



MATERNITY LEAVE RULES IN INDIA: LAWS, ELIGIBILITY AND RULES

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ABSTRACT

This paper comprehensively examines the legal and social framework surrounding maternity leave in India, with a focus on its evolution, implementation, and contemporary relevance. Maternity leave is a critical component of employment rights that safeguards the health, dignity, and economic security of women during and after pregnancy. The study traces the origins and objectives of the Maternity Benefit Act, 1961, which governs the provision of maternity benefits. The 2017 Amendment extended paid maternity leave to 26 weeks for the first two children, included benefits for adoptive and commissioning mothers, required workplace creche facilities, and encouraged work-from-home options. Maternity leave and related benefits for women employed in both public and private sectors in India¹². The analysis further explores eligibility conditions, such as the requirement of 80 days of employment in the preceding 12 months, the structure of leave for miscarriage, tubectomy, postnatal illness, and the inclusion of adoptive, surrogate, and commissioning mothers under its ambit. The paper also reviews supplementary legal provisions, including the Employees' State Insurance Act, 1948³, Central Civil Services (Leave) Rules, 1972,⁴ Equal Remuneration Act 1976, and constitutional backing through Article 42, which directs the State to ensure maternity relief. In addition, the study critically assesses government schemes such as the Pradhan Mantri Matru Vandana Yojana (PMMVY) and Janani Suraksha Yojana, which aim to support pregnant and lactating mothers, particularly among economically disadvantaged groups. It also covers key state-level initiatives like the Dr. Muthulakshmi Reddy Maternity Benefit Scheme (Tamil Nadu) ⁵and the KCR Kit Scheme (Telangana). The paper concludes

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¹ Maternity Benefit Act 1961, No 53 of 1961, India Code

² Maternity Benefit (Amendment) Act 2017, No 6 of 2017, India Code

³ Employees' State Insurance Act 1948, No 34 of 1948, India Code

⁴ Central Civil Services (Leave) Rules 1972, Rule 43

⁵ Government of Tamil Nadu, 'Dr. Muthulakshmi Reddy Maternity Benefit Scheme' <https://pico.tn.gov.in> accessed 14 July 2025

with a comparative global analysis, highlighting how India fares against countries with robust maternity policies like Norway, Sweden, and the UK⁶. It brings to light the limitations in India's implementation, especially concerning the informal sector, and calls for the expansion of benefits, greater employer compliance, inclusive paternity leave policies, and increased awareness among women workers.

Keywords: Maternity Leave, Gender Equality, Pregnancy Rights, Workplace Inclusivity.

INTRODUCTION

Motherhood is often regarded as a deeply meaningful and transformative experience for women, involving the nurturing of new life and the responsibilities that follow after childbirth. For working women, balancing professional duties with the physical and emotional demands of pregnancy and postnatal care can be particularly challenging. Maternity leave offers crucial support by allowing women to prioritise their health and childcare without fearing job loss. In a recent judgment, the Supreme Court of India emphasised that maternity leave is essential to uphold the health, dignity, and equality of working women. Justice Abhay S Oka and Justice Ujjal Bhuyan noted that as women now represent a significant segment of the workforce, they must be treated with honour and dignity, and maternity leave helps in physical recovery and infant care. The case involved a teacher who was previously denied maternity leave by the Madras High Court under a Tamil Nadu government policy restricting such leave for a third child. The Supreme Court overturned this decision, recognising her entitlement to maternity leave, since the child was from a second marriage. The Maternity Benefit Act, 1961, along with other statutory provisions, ensures paid leave, employment protection, and healthcare benefits, aiming to achieve a balance between workplace obligations and family responsibilities for pregnant employees in India.⁷

⁶ International Labour Organization, 'Maternity and Paternity at Work: Law and Practice Across the World' (ILO, 2014) <https://www.ilo.org> accessed 14 July 2025

⁷ Geetha Rani v The Secretary to Government (2024) SC 1024; see also Maternity Benefit Act 1961, No 53 of 1961, India Code <https://www.indiacode.nic.in> accessed 14 July 2025

