

MATERNITY LEAVE FOR MOTHERHOOD

FOR MAINS:

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- Need for maternity leave
- As a tool for inclusive growth
- Maternity benefit act and its amendments
- Observations as per Code on Social Security
- International laws regarding maternity leave
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CONTEXT:

The government of Tamil Nadu enhanced the period of maternity leave for government women employees from nine months to one year. This scheme would be restricted to women with less than two surviving children with effect from July 1.

NEED FOR MATERNITY LEAVE

- With the advent of the **age where women are working shoulder-to-shoulder with men, maternity leave** and other maternity benefits are becoming increasingly common and the need of the hour.
- Providing maternity leave and benefits to women employee and to **protect the dignity of motherhood** is done by providing for the full and healthy maintenance of women and her child.
- With respect to the care taken by the mother herself during this period, **it's of utmost importance that the pregnant women stays at home and takes proper measures.**
- **Women are independent today** by being a bread-earner stems from the patriarchal mindset of the society and a drive inside to stand on their own feet.
- In order to **protect the rights of women employees during pregnancy and after childbirth**, Indian law makes it mandatory for most establishments to offer maternity benefits to women employees.

AS A TOOL FOR INCLUSIVE GROWTH

- While having maternity benefits is necessary for proper care of the pregnant women, it also **has its role in the growth and development of the foetus, and henceforth, newborn.**
- The **independent women, on the other hand, is a necessity** when it comes to
 - Reducing gender disparity
 - Decision-making ability of the women
 - Growth of the child
 - Empowerment of the female gender and the whole nation.

MATERNITY BENEFIT ACT AND ITS AMENDMENTS

- The **Maternity Benefit Act, 1961** seeks to regulate the employment of women in some establishments for a particular period before and after childbirth and to provide for maternity benefit and certain other benefits.
 - **Applicability:**
 - The act is applicable to all establishments employing 10 or more employees – factories, mines, plantations, Government establishments, shops and establishments under the relevant applicable legislation, or any other establishment as may be notified by the Central Government.
 - **Benefits under the Act:**
 - Leave with average pay for 6 weeks before the delivery.
 - Leave with average pay for 6 weeks after the delivery.
 - A medical bonus if the employer does not provide free medical care to the woman.
 - An additional leave with pay up to 1 month if the woman shows proof of illness due to the pregnancy, delivery, miscarriage or premature birth.
 - In the case of miscarriage, six weeks leave with average pay from the date of miscarriage.
 - Light work for ten weeks (six weeks plus one month) before the date of her expected delivery, if she asks for it.
 - Two nursing breaks in the course of her daily work until the child is 15 months old.
 - No discharge or dismissal while she is on maternity leave
- **The Maternity Benefit (Amendment) Act 2017** has made amendments to the Maternity Benefits Act, 1961. The major aim of the amendment Act is to regulate the employment of women during the period of childbirth. It **has amended the provisions related to the duration and applicability of maternity leave, and other facilities.**
 - The act is applicable to all those women employed in factories, mines, and shops or commercial establishments employing 10 or more employees.
 - It enhanced the duration of paid maternity leave available for women employees from 12 weeks to 26 weeks.
 - However, for those women who are expecting after having 2 children, the duration of the leave remains unaltered at 12 weeks.
 - It extended the benefits to the adoptive and commissioning mothers by providing them 12 weeks of maternity leave from the date of adoption. Note: The commissioning mother has been defined as a biological mother who uses her egg to create an embryo planted in any other woman or surrogate mother.
 - The paid maternity leave can be availed 8 weeks before the expected date of delivery. Before the amendment, it was 6 weeks. Remaining 18 weeks can be availed post childbirth.
 - The Act has introduced an enabling provision relating to “work from home” that can be exercised after the expiry of 26 weeks leave period. Depending

upon the nature of work, a woman can avail of this provision on such terms that are mutually agreed with the employer.

- The amended Act has mandated a crèche facility for every establishment employing 50 or more employees. The women employees should be permitted to visit the facility 4 times during the day.
- The amended act makes it compulsory for employers to educate women about the maternity benefits available to them at the time of their appointment.

ADVANTAGES:

- **Survival and Health of Mother and Child:**
 - The amended act has increased the maternity benefits from 12 weeks to 26 weeks. This is significant and is in line with the recommendation of the World Health Organisation which mentions that children should be exclusively breastfed by the mother for the first 24 weeks.
 - Thus the increase in the maternity leave will aid in improving survival rates of children and healthy development of both mother and child.
- **Female Labour force participation:** The amendment will reduce the cases of women dropping out of the labour force because of the lack of adequate maternity leave.
- **International best practices:** The amended act also falls in line with international best practices like the Maternity Protection Convention, 2000 (No 183) which calls for at least 14 weeks of mandatory maternity benefit.
- **Adopting & commissioned mothers:** Another significant feature is the introduction of 12 weeks of maternity benefits to the adopting and commissioned mothers enabling them to take care of their children thus respecting their motherhood.
- **Third such country:** The amended

