only and thereby perpetuating the idea that a father's care and involvement are neither necessary nor desirable. Even without being entitled to maternity benefits, there is an increasing assumption that both parents should share child-rearing responsibilities. This suggests that making parenting benefits equitable and inclusive for all does require changes in India's laws.

The Act of 1961 provides for women in maternity leave to have full pay, which means 100% of wages. This is because the law permits paying female workers their usual wages and daily rates. As compared to the contemporary legal regimes concerning maternity benefits, one would find that this particular act of the Indian Maternity Benefit is more flexible and forthcoming. In line with ILO Convention No. 183, this Act states that maternity benefits should be computed based on a woman's past earnings and shall not be less than 66% of what she had earned before. Because work brings economic independence to women, it also provides choices to women when they encounter problems at home.

Although financial stress, imbalance, or emotional needs may force some women to increase their amount of work, it is not seen as a positive feature, since it puts additional pressure on women who already cope with all the domestic work. Benefits like maternity leave are hence important features of women's jobs. Maternity leave helps working mothers balance their jobs and family duties more efficiently<sup>2</sup>.

## International Labour Organisation

The International Labour Organisation has changed the game for working mothers. Their rules don't just suggest—they clearly lay out what good maternity benefits look like. The ILO Convention on Maternity Protection from 2000, C183, sets the bar. It says working mothers get at least fourteen weeks of paid leave and financial support while they're out. Plus, it draws a hard line against discrimination during pregnancy. We're talking fair medical care, job security, safe workplaces—the basics, but so often ignored. What really stands out is that C183 protects informal and non-traditional workers too. Those are the people who usually get left behind, especially in places like India. On top of that, there's the ILO Recommendation on Maternity Protection. Think of it as the upgrade. It pushes for eighteen weeks of leave and even better health support. It also makes sure women have the right to take breaks for breastfeeding. Then you've got India's Maternity Benefit Act from 1961. Honestly, it fell short. There was no solid way to guarantee that women in factories, mines, or tough jobs actually got the help they needed. However, the Maternity Benefit Act, 1961, was enacted to provide health and safety benefits for women employees in various sectors of the Indian economy. This Act attempted to normalise wages and the length of maternity leave, as well as what women were entitled to. In 1928, the Government of India introduced maternity benefits in Bombay, which was then part of British India.

Dr. Babasajibe Ambedkar was the promoter of maternity leave. The Republic of India passed the Maternity Benefit Act, 1961, on December 12, 1960, after its independence from the British. The main aim of this act is to protect and maintain the health and safety of women before and after their birth according to international laws. Places that fall under the Employees' State Insurance Act, 1948, are excluded from the scope of the Maternity Benefit Act, 1961. Maternity Benefit Act, 1961

Section 4 states, "Working in any office for six weeks after a childbirth or miscarriage is prohibited".

Women should refrain from engaging in demanding jobs that require physical exertion or extended work periods during this time.

According to Section 5 of the Maternity Benefit Act, 1961, all women are eligible for maternity benefit that corresponds to their daily wage earnings.

Until the birth of the child, this entitlement is valid for six weeks after the baby's birth, which starts when she enters labour.

<sup>2</sup> Ministry of Labour & Employment, "Maternity Benefit (Amendment) Act, 2017," available at: <https://labour.gov.in>

The Maternity Benefit Act 1961's Section 8 provides for maternity benefit and a medical claim of twenty-five thousand for women who do not receive any prenatal or post-pregnancy care.

The advantage belongs to its owner, the employer<sup>3</sup>.

## CASE LAWS

Numerous significant court decisions have widened the Maternity Benefit Act and clarified its scope.

In the case of K. Kalaiselvi v. Chennai Port Trust, (2013) 2. A commissioning mother, or biological mother who uses a surrogate, should be treated the same as an adoptive mother and entitled to maternity benefits under LW 530 of the Madras High Court<sup>4</sup>.

In Rama Pandey v. Union of India, (2015) 221. An unsupported claim for childcare leave was made against a pregnant woman by the Delhi High Court, as per DLT 7506. The court pointed out that raising a child isn't easy for any mother, no matter where she lives. Denying maternity leave to a commissioning mother just doesn't fit with what the Constitution says about equality. So, why is that?

