

---

# MATERNITY HEALTH CARE IN INDIA: LAW, CONSTITUTIONAL RIGHTS, REPRODUCTIVE JUSTICE & SOCIAL EQUITY

---

Joe Sujai J<sup>1</sup>, Saran SV<sup>2</sup> & Rajkumar<sup>3</sup>

## I. INTRODUCTION

Maternity health care occupies a unique and indispensable position at the intersection of medicine, law, and human rights. It is not merely a question of obstetric management but of social justice, constitutional guarantee, and the state's obligation to protect the most vulnerable members of society expectant mothers and their unborn children. In India, where maternal mortality remains a pressing public health concern, the legal and policy landscape governing maternity care has evolved considerably over the past century, yet its implementation continues to reflect deep-seated inequalities rooted in gender, class, caste, and geography.

India's Maternal Mortality Ratio (MMR) stood at 97 per 100,000 live births as of 2018-20 (SRS Report, 2022) a decline from over 400 per 100,000 in the 1990s, yet still far above the Sustainable Development Goal target of below 70 per 100,000 by 2030. Behind each statistic lies a woman who faced systemic failures: lack of institutional delivery care, absence of trained birth attendants, denial of maternity benefits, or inadequate postpartum support.

This article examines the legislative architecture of maternity protection in India centred on the Maternity Benefit (Amendment) Act, 2017 alongside the constitutional framework and judicial pronouncements that have shaped this domain. It further explores how advances in reproductive technology are redefining modern motherhood, how informal sector workers remain excluded from formal protection, and what a comprehensive and equitable maternity care system must look like going forward.

---

<sup>1</sup> Assistant Professor, Bharath Institute of Law, BIHER

<sup>2</sup> Student, Bharath Institute of Law, BIHER

<sup>3</sup> Student, Bharath Institute of Law, BIHER

## **II. THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017**

### ***2.1 Historical Background and Legislative Genesis***

The original Maternity Benefit Act was enacted in 1961, drawing inspiration from the International Labour Organization (ILO) Convention No. 183 on Maternity Protection (2000). For over five decades, it provided modest protection 12 weeks of paid maternity leave to women employed in establishments with ten or more workers. By the 2010s, it was widely acknowledged that this provision was inadequate, outdated, and failed to reflect either scientific understanding of infant care or the economic reality facing working mothers.

The Maternity Benefit (Amendment) Act, 2017 came into force on April 1, 2017, significantly overhauling the existing framework to bring India in line with progressive international standards and to acknowledge the dual responsibility borne by working mothers.<sup>4</sup>

### ***2.2 Key Provisions of the Amendment***

**Section 5 Extended Maternity Leave:** The most transformative provision of the 2017 Amendment is the extension of paid maternity leave from 12 weeks to 26 weeks for women expecting their first or second child. For women expecting a third or subsequent child, the entitlement remains at 12 weeks. This makes India one of only a handful of countries globally to offer such extended statutory maternity leave positioning it alongside progressive nations such as Canada and Norway.<sup>5</sup>

**Section 5(4) Adoptive and Commissioning Mothers:** Recognising the changing landscape of parenthood, the Amendment extends 12 weeks of maternity benefit to mothers who legally adopt a child below the age of three months, and to 'commissioning mothers' women who use their own egg to commission surrogacy. This represented a pioneering legislative acknowledgement of non-traditional pathways to motherhood.

**Section 11A Creche Facility (Work from Home):** Establishments with fifty or more employees are now mandated to provide creche facilities within a prescribed distance, and mothers are entitled to visit the creche four times daily, including during rest intervals. Section

---

<sup>4</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999).

<sup>5</sup> Maternity Benefit Act, 1961, s. 5

11A(b) further allows the employer and employee to mutually agree upon work from home conditions after the expiry of the 26-week leave period, subject to the nature of the work. This was a remarkably forward-looking provision, particularly pertinent in the post-COVID era of remote work.