DISADVANTAGES:

- **Male Employees Preference:**
 - The increase in maternity leave could also have an adverse impact on job opportunities for women.
 - (The mandatory full payment of wages during maternity leave + provisioning of the creche and other facilities) = could increase costs for employers = their hiring preference would be in favour of male workers.
 - The provision could also affect the competitiveness of industries that mainly employ women workers.
 - A 2014 International Labour Organisation report specifically cautions against making employers solely liable for the cost of maternity benefits for these reasons.
- **Lack of Clarity:**
 - Several provisions of the amended act lack clarity.
 - For instance, there is no clarity with respect to the time period up to which the crèche facility could be extended to the employee and also regarding the availability, frequency, and extent of nursing breaks.
- **Applicability to unorganised sector:**
 - The provisions related to the applicability of the Act to the unorganised sector also remain unclear.

provisions have placed India third worldwide only behind Canada and Norway globally in the number of maternity benefits being made available to the women workers.

- Though, on one hand, the act states that it covers all women working in mines, plantations, shops, and establishments as well as factories in both organised and unorganised sectors.
- But on the other hand, the Unorganised Workers' Social Security Act, 2008 defines unorganised sector workers as those who are home-based, self-employed, or wage workers working in an entity having less than 10 employees.
- Thus the provisions did not clarify whether the act is applicable to the women employees in those enterprises having less than 10 employees.
- This is disturbing considering the fact that 90% of the working women are employed in unorganised sector in India.
- Although the women working in unorganised sector can avail benefits from the schemes such as the Janani Suraksha Yojana and the Indira Gandhi Matritva Sahyog Yojana, they get their benefit only in terms of cash assistance and lack other institutional support provided in the maternity benefit act.
- **Lack of enough provisions to meet the breastfeeding guidelines:**
 - Studies have shown that health benefits that accrue to both the mother and her child by breastfeeding are more than matched by economic returns at family, enterprise and national levels.
 - However, India spends a measly amount of \$0.15 (less than ₹10) per child to ensure that it meets the breastfeeding guidelines.

	<ul style="list-style-type: none">○ As a result, India is going to lose an estimated \$14 billion in its economy due to the high level of child mortality and the growing number of deaths in women from cancers and Type II diabetes, which is directly attributable to inadequate breastfeeding.● Silent on paternity benefits:<ul style="list-style-type: none">○ Currently, paternity benefits are allowed in government jobs as a part of leave rules and in private organizations as a matter of internal policy.○ ILO has also recognised men's right to parenthood. It wants to see men as an active co-parent.○ In a country where gender stereotypes are predominant, a gender-balanced approach to parenthood is needed.○ But the amendment act is silent on this issue.
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OBSERVATIONS AS PER CODE ON SOCIAL SECURITY

The **Maternity Benefit Act, 1961**, will be repealed by the Central Government and all its provisions have been **transplanted into the Code of Social Security 2020** with some changes.

Maternity Benefits under Code on Social Security observes:

- In the four Labour Code and in notified draft Rules of the Code on Social Security, it has been provided that in every **establishment where fifty or more women employees are ordinarily employed, a creche will be provided** and maintained for the use of children under the age of six.
- **Section 70 of the Code on Social Security provides for forfeiture of maternity benefit in a situation** where a woman who works for remuneration during the period she has been permitted by an employer to absent herself for availing maternity benefits.
- Also, **PM Matru Vandana Yojna (PMMVY)** is a much-publicised scheme to provide compensation to women workers in unorganized sectors for wage losses in terms of cash incentives so that the woman can take adequate rest before and after delivery of the first living child.
- Establishments are required to provide 12 weeks of **paid maternity leave to women employees who adopt a child** below the age of 3 months, or a **commissioning mother (Mothers who have children through surrogacy)**. The 12-week period will

be calculated from the date the child is handed over to the adopting or commissioning mother.

- Provision under which an employer can permit a **woman to work from home**, provided the nature of the work permits her to do so, even after the availing of maternity leave benefit. The terms and conditions, as well as the duration of the arrangement, must be as per an agreement between the employer and woman.

COMPARISON WITH INTERNATIONAL LAWS

● MATERNITY PROTECTION CONVENTION

- This convention is the most up-to-date international labour standard on maternity protection, although the earlier relevant instruments - the Maternity Protection Convention, 1919 (No. 3) , and the Maternity Protection Convention (Revised), 1952 (No. 103) - are still in force for countries in certain countries.

● ILO Maternity Protection Resource Package

- Provides guidance and tools to strengthen and extend maternity protection to all women in all types of economic activity (including in relation to maternal health, maternity leave and benefits, employment protection and non-discrimination, breastfeeding).

