

Maternity Benefits under the Code on Social Security, 2020 Legal Framework and Challenges

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Abstract

As a matter of fact, maternity benefit is a legal right of a woman worker. Provisions such as maternity leave with wages, medical bonus, nursing breaks and crèches are essential to protect the health and well-being of both the woman worker and her child. Financial support during the crucial period of pregnancy and childbirth, along with access to proper medical care and nutrition, is indispensable. Maternity benefits promote gender equality by recognizing the unique challenges faced by women in the workforce and enabling them to balance work and family responsibilities. Although the Apex Court in 1981¹ held that termination of a woman employee merely on the ground of pregnancy violates the right to equality and womanhood, and despite several decades having passed since the judgment, women workers are still struggling to secure their full-fledged right to maternity benefits. While the Maternity Benefit Act, 1961 provided for various benefits, employers have withheld them for years. As part of labour reforms, the Code on Social Security, 2020 sought to address the lacunae under the Maternity Benefit Act, 1961 and judicial pronouncements since 1961 have also been incorporated to a considerable extent in the new Code.

In this article, the author critically examines the legal framework, judicial pronouncements, and the analysis of the Code on Social Security, 2020 concerning maternity benefits. The paper also addresses the challenges in extending these benefits to women workers and suggests possible reforms.

Keywords: Maternity Benefit, Gender Equality, Women Worker, Labour Code, Legal right.

1. Introduction

Maternity benefit is a safeguard provided to woman worker before and after delivery of child in order to ensure mother's physical and mental well-being and the adequate care for the newborns by providing monetary and non-monetary benefits. It gives women enough time to recuperate and tend to the newborn's health rather than making them work in such dire conditions. Maternity benefits are intended to remove the fear amongst women worker of losing jobs as they tend to their personal roles. In India, the first legislation guaranteeing the maternity benefit was enacted during the British period in the Province of Bombay in 1929. Subsequently other provinces followed the suit. The Central Government also passed three Acts viz., the Mines Maternity Benefit Act, 1941,² the Employees' State Insurance Act, 1948 and the Plantations Labour Act, 1951. The provisions of these enactments differed widely. Post-independence, the Central Government took a remedial measure by enacting the Maternity Benefit Act, 1961. In order to better support women in the workforce, maternity benefits have undergone numerous

¹ Air India v. Nargesh Meerza, AIR 1981 SC 1829.

² Act XIX OF 1941.

changes in India. The Employees State Insurance Act of 1948, the Maternity Benefits Act of 1961 and the Guidelines under the MGNREGA Act of 2012 were the legal framework governing maternity benefits in India prior to the passage of the Social Security Code of 2020. These enactments primarily intended to enhance participation of female employees in the workforce. The twelve weeks of maternity leave was first granted by the Maternity Benefit Act of 1961 and through the amendment in 2017, the period was raised to twenty-six weeks. This leave period has been incorporated in New Social Security Code of 2020, in addition various other benefits.

2. Constitutional Framework vis-à-vis Maternity Benefit and Other Rights of Workers

The Constitution of India has laid down a strong foundation for protection of rights of men and women workers in India. There are several provisions contained in the Constitution both in Part – III containing fundamental rights and Part – IV containing directive principles of state policy, which directly or indirectly aim at securing the rights and welfare of working class. In Part – III, article 21 guarantees right to life, which according to the apex court means right to have a meaningful and honorable life, which goes beyond mere animal existence.³ The article 15(3) of the Indian Constitution provides that the State shall make special provisions for women. In other words, the provision permits the state to adopt "protective discrimination" policies for the betterment and empowerment of women. Part – IV contains several direct provisions obligating the state to secure the rights and interest of the working men and women. Article 39 requires the state to direct its policy to secure to both men and women equally the adequate means of livelihood,⁴ and equal pay for equal work.⁵ It also requires to state to prevent abuse of health and strength of workers. Article 41 obligates the state to secure right to work. Article 42 specifically requires the State to “make provision for securing just and humane working conditions and for maternity relief”. Article 43 directs that the state shall make an endeavor to secure, inter alia, living wage, decent standard of living for the working men and women.

It is trite that the directive principles of state policy contained in Part – IV of the Constitution including the ones relating to the rights and interests of workers mentioned above are not judicially enforceable. But under the constitutional scheme, they are fundamental in the governance of the country. The state is bound to incorporate them while making laws. By virtue of the various constitutional provisions, several laws have been enacted in India for protecting the rights and interests of the workers. As regards the working women are concerned, the Constitution of India has not only paved way for statutory protection of their rights, it has also aimed at creating congenial environment to encourage more and more women to enter India’s workforce. As a result, the participation of women in workforce, as in other walks of life, has been tremendously increased since the adoption of the Constitution.