LEGAL FRAMEWORK IN INDIA

Maternity Benefit Act 1961 –

Purpose of the Act: The Maternity Benefit Act, 1961, regulates maternity leave and related benefits for working women in India, aiming to provide financial and health security during pregnancy and childbirth. It mandates fully paid maternity leave for eligible women working in notified establishments, allowing them to take leave before and after childbirth for a total duration of up to 26 weeks. The legislation also provides for medical bonuses, nursing breaks, and job protection during the maternity period. Its central objective is to safeguard the employment and well-being of women employees, enabling them to care for their newborns while ensuring continuity of income during the maternity period.⁸

What is Maternity Leave? Maternity leave refers to the period of paid absence from work granted to pregnant women employed in an organisation. Under the Maternity Benefit Act, 1961, the law specifies the duration and conditions of such leave. Women are entitled to 26 weeks of maternity leave for their first and second child, with the option to utilise up to 8 weeks of leave before the expected date of delivery. In the case of a third child or beyond, the leave entitlement is reduced to 12 weeks. If a woman undergoes a miscarriage or medical termination of pregnancy, she is eligible for 6 weeks of paid leave, starting immediately after the event, subject to medical proof. Furthermore, the Act allows adoptive or commissioning mothers to take 12 weeks of maternity leave, beginning from the date the child is entrusted to them. In cases where recovery takes longer, employers may provide additional leave. The legislation also enforces penalties, including imprisonment, for employers who fail to comply with the provisions or deny the statutory maternity benefits to eligible women.⁹

Amendments: Significant reforms were introduced through the Maternity Benefit (Amendment) Act, 2017, enhancing maternity protections for working women in India. One of the key changes was the extension of paid maternity leave from 12 weeks to 26 weeks for the first two children. The amendment also introduced the option of working from home after the completion of paid leave, subject to mutual agreement between the employee and employer, and depending on the nature of the work involved. For workplaces with 50 or more employees, it became mandatory to establish a creche facility within the office premises.

⁸ Maternity Benefit Act 1961, No 53 of 1961, India Code <https://www.indiacode.nic.in> accessed 14 July 2025

⁹ Maternity Benefit Act 1961, No 53 of 1961, ss 5–9, India Code <https://www.indiacode.nic.in> accessed 14 July 2025

Women employees are permitted to visit the creche up to four times a day, which includes the time allotted for rest intervals. Additionally, employers are now required to inform and educate their female employees about the maternity benefits available under the law to ensure greater awareness and compliance. The amendments also extended 12 weeks of maternity leave to adoptive and commissioning mothers. This applies to women adopting a child below three months of age, as well as to commissioning mothers—those who have biologically contributed an egg for surrogacy.

ELIGIBILITY CRITERIA

Women who legally adopt an infant under the age of three months are eligible for 12 weeks of paid maternity leave, starting from the day the child is placed in their care to the adoptive mother. Similarly, women who become commissioning mothers—where another woman carries the child on their behalf through surrogacy—are eligible for 26 weeks of maternity leave, starting from the date the child is handed over. If a woman chooses to act as a surrogate mother, she is entitled to 12 weeks of paid maternity leave under current provisions. Moreover, a woman who undergoes a tubectomy (surgical sterilisation) is permitted two weeks of leave with wages, counted from the date of the operation. In cases of post-natal complications or illness following childbirth, the law provides for an additional one month of paid leave, over and above the standard 26-week entitlement.⁵ Female employees in government offices also enjoy 26 weeks of paid maternity leave as per service rules applicable to them.

These are the things you should remember as per the maternity leave rules in India 2022: To qualify for maternity leave benefits under Indian law, a woman must have worked for at least 80 days in the 12 months preceding her expected date of delivery.¹ Upon fulfilling this condition, she is entitled to maternity leave benefits under the Maternity Benefit Act. A woman may choose to begin her maternity leave before childbirth, and up to 8 weeks of such pre-delivery leave is permitted. These days are counted within the total 26 weeks of paid maternity leave allowed for the first two children. In cases where the woman is pregnant with her third child or more, the Act limits the paid leave to 12 weeks. If a woman unfortunately experiences a miscarriage, she is entitled to 6 weeks of paid leave, commencing from the date of the miscarriage. In addition to paid leave, the Maternity Benefit Act provides for a medical bonus of ₹3,500 to women whose employer does not provide free pre- and post-natal care. Separately, under the National Food Security Act, 2013, all pregnant and lactating women are

entitled to a maternity benefit of ₹6,000 from the government, aimed at supporting nutritional needs and well-being. Women working in the private sector should consult with their employers regarding the specific leave policies applicable to them, as organisational rules may differ.¹⁰

