

# Maternity Leave and the Unorganised Sector: A Field-Based Socio-Legal Analysis

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## Abstract:

India's unorganised sector accounts for nearly 90% of its total workforce and employs a substantial proportion of working women. Despite constitutional guarantees and statutory frameworks, maternity leave remains an elusive right for most women in the unorganised sector. This article undertakes a socio-legal analysis of maternity leave policies in India with special reference to field-level observations and challenges faced by unorganised women workers. It evaluates the legislative landscape, highlights systemic exclusion, and draws upon empirical insights to reveal the lived experiences of women denied maternity rights. The article concludes with actionable policy suggestions that focus on expanding coverage, improving awareness, and integrating maternity protection within the larger ambit of social security reforms.

**Keywords:** Maternity Leave, Unorganised Sector, Women Workers, Social Security, Labour Law, Gender Justice, India, Informal Economy, Field Study, Legal Rights, etc.

## Introduction

India's economic structure is predominantly supported by the unorganised sector, a vast space of informal employment marked by insecurity, irregular wages, and absence of legal protections. A major concern within this sector is the denial of maternity leave and related benefits to women workers. This gap contradicts the constitutional vision of equality and social justice, and further entrenches gender-based vulnerabilities in the labour market.

This article presents a comprehensive socio-legal and field-based analysis of the status of maternity leave in India's unorganised sector. It combines legal research with insights from grassroots-level interviews and surveys to understand the lived realities of women. The objective is to identify legislative shortcomings and recommend inclusive policies to ensure that all working women can access maternity protections, regardless of their employment type.

## Understanding the Unorganised Sector

The unorganised sector includes enterprises that are unregistered, small-scale, and often unregulated. It comprises occupations such as domestic work, agriculture, construction, street vending, tailoring, and home-based manufacturing. The workforce here is predominantly female, yet largely invisible in the policy landscape.

**Characteristics of the unorganised sector include:**

- Absence of formal employment contracts
- Irregular incomes and working hours
- Lack of access to paid leave, health insurance, or job security
- Limited enforcement of labour laws

In this environment, the concept of maternity leave is virtually non-existent, despite the significant physical and emotional demands placed on pregnant and postpartum women.

**Legal Framework: Gaps and Limitations**

The **Maternity Benefit Act, 1961** provides for 26 weeks of paid leave to women employed in establishments with 10 or more workers. However, it does not extend to the vast majority of women working outside formal establishments.

The **Unorganised Workers' Social Security Act, 2008** aims to provide social security to unorganised workers but lacks a specific, enforceable maternity benefit component. Further, schemes like the **Pradhan Mantri Matru Vandana Yojana (PMMVY)** offer conditional cash transfers for maternal health, but they are often limited in scope and riddled with bureaucratic barriers.

Despite these laws and schemes, maternity leave remains largely inaccessible to women in informal employment.

**Constitutional Mandate and Judicial Interpretation**

Article 42 of the Indian Constitution directs the State to make provision for maternity relief. Article 15(3) allows for special laws for women, while Article 21 guarantees the right to life with dignity. These provisions form the constitutional backbone for maternity protection.

In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*<sup>1</sup>, the Supreme Court held that even temporary and daily wage workers are entitled to maternity benefits. The Court emphasized the need to treat maternity benefits as a basic human right, not just a statutory entitlement.

Yet, despite such pronouncements, legislative and administrative responses have remained inadequate for the unorganised sector.

**Field-Based Observations: Empirical Realities**

A field study conducted in semi-urban and rural parts of Andhra Pradesh and Telangana (2023–24) involving 120 women workers in agriculture, domestic service, and small manufacturing units revealed the following:

- **72%** of women had no knowledge of maternity benefit schemes
- **80%** reported continuing to work during pregnancy due to financial necessity
- **65%** returned to work within two weeks of delivery, often in physically demanding roles
- **90%** of employers (including households) were unaware of any legal obligation to provide maternity leave

Respondents described pregnancy as a period of heightened vulnerability, both physically and economically. Several women reported miscarriages or postnatal complications aggravated by work-related stress and lack of rest.

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<sup>1</sup> (2000) 3 SCC 224

These findings reflect a severe disconnect between legal intent and field-level implementation.

### **Scheme-Based Analysis: PMMVY and ESI Limitations**

The **PMMVY** provides Rs. 5,000 in three instalments to pregnant and lactating women for their first child. However, women must fulfil several conditions (e.g., antenatal check-ups, institutional delivery), and the process involves complex documentation. Field data suggests low enrolment and disbursement rates due to:

- Lack of awareness
- Aadhaar and bank account mismatches
- Delays in government approvals
- Exclusion of second and subsequent births

The **Employees' State Insurance (ESI) Scheme**, though effective for insured women, is inapplicable to informal workers due to their employment status.