It is important to note that in view of specific mandate contained in article 42 of the Constitution, the Parliament of India had enacted the Maternity Benefit Act, 1961 paving way for legal protection of maternity benefit for working women. The new Social Security Code, 2020 had replaced it and further reinforced the commitment of the State to strengthen the legislative framework relating to maternity benefit in the light of the experience gained in the past.

³ Kharak Singh V. State of U.P. AIR 1963 SC 1295

⁴ Clause (a).

⁵ Clause (d).

3. Rights and Safeguards Guaranteed under the Maternity Benefits Act, 1961: Brief Overview

The Maternity Benefit Act, 1961 was an Act to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits. The Act initially applied to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; and to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months. The maternity benefits are also provided to women workers under the provisions of Employees' State Insurance (ESI) Act, 1948. A woman continued to be covered under this Act until she becomes qualified to claim maternity benefit under the ESI Act, 1948.

The Maternity Benefits Act, 1961 provided various benefits/ measures for woman workers. The Act allowed working women to avail, as matter of right, maternity leave for six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.⁶ The period of six weeks was later raised to 24 weeks in the year 2017 in case of delivery of child.⁷ The Act mandates that during the period of leave, the full wages has to be paid by her employer to woman worker as if the woman was working in the establishment. Even if woman dies, who was otherwise entitled for maternity benefits if alive, before receiving an amount of maternity benefit, her nominee is still entitled for the same.⁸ Even medical bonus of Rs. 1,000/- was to be paid to a woman by her employer if no care was provided by the employer free of charge.⁹

The Act, as mentioned above, allowed woman workers to avail paid leave for six weeks in case of miscarriage or medical termination of pregnancy,¹⁰ and even for tubectomy operations, woman could avail paid leave for a period of two weeks.¹¹ Further, there were also provisions for leave in case of any illness arising out of pregnancy, delivery, premature birth of a child, miscarriage, medical termination of pregnancy or tubectomy operation.¹² In addition to these benefits, two nursing breaks were also provided for such woman worker.¹³ The 1961 Act, while it was in operation has in fact significantly contributed for protecting the health and well-being of both working woman and their newborns.

4. Judicial delineations on Maternity Benefits

The constitutional courts in India have played a constructive role in ensuring maternity benefits to the working woman by enforcing the legislation and various schemes keeping. In dealing with such cases, courts have always borne in mind the true and real intention behind the legislation and schemes. In *B. Shah v. Presiding Officer, Labour Court Coimbatore*,¹⁴ the Supreme court has observed that in interpreting the provision of beneficial legislations like Maternity Benefit Act, 1961, which is intended to achieve the objective envisaged in article 42 of the Constitution i.e., to secure "just and humane conditions of work and for maternity relief", the courts must adopt the beneficial rule of construction.

⁶ Sec. 4 of Maternity Benefit Act, 1961.

⁷ The Maternity Benefit (Amendment) Act, 2017.

⁸ Section of Maternity Benefit Act, 1961.

⁹ Section 6 (1) of the Maternity Benefit Act, 1961.

¹⁰ Section 9 of Maternity Benefit Act, 1961.

¹¹ Section 9-A of Maternity Benefit Act, 1961.

¹² Section 10 of Maternity Benefit Act, 1961.

¹³ Section 11 of Maternity Benefit Act, 1961.

¹⁴ AIR 1978 SC 12

The provisions shall be so interpreted and given effect to in a manner that would enable the working women not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output. .

In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*,¹⁵ the Supreme Court while interpreting the Maternity Benefits Act, 1961 held that the rights guaranteed are equally available to female employees employed on casual or daily wage basis. It categorically held that there is nothing in the Act to state that only regular woman employees are entitled to the benefit of maternity leave and the other female employees who are either employed on casual basis or on the muster roll on daily wage basis are not entitled to maternity leave. The court further stated that becoming a mother is the most natural phenomenon in the life of a woman. The employer has to be considerate and sympathetic towards such women. The employer must understand the physical difficulties which working women would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. Whatever is needed to facilitate the birth of a child to a woman who is in service shall be provided. The Court also emphasized the importance of the Maternity Benefit Act, 1961. The Act aims to provide all these benefits as a matter of right to a working woman so that she may carry out her motherhood duties honorably, peaceably, and most importantly without being deterred by the fear of being victimized for forced absence during the pre or post natal period.