ENTITLEMENT AND PAYMENT DURING MATERNITY LEAVE

Right to Pay: The right to receive wages during maternity leave is a fundamental component of the Maternity Benefit Act in India¹¹. This statutory right ensures that a woman on maternity leave is financially supported by her employer, thereby protecting her from economic hardship during the period she is unable to work.¹²

Entitlement: Any woman who qualifies for maternity benefits is entitled to receive payment from her employer or, where applicable, from a notified government authority¹³. The purpose of this compensation is to partially replace her regular earnings, helping her maintain financial stability during her absence from employment.

Rate of Payment: The amount paid is calculated based on the woman's average daily wage for the period immediately preceding her leave. Typically, this payment reflects a proportion of her earnings, ensuring fair and consistent financial support throughout her maternity leave.

MATERNITY LEAVE APPLICATION

According to the Maternity Benefit Act, a woman expecting a child is required to submit a written notice to her employer indicating her intention to take maternity leave and to receive wages during such leave. The notice must include the date from which she intends to be absent from work. Employees may notify their employer through a formal letter, by applying via the company's HR department, or by using the organisation's designated online portal. Additionally, maternity leave can be requested by sending an official email to the employer.¹⁴

¹⁰ Maternity Benefit Act 1961, No 53 of 1961, ss 5–9, India Code <https://www.indiacode.nic.in> accessed 14 July 2025; National Food Security Act 2013, No 20 of 2013, s 4, India Code <https://www.indiacode.nic.in>

¹¹ Maternity Benefit Act 1961, s 5(1)

¹² Maternity Benefit Act 1961, s 3(h)

¹³ Maternity Benefit Act 1961, s 5(1)

¹⁴ Maternity Benefit Act 1961, s 6(1)

K. UMADEVI V. GOVERNMENT OF TAMIL NADU (2025)

The Supreme Court ruled that maternity leave is a constitutional right under Article 21 (right to life and dignity) and cannot be denied based on the number of children. This overturned a Tamil Nadu policy that restricted maternity leave to women with fewer than two children. The Court emphasised that reproductive choices are protected under constitutional rights, reinforcing women's workplace rights in India¹⁵.

BENEFITS OF THE MATERNITY BENEFIT ACT 1961

Pre-Natal and Post-Natal Leave: Women can avail of a portion of their maternity leave before the expected delivery date (up to 8 weeks for the first two children and 6 weeks for subsequent children) and the remaining portion after delivery.¹⁶

Medical Bonus: The Act also provides for a medical bonus to eligible women if the employer doesn't provide free prenatal and post-natal care.¹⁷

Leave for Miscarriage or Medical Termination: In cases of miscarriage or medical termination of pregnancy, women are entitled to leave with wages for a specified period (e.g., 6 weeks after miscarriage).¹⁸

Leave for Illness Related to Pregnancy: Women experiencing illness related to pregnancy, delivery, premature birth, or miscarriage are entitled to additional leave with wages.¹⁹

Nursing Breaks: The Act mandates nursing breaks for mothers returning to work after delivery, allowing them time to breastfeed their infants.²⁰

Protection against Dismissal: The Act prohibits employers from dismissing or discharging a woman employee during her maternity leave or on account of her absence due to pregnancy.²¹

Creche Facility: Establishments with 50 or more employees are required to provide creche facilities for the children of working mothers.²²

¹⁵ K Umadevi v Government of Tamil Nadu [2025] INSC 781 (SC)

¹⁶ Maternity Benefit Act 1961, s 5(3)

¹⁷ Maternity Benefit Act 1961, s 8

¹⁸ Maternity Benefit Act 1961, s 9

¹⁹ Maternity Benefit Act 1961, s 10

²⁰ Maternity Benefit Act 1961, s 11

²¹ Maternity Benefit Act 1961, s 12

Work-from-Home Option: The Act includes an enabling provision for work-from-home options for nursing mothers, subject to mutual agreement with the employer.²³

Job Security: The Act protects women from being terminated or denied benefits solely for taking maternity leave.