Take the case of Hema Vijay Menon v. State of Maharashtra from 2015. The Bombay High Court looked at a similar situation. The judges made it clear: maternity benefits aren't just for women who physically give birth. Being a mother goes way beyond biology. Maternity leave should cover commissioning and adoptive mothers, too.

The case of Municipal Corporation of Delhi against. In AIR 2000, SC 1274, the Supreme Court declared that women who work on daily wages (collectively called muster rolls) should be entitled to maternity benefits just like permanent workers<sup>5</sup>.

But the court ruled that not awarding maternity benefits on the basis of an employee's employment status is in breach of Article 14 and 42. The decision was made accordingly.

Sushma Devi v. 2021 210.A. 2100. FLR 410 stipulated that women who work on a sex contract should be eligible for maternity benefits. The Himachal Pradesh High Court decided in November 2014. Additionally,

It was held in the court that not granting such employees maternity leave constitutes unfairness and discrimination.

In a landmark case, Dr Kavita Yadav v. Women with long-term contracts were also provided with maternity benefits by the Ministry of Health and Family Welfare (2023).

After 80 days of work, a woman can continue to receive maternity benefits even if her contract expires before she can claim all of the benefits, according to the court's ruling.

## Comparative Evaluation

i) Singapore Maternity laws in Singapore are veritably strict. It varies depending on the citizenship of the child and, thus, the marital status of the woman. However, the mama doesn't enjoy the total benefits of the act if the child is not a citizen of Singapore. These are the posterior conditions under the Ministry of Manpower of Singapore for the mother to enjoy full 16 weeks of paid maternity leave

<sup>3</sup> International Labour Organisation, "Convention C183 – Maternity Protection Convention, 2000," available at: <https://www.ilo.org>

<sup>4</sup> Madras High Court Judgement Search Portal, "K Kalaiselvi v. Chennai Port Trust (2013)," available at: <https://hcservices.ecourts.gov.in>

<sup>5</sup> Supreme Court of India, Municipal Corporation of Delhi v. Female Workers, AIR 2000 SC 1274, available at: <https://main.sci.gov.in>

- The child is a citizen of Singapore
- The mama is fairly married to the father of the child.
- The mama has worked for the employer or has been tone-employed for at least 3 months before the birth of the child. A notice needs to be given to the employer for a minimum of 1 week before going for maternity leave, and inform them as soon as possible of the delivery. Otherwise, the employer can give half the entire payment unless they've a sound reason to not give the notice on time. Motherliness leaves in Singapore can be applied to the Singapore Government website.<sup>12</sup> ii) Malaysia In Malaysia, under the Employment Act of 1955, as long as the lady has worked for at least 90 days in the last four months before starting maternity leave, she's also entitled to 60 days of full paid maternity leave. The employer needs to learn for a minimum of four months before the maturity. In the following cases, the awaiting mama is entitled to over two months of statutory leave
- Banks and some state government workers may enjoy maternity leave of over 90 days,
- Some transnational companies give indeed further than 90 days of maternity leave.
- Some companies allow employers to take further than 90 days, but without pay

In all cases, it depends on the employer and thus the employment agreement. It's worth noting that motherliness benefits generally apply to the first five children; no motherliness leaves are handed on the birth of the sixth and subsequent children.<sup>13</sup> iii) Thailand In Thailand, an expectant mother is protected under the Labour Protection Act of 1988. womanish workers there enjoy the posterior benefits –