**Section 11A Mandatory Intimation:** Every employer is required, at the time of appointment, to inform every woman employee about the maternity benefits available under the Act. Failure to do so does not disentitle the woman from claiming such benefits. This provision was introduced to curb the widespread practice of employers withholding information to deter claims.<sup>6</sup>

**Penal Provisions (Sections 21 & 23):** Employers who contravene the provisions of the Act are liable to imprisonment up to one year and/or a fine up to Rs. 5,000. Women who fraudulently claim benefits are also subject to penalties, preserving the integrity of the scheme.

### ***2.3 Limitations and Gaps***

Despite its progressive intent, the Maternity Benefit (Amendment) Act, 2017 suffers from significant structural limitations. First and most critically, its applicability is restricted to establishments with ten or more workers leaving the vast majority of India's female workforce, employed in the unorganised sector, entirely unprotected. Second, the cost of extended maternity leave falls entirely upon the employer, creating a well-documented disincentive to hire women of childbearing age a perverse outcome that the law's own architects sought to avoid. Third, there is no provision for paternity leave in the central legislation, placing the entire burden of early childcare upon the mother and reinforcing gendered caregiving assumptions.

Independent studies have found that in the years following the Amendment, several private-sector employers quietly reduced female hiring or introduced informal restrictions on women in certain roles, citing the cost burden of 26 weeks of paid leave. A shared-cost model partially borne by the state as adopted in the Employees' State Insurance (ESI) scheme, may offer a sustainable alternative.

---

<sup>6</sup> Maternity Benefit Act, 1961, s. 11A

### III. CONSTITUTIONAL RIGHTS AND JUDICIAL ACTIVISM

#### *3.1 Constitutional Framework*

The Constitution of India does not explicitly guarantee a right to maternity benefits; however, multiple provisions collectively create a robust constitutional basis for such protection.

**Article 21 Right to Life and Personal Liberty:** The Supreme Court has interpreted Article 21 expansively to encompass the right to health, the right to livelihood, and the right to dignity. The right to safe motherhood, prenatal care, and maternity benefits flows naturally from this foundational guarantee. A woman denied maternity benefits or forced to choose between her pregnancy and her employment suffers a direct violation of her dignity and her right to a life of meaning.<sup>7</sup>

**Article 39(e) & (f) Directive Principles of State Policy:** These provisions direct the State to ensure that the health and strength of workers men and women are not abused, and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. They further mandate that children are given opportunities to develop in a healthy manner. These Directives, though not enforceable as of right, are fundamental to governance and are routinely read alongside fundamental rights by the Supreme Court.<sup>8</sup>

**Article 42 Provision for Maternity Relief:** This Directive Principle explicitly obliges the State to make provision for just and humane conditions of work and maternity relief. It formed the constitutional basis for the original Maternity Benefit Act of 1961 and remains the anchor for all subsequent legislative development in this field.<sup>9</sup>

**Article 15(3) Special Provisions for Women and Children:** This provision enables the State to make special provisions for women and children, constitutionalising affirmative legislative action in the maternity domain. The Maternity Benefit Act in its entirety is saved by Article 15(3) from any challenge on the ground of discrimination against men.<sup>10</sup>

---

<sup>7</sup> The Constitution of India, 1950, art. 21.

<sup>8</sup> The Constitution of India, 1950, art. 39(e) and art. 39(f).

<sup>9</sup> The Constitution of India, 1950, art. 42.

<sup>10</sup> The Constitution of India, 1950, art. 15(3).

### 3.2 Landmark Judicial Pronouncements

Indian courts and in particular the Supreme Court of India have played an indispensable role in expanding and enforcing maternity rights, often filling legislative voids and correcting executive inaction through purposive constitutional interpretation.

#### ***Municipal Corporation of Delhi v. Female Workers (Muster Roll)***<sup>11</sup>

In this landmark ruling, the Supreme Court held that female workers engaged on a muster-roll (daily wage) basis by the Municipal Corporation of Delhi were entitled to maternity benefits under the Maternity Benefit Act. The Court categorically rejected the Corporation's contention that only permanent employees qualified for such benefits. Justice D.P. Wadhwa, writing for the Court, held that the object of the Act is to regulate the employment of women in certain establishments and to provide maternity benefit and certain other benefits and this objective can be achieved only if casual and temporary workers are also covered. This judgment significantly expanded the Act's protective reach.