Protection against Retrenchment: Redundancy protection lasts for 18 months after the baby is born, requiring employers to offer suitable alternative vacancies if available.

CONSTITUTIONAL PROVISION RELATED TO MATERNITY LEAVE

Article 42 of the Indian Constitution directs the State to ensure just and humane conditions of work and to provide maternity relief. This provision, found within the Directive Principles of State Policy (DPSPs), is aimed at promoting social and economic welfare by safeguarding the well-being of working individuals and ensuring support for women during and after pregnancy.

Key Aspects of Article 42 –

Just and Humane Conditions of Work: This part of the article emphasises the need for a safe and fair working environment

Maternity Relief: Article 42 specifically addresses the need for maternity benefits and support for women workers. This includes provisions for paid leave, medical care, and other necessary assistance during pregnancy and after childbirth.²⁴

SOME OTHER RULES AND ACTS PROVIDE MATERNITY BENEFIT AT THE WORKPLACE

Employees' State Insurance Act, 1948: This Act covers women in establishments earning up to ₹15,000 per month (increase to ₹21,000). Offers maternity benefits, typically 12 weeks of paid leave with cash plus medical benefits. Employment must have qualifying contributions.²⁵

²² Maternity Benefit (Amendment) Act 2017, s 11A

²³ Maternity Benefit (Amendment) Act 2017, s 5(5)

²⁴ The Constitution of India 1950, art 42

²⁵ Employees' State Insurance Act 1948, ss 46, 50, and 51A

Central Civil Services (Leave) Rules, 1972: For central government employees, 180 days (about 26 weeks) of paid maternity leave, covering miscarriage and stillbirths.²⁶

Equal Remuneration Act, 1976: Mandates equal pay for equal work, prohibits discrimination in hiring, job assignment or promotion based on gender.²⁷

Sexual Harassment of Women at Workplace Act, 2013: It requires employers to maintain a grievance redressal mechanism, create safe workplaces, and report sexual harassment complaints. Maternity-related compliance must also be disclosed.

GOVERNMENT SCHEMES

Pradhan Mantri Matru Vandana Yojana (PMMVY): The Pradhan Mantri Matru Vandana Yojana (PMMVY), introduced by the Government of India on 1st January 2017, is implemented under Section 4 of the National Food Security Act, 2013. This scheme offers financial aid to pregnant and lactating women to enhance maternal and child health, provide nutritional support, and compensate for any wage loss during this period.²⁸ The Objectives of the PMMVY are to improve health amongst pregnant Women & Lactating Mothers. Pregnancy often requires women to take time off work. The scheme compensates for the loss of wages during pregnancy and the post-delivery period so that women can take adequate rest and nutrition.

Janani Suraksha Yojana: It is a safe motherhood intervention scheme launched by the Government of India under the National Health Mission (NHM) on 12th April 2005. The objective is to reduce maternal and neonatal mortality by promoting institutional deliveries among poor pregnant women. The objective of this yojana is to promote institutional deliveries, provide financial assistance to encourage safe childbirth, and reduce maternal and infant mortality rates.

The National Maternity Benefit Scheme

- Previously provided ₹500 for pregnant women in the BPL category.

²⁶ Central Civil Services (Leave) Rules 1972, r 43–45

²⁷ Equal Remuneration Act 1976, ss 4 and 5

²⁸ Ministry of Women and Child Development, Pradhan Mantri Matru Vandana Yojana Scheme Guidelines (2017) <https://wcd.nic.in> accessed 13 Jul. 25

- Merged with PMMVY to streamline benefits²⁹

STATE-LEVEL MATERNITY BENEFIT SCHEMES

Dr. Muthulakshmi Reddy Maternity Benefit Scheme (Tamil Nadu) –

Objective: Provide financial assistance and nutrition kits to pregnant women to improve their health and nutrition.

Eligibility: Pregnant women aged 18 to 55 years belonging to specific categories such as Scheduled Tribes, Scheduled Castes, Below Poverty Line families, and other government scheme beneficiaries.

Benefits: ₹14,000 cash assistance and two nutrition kits.