- 90 days of motherliness leave, including any leaves coming in between.
- Full 45 days of pay from the employer and 45 days' pay from the social welfare fund.
- Minor changes within duties can be handed before or after the birth of a child with the instrument of the croaker
- Full protection from the termination of employment. Other benefits available to expectant maters include- medical examination and childbirth charges, medical treatment charges, confinement charges and other necessary charges. iv) Indonesia Maternity benefits in Indonesia are provided with its health care during motherhood, in addition to during delivery. It's handed under the provisions of the Social Security Law. The workers get the following benefits
- The employer is required to pay cash benefits in addition to the yearly pay envelope for a period of 12 weeks, six weeks before confinement and six weeks latterly.
- In the event the woman's hand dies during or after delivery, the employer is still liable for maternity benefit payments for the 12 weeks. Are there any benefits for the employment or donation conditions for the annuity of motherliness benefit? This is a major debit, as an employer is required to pay benefits, whether or not the lady delivers within the first month of employment.<sup>14</sup> v) Philippines The maternity benefits in the Philippines have lately been extended from 60 to 150 days through a new law, Republic Act No. 11210. The law applies to all workers in to Private sector, including those in informal frugality, irrespective of the legality or civil status of the child, confinement, etc. The workers get the following benefits<sup>15</sup>
- Paid maternity leave is available to any or all working mothers.
- The private sector workers get the total payment within 30 days after submitting the leave application.

- Workers can extend the leave period up to 30 days, after notifying the employer 45 days before the start of leave.

In comparison with the given countries below, the act presently in effect in India is beyond par than nearly all other countries in some manner or the other. India provides nearly 85 further duration of maternity leave than the transnational convention, whereas all of these countries give leave for twelve to fourteen weeks on average. India has a better structure and process of remuneration than these countries. The biggest debit of the act enforced in India is that the maximum liability falls on the employer and nearly nothing on the Government. E.g. Thailand has a social welfare fund, which provides 45 days of maternity leave payment. Also, India is the only country amongst the considered, which makes a crèche installation obligatory. Before the 2017 correction of the act, the benefits available in India were similar to those available in the aforementioned countries. In the once couple of times, India has taken a major step in transitioning from a developing economy to a developed one, by furnishing multiple benefits to workers to boost the pool. This includes an increase in the installation of the labour laws. This has put India in the 3rd position encyclopedically for the motherliness installations it provides<sup>6</sup>.

## DIFFICULTIES WITH IMPLEMENTATION

1. Lack of monitoring mechanisms.
2. The expense burden causes fewer women to be hired.
3. The lack of creche facilities.
4. Women in rural regions have low levels of digital knowledge.
5. Private enterprises' compliance is complicated.

## SUGGESTIONS

1. Establish a Maternity Benefit Fund that is shared by social insurance, the government, and employers.
2. Provide universal maternity support to extend benefits to the unorganised sector.
3. To promote shared caregiving, implement parental leave.
4. Offer tax breaks to companies that provide maternity facilities.
5. Make labour inspections and non-compliance fines more stringent.
6. Required awareness campaigns for female employee<sup>7</sup>s.

## CONCLUSION

The Amendment Act started working from 1 April 2017. All places that are covered by this Act were supposed to update their current maternity benefit rules so they match the Amendment Act, starting from 1 April 2017. The changes made by the Amendment Act are generally welcomed by everyone. However, there are some parts of the Act that need to be made clearer. It is not clear if the higher maternity benefits will also apply to women who are already on maternity leave. Also, the reason for having a separate start date for the "work from home" option is not clear. The work-from-home provision is meant to encourage employers to give this option to women based on the type of work they do, not as a rule that employers must follow under the MB Amendment Act. Other requirements, like creche facilities, need more money from the employer, both in terms of setting them up and running them. Employers will have to cover the full cost of maternity leave. Maternity leave is paid for by a combination of the government, employer, insurance companies, and other social security entities in most countries.

## REFERENCE:

1. Maternity Benefit Act, 1961.
2. Maternity Benefit (Amendment) Act, 2017.
3. International Labour Organisation, Convention C183.
4. Female Workers vs Municipal Corporation of Delhi AIR 2000. SC 1274.
5. The case between K Kalaiselvi and Chennai Port Trust in 2013 is 2nd case. LW 530.

<sup>6</sup> Government of India, Ministry of Labour & Employment Reports, available at: <https://labour.gov.in>

<sup>7</sup> World Economic Forum, "Global Gender Gap Report," available at: <https://www.weforum.org>

6. Government of India's Ministry of Labour & Employment Reports.

7. The Global Gender Gap Report by the World Economic Forum.