### **International Standards and India's Position**

The **International Labour Organization (ILO) Convention No. 183** mandates 14 weeks of maternity leave and job security, applicable to all women workers irrespective of employment type. India has not ratified this convention, citing concerns over cost and coverage feasibility in the informal sector.

Countries such as Brazil, South Africa, and Bangladesh have initiated innovative state-funded models to deliver maternity benefits even to unregistered workers. These models highlight the need for India to shift from employer-centric to state-centric financing mechanisms to ensure equity.

### **Barriers to Implementation in the Informal Sector**

Key structural and administrative barriers include:

- **Lack of employer identification** in informal settings
- **Non-registration of workers** under any social security scheme
- **Gender-based discrimination** in hiring and employment continuity
- **Inadequate labour inspection** mechanisms for home-based or casual workers
- **Absence of political will and budget allocation**

### **Policy Recommendations for Inclusive Reform**

#### **1. Universal Maternity Benefit Scheme**

Develop a state-sponsored, unconditional maternity support scheme applicable to all women workers, funded through general taxation or social security funds.

#### **2. Digital Registration and Tracking**

Create an integrated digital platform that allows informal women workers to register for maternity benefits using Aadhaar, Jan Dhan, and ASHA/AWW outreach channels.

#### **3. Employer-State Partnership Model**

In sectors like domestic work, implement a co-contribution model between employers and government to ensure financial feasibility.

#### **4. Strengthening PMMVY**

Expand PMMVY benefits to cover second and third births, streamline disbursement, and relax conditionalities that exclude marginalised women.

## 5. Awareness Campaigns

Launch community-level awareness initiatives via SHGs, panchayats, and health workers about maternity rights and entitlements.

## 6. Legal Amendments

Amend the Maternity Benefit Act and the Code on Social Security, 2020 to include a chapter on informal sector maternity rights and accountability frameworks.

## 7. Monitoring and Evaluation

Establish an independent monitoring body under the Ministry of Labour to track maternity protection indicators in the unorganised sector.

### Analyzed Chart:

Aspect/Parameter	Observations / Findings	Analysis
<b>Coverage under Maternity Laws</b>	Only 10–12% of unorganised women workers are covered	Majority excluded due to non-registration, lack of awareness, or inapplicability of laws
<b>Awareness of Legal Rights</b>	72% of surveyed women had no knowledge of maternity rights	Indicates poor outreach and ineffective awareness campaigns
<b>Employer Compliance</b>	90% of informal employers (including households) unaware of obligations	Reflects lack of enforcement and monitoring in the informal sector
<b>Leave During Pregnancy</b>	80% of women continued working till the last trimester	Driven by financial compulsion and absence of paid leave
<b>Post-Delivery Return to Work</b>	65% resumed work within 2 weeks of childbirth	Poses health risks to both mother and child; signals absence of social safety net
<b>Access to Government Schemes (PMMVY etc.)</b>	Only 20% received benefits; others faced delays, rejections, or procedural hurdles	Operational bottlenecks hinder accessibility even when schemes exist
<b>Judicial Enforcement</b>	Supreme Court extended maternity benefits to casual workers in MCD case.	Judicial interpretation is progressive, but requires legislative follow-up for wider coverage
<b>ILO Compliance (C183)</b>	India has not ratified ILO Convention No. 183	Global standards not yet met; cost and feasibility cited as barriers
<b>Childcare Facilities (Crèches)</b>	95% reported absence of workplace childcare	Crèche mandates remain unimplemented; particularly impractical for home-based or mobile work
<b>Suggested Interventions (from Field)</b>	Direct cash transfers, simplified registration, local awareness drives, paternity leave	Policy recommendations align with field voices calling for inclusive and accessible solutions

**Conclusion**

Maternity protection for women in the unorganised sector is not merely a legal or policy issue — it is a human rights imperative. While India has made strides in recognising maternity as a labour right, the exclusion of a majority of women workers from its ambit remains a critical failure. A rights-based, inclusive, and field-responsive approach is urgently needed.

Maternity leave should be a universal entitlement, not a privilege restricted by the formality of employment. The transformation of India's maternity benefit landscape depends on political commitment, inclusive lawmaking, and active participation of local communities. Only then can India fulfill its constitutional promise of justice, dignity, and equality for all its working mothers.