Application: Apply online via the Pregnancy and Infant Cohort Monitoring and Evaluation Portal or offline at Anganwadi Centres.

KCR Kit Scheme (Telangana) –

Objective: Provide financial and medical assistance to women undergoing delivery in government hospitals to reduce infant and maternal mortality rates.

Benefits: Distribution of Mother and Child Health (MCH) kits containing essential items for newborns and mothers, along with financial incentives.

Additional Support: Transportation facilities for pregnant women before and after

GLOBAL COMPARISON OF MATERNITY LEAVE POLICIES

Globally, maternity leave policies differ widely across the globe, with some countries offering no paid leave, while others provide more than a year of paid time off. Many countries offer paid maternity leave, with the average duration being around 29 weeks, according to one analysis. However, the United States remains one of the rare countries that does not legally require paid maternity leave, setting it apart from most developed and even several developing nations.

²⁹ Ministry of Women and Child Development, National Maternity Benefit Scheme Guidelines (discontinued and merged in 2017) <https://wcd.nic.in> accessed 13 July 2025

Countries with Extensive Maternity Leave Benefits –

Norway: Provides up to 49 weeks of parental leave with full salary or 59 weeks at 80% of regular pay.³⁰

Bulgaria: Provides 410 days (approximately 58.6 weeks) at 90% pay.³¹

Sweden: Sweden provides a total of 480 days of shared parental leave, with approximately 390 days compensated at 80% of the parent's income.

United Kingdom: It allows 39 weeks of paid maternity leave, where the initial 6 weeks are paid at 90% of the employee's regular earnings.

Canada: Provides 15 weeks of maternity leave at 55% of pay, with the option to extend with parental leave.

Japan: Gives 14 weeks of paid maternity leave, along with additional parental leave benefits.

India: Under its national law, India mandates 26 weeks of paid maternity leave for women working in the organised sector

COUNTRIES WITH LIMITED OR NO PAID MATERNITY LEAVE

United States: Lacks a federal requirement for paid maternity leave, though certain employers may choose to offer it.

Papua New Guinea: Offers no legal provision for paid maternity leave.

African Countries: It shows varied policies, where government employees may receive paid leave, but private sector provisions are often minimal or absent.

While nations like Norway and Sweden prioritise parental welfare with robust maternity and parental leave frameworks, countries like the United States fall behind due to the absence of nationwide paid leave legislation. International bodies like the International Labour

³⁰ Norwegian Labour and Welfare Administration (NAV), 'Parental Benefits' (NAV, 2024) <https://www.nav.no> accessed 14 July 2025

³¹ Swedish Social Insurance Agency, 'Parental Leave and Benefits' <https://www.forsakringskassan.se> accessed 14 July 2025

Organisation (ILO) recommend a minimum of 14 weeks of maternity leave with benefits at no less than two-thirds of previous earnings.³²

ADVERSE IMPACT OF THE MATERNITY BENEFIT (AMENDMENT) ACT 2017, ON EMPLOYABILITY

- Many private employers now see women employees as a burden because they are legally required to give paid maternity leave of up to 26 weeks. This makes some employers hesitant to hire women who may become pregnant.
- Since employers must pay full wages during the leave period, it increases their overall costs of doing business.
- This financial pressure may lead employers to prefer hiring men over women.
- Industries that employ mostly women may suffer losses due to the longer and paid maternity leave.

JUDICIAL RESPONSES

Mrs. Savita Ahuja v. State of Haryana & Others: In the case of *Mrs. Savita Ahuja v. State of Haryana & Others*, the Court held that denying maternity leave to a woman merely because she was appointed on an ad-hoc or temporary basis is unjustified. The Court ruled that she is entitled to receive full-paid maternity leave during her confinement period, and that terminating her employment due to her pregnancy was unlawful. The judgment emphasised that female government employees appointed temporarily should also be granted maternity benefits.³³

J. Sharmila v. The Secretary to Government, Education Department: In *J. Sharmila v. The Secretary to Government, Education Department*³⁴, Madras, the issue was whether a married woman government servant is eligible for fully paid maternity leave if she already has two living children. The petitioner had twins during her first delivery and a single child in the second. The Court clarified that the maternity leave should be considered based on the number of pregnancies, not the number of children born. It stressed that the health and well-

³² International Labour Organization, 'Maternity Protection Convention, 2000 (No. 183)' <https://www.ilo.org> accessed 10 July 2025

³³ *Mrs. Savita Ahuja v. State of Haryana & Others* 1988(1) SLR 735

³⁴ *J. Sharmila v. The Secretary to Government, Education Department* W.P (MD) No13555 of 2009

being of the mother must take precedence, and therefore, the petitioner was entitled to full salary during her second maternity leave.