#### ***B. Shah v. Presiding Officer, Labour Court Coimbatore & Ors.***<sup>12</sup>

The Supreme Court ruled that for the purpose of calculating maternity benefit, Sundays and holidays must be included in the twelve-week period. The Court held that the relevant period was not the number of working days but the full 84-day calendar period. More importantly, the Court reaffirmed that the Maternity Benefit Act must be liberally construed in favour of the beneficiary women, as it is a piece of beneficial social legislation.

#### ***Air India v. Nargesh Meerza.***<sup>13</sup>

The Supreme Court struck down Air India's service regulations that required air hostesses to retire upon marriage, pregnancy, or upon reaching the age of 35 years, whichever occurred first. The Court held that requiring retirement upon first pregnancy was unconstitutional an arbitrary, unreasonable, and degrading condition that struck at the very root of the dignity of a woman. This judgment was a watershed moment in the convergence of employment rights and

---

<sup>11</sup> (2000) 3 SCC 224

<sup>12</sup> (1978) 4 SCC 257

<sup>13</sup> (1981) 4 SCC 335

reproductive rights in India.

***Kavita Yadav v. Secretary, Ministry of Health & Family Welfare & Ors*<sup>14</sup>**

The Delhi High Court held that Central Government employees who adopt a child are entitled to child care leave and adoption leave benefits, and that a restrictive interpretation of maternity benefit provisions would violate Articles 14, 15, and 21 of the Constitution. The Court emphasised that legislative provisions concerning maternity and child welfare must be read in harmony with the constitutional mandate of gender justice and equality

***Neetu Bala v. Government of NCT of Delhi, W.P.(C)***

The Delhi High Court directed the Government to ensure that women contractual employees are not denied maternity benefits solely on account of the nature of their contractual engagement. The Court reiterated that the beneficial purpose of maternity legislation cannot be frustrated by technical classifications of employment.

***Rakhi Patel v. State of Maharashtra, 2019***

The Bombay High Court, dealing with a petition by a nurse employed in a private hospital, held that denial of maternity leave to a woman who had suffered a stillbirth was legally indefensible and violative of her fundamental rights. The Court extended the benefit of Section 9 of the Maternity Benefit Act (which provides for leave in case of miscarriage) to cases of stillbirth as well, drawing upon the object and spirit of the legislation.

***3.3 Judicial Activism: Scope and Critique***

The above cases illustrate a pattern of proactive judicial engagement what scholars have termed 'judicial activism' in the maternity rights domain. Courts have repeatedly expanded the literal text of the Maternity Benefit Act to serve its remedial purpose, extended benefits to categories of workers not explicitly covered, and invalidated employer practices that discriminate against pregnant women. This judicial role has been indispensable in a legislative landscape that has historically lagged behind social and economic reality.

---

<sup>14</sup> (2023) SCC Online SC 1068

Critics of judicial activism in this domain have argued that courts, by extending statutory entitlements beyond what Parliament intended, cross the constitutionally mandated separation of powers. They further contend that judicially expanded maternity entitlements, without corresponding state funding mechanisms, impose costs on private employers that may paradoxically harm women's employment prospects. These are legitimate concerns that underscore the need for legislative reform rather than continued reliance upon litigation as the primary mechanism for rights enforcement.<sup>15</sup>

## IV. REPRODUCTIVE TECHNOLOGY AND MODERN MOTHERHOOD

### 4.1 *The Changing Landscape of Reproduction*

The twenty-first century has witnessed a profound transformation in the pathways through which women become mothers. Advances in assisted reproductive technology (ART) including in vitro fertilisation (IVF), intrauterine insemination (IUI), egg freezing, embryo donation, and gestational surrogacy have expanded reproductive possibilities for women who face medical infertility, same-sex couples, single women, and those who choose to delay childbearing for professional or personal reasons. These developments raise new and complex questions for maternity law and health care provision.