● ILO Database of Conditions of Work and Employment Laws

- Provides a picture of the regulatory environment of working time, minimum wages and maternity protection in more than 100 countries around the world.

<ul style="list-style-type: none"> ● Maternity Leave in the UK <ul style="list-style-type: none"> ○ Total Maternity Leave Entitlement: 52 weeks ○ When that Leave Can be Taken: Starting 11 weeks prior to the due date ○ Amount of Paid Leave: 39 weeks ○ Percentage of Wages Paid: 90% of wages for the first 6 weeks of leave, then either 90% of wages or 145 BP per week (whichever is less) for the next 33 weeks. ○ Paid by: Social security ○ Amount of Unpaid Leave: 13 weeks ○ Protection from Termination While on Leave: Yes 	<ul style="list-style-type: none"> ● Maternity Leave in India <ul style="list-style-type: none"> ○ Total Maternity Leave Entitlement: 26 weeks (birth) or 12 weeks (adoption) ○ When Leave Can be Taken: up to 8 weeks prior (pre-natal) to the due date ○ Amount of Paid Leave: 26 weeks ○ Percentage of Wages Paid: 100% plus medical bonus (if no health benefits) ○ Paid by: Employer ○ Amount of Unpaid Leave: N/A ○ Protection from Termination While on Leave: Yes
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<ul style="list-style-type: none"> ● Maternity Leave in France <ul style="list-style-type: none"> ○ Total Maternity Leave Entitlement: 16 to 26 weeks depending on number of children ○ When Leave Can be Taken: Six weeks prior to delivery and 10 weeks after ○ Amount of Paid Leave: 16-26 weeks up to the statutory maximum wage ○ Percentage of Wages Paid: 100% of average wage up to 9,933 Euros ○ Paid by: Social Security ○ Amount of Unpaid Leave: N/A but after 16 weeks parental leave is available ○ Protection from Termination While on Leave: Yes 	<ul style="list-style-type: none"> ● Maternity Leave in Japan <ul style="list-style-type: none"> ○ Total Maternity Leave Entitlement: 14 weeks ○ When Leave Can be Taken: Six weeks prior to birth and eight weeks after ○ Amount of Paid Leave: 14 weeks ○ Percentage of Wages Paid: 66% ○ Paid by: Social security ○ Amount of Unpaid Leave: N/A but may take up to one year of child care leave, paid at 50% of wages ○ Protection from Termination While on Leave: Yes
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<ul style="list-style-type: none"> ● Maternity Leave in the US <ul style="list-style-type: none"> ○ Total Maternity Leave Entitlement: 12 weeks (limited application to companies with more than 50 employees) ○ When Leave Can be Taken: Following childbirth ○ Amount of Paid Leave: N/A ○ Percentage of Wages Paid: N/A ○ Paid by: Employer maintains health benefits ○ Amount of Unpaid Leave: up to 12 weeks ○ Protection from Termination While on Leave: No 	<ul style="list-style-type: none"> ● Maternity Leave in China <ul style="list-style-type: none"> ○ Total Maternity Leave Entitlement: 98 days (includes weekends and holidays) ○ When Leave Can be Taken: 15 days prior to childbirth ○ Amount of Paid Leave: 98 days ○ Percentage of Wages Paid: Maternity Allowance based on monthly salary of employee, in relation to all employees in the past 12 months (whichever is higher, but no more than three times average salary in the region). ○ Paid by: Social Security ○ Amount of Unpaid Leave: N/A ○ Protection from Termination While Pregnant or Maternity Leave: Yes, up to when the child is a year old)
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- **Article 15(3)** of the Indian Constitution empowers the State to make special provisions for women. The main objective of Article 15 (3) is based on “protective discrimination” keeping in view the weak physical position of women.
- **Article 21** – Right to Life and Personal Liberty means the right to lead a meaningful, complete and dignified life. It does not have restricted meaning. Therefore, the State must guarantee to a pregnant working woman all the facilities and assistance that she requires while protecting her employment as well as her own and her child’s health.
- The **Directive Principles of State Policy contained in Part IV of the Constitution of India, under Article 41** requires the State to make effective provision for securing the right to work and to education.
- **Article 42** requires that the State shall make provision for securing just and humane conditions of work and for maternity relief

WAY FORWARD

It's high time for the government that they focus on the financial responsibility of providing maternity benefits. This could be implemented by

- Providing reimbursements to the employers who give monetary benefit to pregnant and lactating women.
- In addition, the government must find innovative and cost-effective ways to ensure that working women are not forced to discontinue breastfeeding.
- Employers need to facilitate a clean and private room for such lady employees.

Government has to show the will to effectively implement maternity benefits.

Sources

- The Indian Express
- Times of India
- The Hindu
- PRS
- PIB
- <https://shieldgeo.com/maternity-leave-around-the-world-a-guide-for-international-employers/>
- ILO WEBSITE