The Madras High Court, in *Kanchipuram District v. The Principal Secretary*,¹⁶ came to the rescue of woman employee working on contractual basis. The court interpreted the Act and said that contractual employee who has worked for a minimum period fixed under the Maternity Benefit Act, 1961 is also entitled for maternity benefit.

In *K.C Chandrika v. Indian Red Cross Society*,¹⁷ an female employee was appointed by the Red Cross Society and she had applied for maternity leave and the same was granted to her by the Red Cross Society. While the petitioner was on maternity leave, her services were terminated. The question that arose for determination by Court was that whether termination of services of the Petitioner, while on maternity leave, was illegal. The court held the termination of employee who was rightfully sanctioned maternity leave and later termination of her service is illegal and not acceptable. After taking into consideration all the relevant factors the court directed the respondent to reinstate the petitioner in service with continuity of service for the purpose of computation of all service benefits.

In *K. Umadevi v. Government of Tamil Nadu*,¹⁸ the Supreme Court of India had delivered a landmark judgment that marks significant advancement in the pursuit of gender justice and the protection of workers' rights. In this case, the court for the first time recognized maternity benefit as a fundamental right guaranteed under Article 21 of the Constitution of India. This ruling of the Supreme Court elevated the status maternity benefit from mere legal right to fundamental right. The judgement of the Court affirmed the inherent dignity, bodily autonomy, and reproductive rights of working women. It embedded that right within the core framework of constitutional protections. This judgment is transformative step towards ensuring that the right to maternity is not just a statutory right. By elevating it to the status of fundamental right, the Supreme Court made it inviolable to ordinary legislative processes. Even if the law expressly conferring right to maternity benefit is repealed for whatever

¹⁵ 2000 SCC(L&S) 331

¹⁶ W.P.No.27556 of 2018

¹⁷ 131 (2006) DLT 585

¹⁸ 2025 Livelaw (SC) 614.

reason, the right would still survive as an implicit fundamental right article 21 of the Constitution of India.

The cases discussed above are only illustrative but they clearly suggest that the constitutional courts in India have contributed significantly for fostering more just and humane work environment for women by ensuring that the maternity benefits are not denied to working women by employers on some or the other pretexts. It is now well settled that women employees working on casual or contractual or even on daily wages are all entitled to the benefits provided the minimum statutory conditions are fulfilled. The elevation of the maternity benefit to the status of fundamental right is the most significant development.

5. Maternity Benefits as provided under New Social Security Code, 2020

To provide Social Security in particular maternity benefit to woman worker is the direction of the Constitution of India and also it is fundamental right of woman worker. In this regard the Parliament has consolidated various labour laws in particular Maternity Benefit Act, 1961 and incorporated the provisions of the Act in new Social Security Code 2020. Apart from incorporation of various provisions of Maternity Benefit Act, 1961 the New Code has granted various new benefits for women worker and they are discussed hereinunder.

Section 59 to Section 72 of the Code on Social Security, 2020 provide for Maternity Benefits. The Section 60 of the Social Security Code, 2020 opens with the word “Right” which is very much significant here. Thus, Maternity Benefit is a right of every women worker who has worked for minimum of eighty days in the twelve months preceding her expected delivery date. Hence, maternity benefit is payable at the rate of the average daily wage.¹⁹ The Women worker who has worked minimum of 80 days in an establishment can, as a matter of right, avail up to 26 weeks of paid maternity leave, in which up to 8 weeks of maternity leave can be availed prior to the expected date of delivery²⁰.

The Code provided for maternity leave for adoptive mother as well but only if the adoptive child is below the age of three months. But the Apex Court struck down the said condition in section 60 (4),²¹ which restricted provision for maternity leave. The Court held that an adoptive mother should be allowed maternity leave of 12 weeks irrespective of the age of the adoptive child. Further the court also held that the protection of maternity benefits cannot be restricted keeping in mind the age of the child. The adoptive mother would have the same rights and obligations towards the child as a natural mother. The judgement of the Supreme Court would have far reaching implications.