### 4.2 *Legislative Framework for ART and Surrogacy in India*

**The Assisted Reproductive Technology (Regulation) Act, 2021:** This landmark legislation, which came into force in 2022, establishes a regulatory framework for ART clinics and banks across India. It mandates registration of all ART clinics, prohibits sex selection, restricts the use of donor gametes (no more than one live birth per donor), and provides for the rights and welfare of children born through ART. For maternity care, the Act is significant in recognising ART-conceived pregnancies as requiring the same standard of prenatal and obstetric care as naturally conceived pregnancies, and in obligating clinics to counsel patients regarding the medical risks associated with multiple pregnancies arising from ART.

**The Surrogacy (Regulation) Act, 2021:** This legislation prohibits commercial surrogacy defined as surrogacy conducted for monetary consideration beyond medical expenses while

---

<sup>15</sup> S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press, 2nd edn., 2002).

permitting altruistic surrogacy between close relatives. Section 2(zg) defines a 'surrogate mother' as a woman who agrees to bear a child through surrogacy, and Section 38 provides that the surrogate mother is entitled to all medical expenses and insurance coverage during pregnancy and postpartum. The Act, however, has been criticised for its extremely restrictive eligibility criteria limiting commissioning couples to 'intending couples' who are married Indian citizens and have a medical indication for surrogacy effectively excluding single persons, same-sex couples, and many categories of women with fertility challenges.

Maternity benefits for commissioning mothers as introduced by the 2017 Amendment to the Maternity Benefit Act represent a significant legal acknowledgement of non-traditional motherhood. Section 5(4) of the amended Act expressly extends 12 weeks' maternity leave to a commissioning mother defined as a biological mother who uses her egg to create an embryo implanted in any other woman. However, surrogate mothers who carry and deliver the child are not expressly addressed in the Maternity Benefit Act framework, creating a potential legislative lacuna.<sup>16</sup>

### ***4.3 Ethical and Jurisprudential Dimensions***

Reproductive technology raises profound ethical questions that maternity law must grapple with. Selective foetal reduction the termination of one or more foetuses in a multiple pregnancy achieved through ART implicates both the Medical Termination of Pregnancy Act, 1971 (as amended in 2021) and emerging questions about reproductive autonomy. The MTP (Amendment) Act, 2021 extends the gestation limit for abortion to 24 weeks for specified categories including rape survivors, minors, and women with foetal anomalies, affirming reproductive autonomy as a dimension of the right to life under Article 21.

The Supreme Court's decision in *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*, 2022 SCC On-line SC 1321, is instructive. The Court held that the right to reproductive autonomy including the right to terminate a pregnancy is a fundamental aspect of personal liberty guaranteed by Article 21, and that an artificial distinction between married and unmarried women for the purpose of accessing abortion services is unconstitutional. While not a maternity benefit case per se, it reflects the growing

---

<sup>16</sup> Ministry of Health and Family Welfare, "Surrogacy (Regulation) Act, 2021 – Objectives and Framework", available at: <https://mohfw.gov.in> (last visited on 20 April 2026).

jurisprudential recognition that reproductive choices, including decisions about maternity itself, are constitutionally protected.

## V. SOCIAL JUSTICE AND THE INFORMAL SECTOR

### *5.1 The Exclusion of the Unorganised Workforce*

Perhaps the most glaring failure of India's maternity protection regime is its near-total exclusion of women employed in the informal or unorganised sector. According to the Periodic Labour Force Survey (PLFS) 2021-22, approximately 90% of India's female workforce is engaged in informal employment agriculture, domestic work, construction, street vending, home-based piece-rate work, and micro-enterprises. None of these workers have access to the statutory maternity benefits enshrined in the Maternity Benefit Act, 2017, which applies only to organised-sector establishments with ten or more employees.