K.C. Chandrika v. Indian Red Cross Society: In *K.C. Chandrika v. Indian Red Cross Society*³⁵, the petitioner, temporarily appointed as a clerk, had been granted three months' maternity leave. However, during her leave, she was informed of her service termination. The Court found this action unjust and directed the respondent to reinstate her with continuity in service to calculate service benefits. Although she would not receive full back wages, the Court held that partial sacrifice may be justified in the public interest.

Smt. Archana Pandey v. State of M.P. & Others: In *Smt. Archana Pandey v. State of M.P. & Others*³⁶, the question raised was whether a contractual employee is entitled to maternity leave. The High Court ruled in favour of the petitioner, stating that the employer is constitutionally obliged to provide necessary maternity benefits, regardless of the nature of employment. Therefore, the Court directed the respondents to grant maternity benefits under the Maternity Benefit Act to the petitioner.

SUGGESTIONS

Strengthen Implementation and Awareness: Many women are unaware of their rights, like in the informal sector or rural areas. Government and employers should initiate widespread awareness campaigns and strengthen enforcement mechanisms.

Include the Unorganised Sector: Despite laws being robust on paper, over 90% of working women in India are in the unorganised sector, where legal protections and paid leave are often denied. Legal coverage must be extended to them with clear compliance protocols.

Shikha Sharma v. Maruti Suzuki (2018): T. The Delhi High Court ruled that contractual workers are entitled to the same maternity benefits as permanent employees under the Maternity Benefit Act, 1961. The Court concluded that the Act applies equally to all women employees, regardless of their employment status³⁷.

Increase Financial Support and Flexibility: The compensation amounts under PMMVY (₹6,000) and other schemes are insufficient. Increasing this amount and aligning it with

³⁵ K.C. Chandrika v. Indian Red Cross Society, 131 (2006) DLT 585

³⁶ Smt. Archana Pandey v. State of M.P. & Others Writ Petition No 15523 of 2016

³⁷ Shikha Sharma v Maruti Suzuki (Contract Worker – Maternity Benefit) (Delhi High Court, 2018).S

inflation and the cost of living would make a meaningful impact on maternal nutrition and care.

Paternity and Parental Leave Policies: To ensure gender equity and shared caregiving, the government should consider introducing mandatory paternity leave and flexible parental leave models, as seen in Scandinavian countries.

Digital and Monitoring Reforms: Introduce robust, centralised digital platforms for maternity benefit applications, grievance redressal, and tracking benefit delivery. This can curb delays, corruption, and exploitation.

CONCLUSION

Maternity leave is not merely a labour right but a social justice imperative that reflects a society's commitment to gender equality, healthcare, and child welfare. India's legal framework, particularly after the 2017 Amendment, offers one of the more progressive maternity leave policies among developing nations. However, implementation gaps, exclusion of the informal workforce, and insufficient financial and infrastructural support still hinder universal access and impact. Strengthening enforcement, expanding coverage to unorganised sectors, and integrating paternal and parental leave provisions are essential next steps. As the workforce diversifies and evolves, India must continue refining its maternity policies to uphold the dignity, health, and economic security of all mothers—thereby fostering a more equitable and humane work environment. The government has taken significant steps to ensure financial security, health protection, and job continuity for women during and after pregnancy. Provisions such as extended paid leave, benefits for adoptive and commissioning mothers, and mandatory crèche facilities indicate a progressive approach toward gender-sensitive labour policies. However, challenges remain in terms of uniform implementation across sectors—especially for women in the unorganised workforce who still face limited access to maternity benefits. Continued reforms, employer awareness, and stronger enforcement mechanisms are necessary to make maternity leave rights a universal reality for all working women in India.