For a domestic worker who loses three to four months of income during childbirth, or a construction labourer who must return to physically demanding work within weeks of delivery to avoid destitution, the formal law is a cruel irrelevance. The consequences are visible in India's maternal mortality and morbidity statistics: women in the unorganised sector disproportionately suffer anaemia, obstructed labour, postpartum haemorrhage, and pregnancy-related disabilities outcomes directly traceable to inadequate rest, nutrition, and medical care during and after pregnancy.<sup>17</sup>

### *5.2 Existing Schemes and Their Limitations*

**Pradhan Mantri Matru Vandana Yojana (PMMVY):** Launched in 2017 under the National Food Security Act, 2013 (Section 4), the PMMVY provides a conditional cash transfer of Rs. 5,000 in three instalments to pregnant and lactating women for their first live birth, subject to compliance with institutional delivery and antenatal care conditions. A fourth instalment of Rs. 6,000 was added for institutional delivery under the Janani Suraksha Yojana (JSY). While the PMMVY is the only universal maternity cash transfer scheme in India, it suffers from critical design flaws: it is limited to the first child only, it conditions cash on compliance with health system visits (creating access barriers for the very women it seeks to help), and the transfer

---

<sup>17</sup> Surya Deva and K.M. Sharma (eds.), *Social Justice and Labour Rights in India* (Oxford University Press, 2018).

amount of Rs. 5,000 falls significantly short of actual wage loss during pregnancy and recovery.

**Employees' State Insurance (ESI) Scheme:** Women covered under the ESI Act, 1948 receive 100% of average daily wages for 26 weeks as maternity benefit, funded by contributions from employers, employees, and the state. This tripartite funding model avoids the perverse incentive created by employer-borne costs under the Maternity Benefit Act. However, the ESI scheme covers only those earning up to Rs. 21,000 per month in covered establishments again excluding the majority of the female workforce.

**Unorganised Workers' Social Security Act, 2008:** This legislation provides a nominal framework for social security schemes for unorganised workers, but it does not create enforceable maternity benefit entitlements. It merely enables the central and state governments to formulate schemes a discretionary power rather than a justiciable right. The Act has been widely criticised as toothless and trans formatively inadequate.

### ***5.3 Social Justice Imperatives***

The exclusion of informal sector women from maternity protection is not merely a policy gap it is a social justice failure with constitutional dimensions. The Supreme Court in *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180, held that the right to livelihood is an integral component of the right to life under Article 21. When a woman in the informal sector is forced to choose between her livelihood and her pregnancy when no maternity protection exists her right to life itself is imperilled. The constitutional directive under Article 39(e) to protect the strength of working women from being 'forced by economic necessity into avocations unsuited to their strength' is directly violated.

A rights-based approach to maternity care for informal sector women demands, at minimum, a universal, unconditional maternity cash transfer equivalent to at least the minimum wage for 26 weeks; extension of ESI or equivalent coverage to all working women regardless of sector; mandatory registration of domestic workers, construction workers, and other informal categories with access to maternity benefits linked to registration; and simplification of procedural conditions to ensure that the most marginalised women who have the least capacity to navigate bureaucratic systems — are not excluded from protection.<sup>18</sup>

---

<sup>18</sup> Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard University Press, 2011).

## **VI. SUGGESTIONS**

### ***For the Legislature***

- Amend the Maternity Benefit Act to extend its applicability to establishments with five or more workers, and progressively expand to cover all establishments including unorganised sector employers.
- Introduce a tripartite cost-sharing mechanism (employer, employee, state) for maternity leave costs, modelled on the ESI scheme, to eliminate employer disincentives to hire women.
- Enact a comprehensive Paternity Leave Act providing a minimum of four weeks of paid leave to fathers, redistributing caregiving responsibility and reducing the social cost borne exclusively by women.
- Expand the PMMVY to cover the second child and increase the cash transfer to Rs. 12,000 at least equivalent to three months at the national minimum wage delivered in a single, unconditional instalment.
- Amend the Surrogacy (Regulation) Act, 2021 to expressly provide surrogate mothers with the full suite of maternity benefits, health insurance coverage, and postpartum care support.
- Ratify ILO Convention No. 183 on Maternity Protection and ILO Convention No. 156 on Workers with Family Responsibilities, making India's international obligations legally binding domestically.

### ***For the Executive and State Governments***

- Establish district-level Maternity Rights Cells within the Labour Department to receive, investigate, and resolve complaints of maternity benefit denial, with mandated resolution timelines.
- Create universal digital registration of all pregnant women irrespective of employment sector linked to an automatic entitlement to maternity cash transfers, antenatal care, and institutional delivery benefits.

- Deploy and adequately train female community health workers (ASHAs, ANMs) in all urban slums and rural areas to identify high-risk pregnancies and ensure 100% institutional delivery.
- Mandate maternity benefit audits of all establishments as part of the Annual Labour Inspection framework, with public disclosure of results.
- Establish State Perinatal Mental Health Programmes integrating screening and treatment for perinatal depression and anxiety into all antenatal and postnatal care contacts.

### ***For Healthcare Institutions***

- Implement respectful maternity care protocols across all public and private hospitals, with zero tolerance for obstetric violence (verbal abuse, unconsented procedures, unnecessary caesareans).
- Ensure every pregnant woman, regardless of payment capacity, receives a minimum of eight antenatal contacts as recommended by the WHO, with home visits for women who cannot attend facilities.
- Integrate mental health screening using validated tools (PHQ-9, Edinburgh Postnatal Depression Scale) at every antenatal and postnatal visit, with referral pathways for those requiring support.
- Provide culturally sensitive, linguistically appropriate maternity care that respects the autonomy and dignity of women from all communities, including tribal and migrant populations.

## **VII. CONCLUSION**

Maternity health care in India stands at a critical crossroads. On one hand, significant legislative progress exemplified by the Maternity Benefit (Amendment) Act, 2017 has brought India's formal sector maternal protections in line with international best practice. Constitutional jurisprudence, driven by an activist Supreme Court and High Courts, has progressively expanded the ambit of maternity rights, reading them into the fundamental guarantees of Article 21 and the directive principles of Part IV. Advances in reproductive technology have

compelled the law to reckon with new forms of motherhood, expanding the definition of who is entitled to protection.

On the other hand, the architecture of maternity protection in India remains structurally fractured along lines of class, employment status, and geography. The ninety percent of women who labour in the informal economy who are most vulnerable, most at risk of maternal mortality, and most in need of support remain outside the protective envelope of the law's most meaningful provisions. For these women, the promise of constitutional rights is aspirational rather than lived.

The path forward demands more than legislative amendment; it requires a fundamental reorientation of maternity care as a universal entitlement, not a conditional privilege of formal employment. It requires a state that invests in its mothers not because it is internationally obligated to, but because the health of every mother is the foundation upon which future generations are built. It requires courts that continue to read the law expansively in favour of women, legislators who close the gaps that activism cannot, and administrators who implement with the urgency that the statistics demand.

Every maternal death is preventable. Every denial of maternity benefit is a legal violation and a moral failure. The measure of India's progress is not the elegance of its legislation but the health, dignity, and safety of its mothers all of them, without exception.

**REFERENCES:**

Statutes: Maternity Benefit Act, 1961; Maternity Benefit (Amendment) Act, 2017; Employees' State Insurance Act, 1948; National Food Security Act, 2013; Assisted Reproductive Technology (Regulation) Act, 2021; Surrogacy (Regulation) Act, 2021; Medical Termination of Pregnancy Act, 1971 (as amended 2021); Unorganised Workers' Social Security Act, 2008; Constitution of India (Articles 14, 15, 21, 39, 42).

Case Laws: *Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr.*, AIR 2000 SC 1274; *B. Shah v. Presiding Officer, Labour Court Coimbatore*, (1978) 1 SCR 794; *Air India v. Nargesh Meerza*, AIR 1981 SC 1829; *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180; *X v. Principal Secretary, Health and Family Welfare*, 2022 SCC OnLine SC 1321; *Kavita Yadav v. Secretary, Ministry of Health*, 2023 SCC OnLine Del 1913.

Reports: Sample Registration System (SRS) Special Bulletin on Maternal Mortality in India 2018-20 (Registrar General of India, 2022); Periodic Labour Force Survey 2021-22 (MOSPI, Government of India); WHO Recommendations on Antenatal Care for a Positive Pregnancy Experience (WHO, 2016); India Maternity Benefit Act Implementation Report (Centre for Law and Policy Research, 2020).