One of the most significant and distinguishing features of the Code is provision for Work from Home. If the nature of the work is such that women can work from Home, the employer may allow her to do so even after availing of maternity leave of 26 weeks on mutually agreed terms between employer and women employee.²²

The code of 2020 is undoubtedly a pro working women legislation. The Code prohibits the employer to act against women employee in a manner that is detrimental to her work. Since legislative intention is to encourage women’s participation workforce and even to enhance it, it prohibits dismissal of woman employee during her pregnancy.²³ Under the Code, there can be no deduction in salary/wages of a

¹⁹ Section 60 (2) of Social Security, Code 2020.

²⁰ Section 60 (3) of Social Security Code, 2020.

²¹ Hamsanandini Nanduri v. Union of India delivered on March 17, 2026,

²² Section 60 (5) of the Code.

²³ Section 68 of the Code.

woman just because she has availed maternity benefit or she has spent time for nursing the child.²⁴ Apart from this, like the 1961 Act, even under the Code, the liability to pay maternity benefit to women employee will not end even if such woman dies, but her nominee or if no nominee given her legal representative is entitled for maternity benefit or amount.²⁵ The code has also made a provision for medical bonus to a woman employee who is entitled for maternity benefit. The medical bonus amount is Rs. 3,500/- The Central Government has the power to increase it.²⁶ For a woman employee who has undergone miscarriage or medical termination of pregnancy, such woman is entitled to leave with wages for a period of six weeks.²⁷ Another important feature of the new Code is leave for tubectomy operation. In case of tubectomy operation a woman is also entitled for two weeks of maternity leave.²⁸

Every mother who returns to work after giving birth is entitled to two nursing breaks in a day so that she would continue nursing the kid until the child turns fifteen months²⁹ and duration of the nursing break is determined by the Central Government. Further, provision for crèche facility is provided under Section 67 of the Code. Any establishment with fifty or more employees is required to have a crèche facility, and the female employees are entitled to four daily visits to the crèche. A woman cannot be terminated from her employment by her employer for missing work during her maternity leave, as stated in Section 68 of the Code, unless the termination is due to gross misconduct as prescribed by the Central government, in which case an employer may deny the female employee her bonus, or maternity benefit, or both. Under Section 68(2) of the Code, a woman who is refused maternity benefits or dismissed while on maternity leave within the period of 60 days from the date of refusal/dismissal order can appeal to a competent authority. The competent authority's judgment in this regard shall be final. Further, the section 69 of the Code provides that a woman who is eligible for maternity benefit under the terms of this Chapter may not have any deductions from her regular daily salary made for the sole reason that she was delegated less challenging work, in accordance with section 59(3) or that she took nursing breaks.

Throughout history, women have been subject to exploitation and unequal treatment and are struggling to maintain their status in the patriarchal society. The employer must not take it as burden rather a social security measure which our Constitution envisages. The employment rates of woman worker will be declined if measures of maternity are provided to them. The Legislature has done its best in achieving the goal both under Constitution and under various legislations.

6. Challenges in achieving Maternity Benefits

The New Labour Code is seen as an opportunity to bolster the status of female workers and close any lacunas in the previous labour law legislations. Instead, the Code in the chapter VI, under the heading 'maternity benefits' has simply merged all the previous laws pertaining to social security, disregarding the legal issues and challenges. Although, the Code provides for a maternity leave of 26 weeks, this is applicable for a woman's first two surviving children and for the third child and subsequent children, the maternity leave stands at a 12 weeks period. Although the Code permits the application of maternity benefits to the unorganized sector, it seems unlikely given the absence of a timeframe, duration, schematic provisions, etc. Even that description is vague. The phrase "unorganized sector" has not been

²⁴ Section 69 of the Code.

²⁵ Section 63 of Code.

²⁶ Section 64 of Code.

²⁷ Section 65 (1) of the Code.

²⁸ Section 65 (2) of the Code.

²⁹ Section 66 of the Code.

clearly defined in the Code. Further, until their child turns 15 months old, female employees are entitled to two nursing breaks apart from regular break given. Nonetheless, the majority of female workers in the unorganized sector are not covered by this rule, which solely applies to women in the organized sector. Because of this, many women miss out on these vital breastfeeding intervals that are essential to the child's growth and development.

Small and medium scale enterprises may struggle to manage the costs associated with prolonged employee absences and hiring temporary replacements. This financial strain could disincentivize SMEs from hiring women of reproductive age, leading to potential discrimination in hiring practices. Addressing the expense associated with providing creche facilities emerges as an additional challenge warranting resolution. While the legislation does not expressly mandate that employers shoulder the financial burden of such facilities, an interpretive analysis of the law suggests this inference. While the new Labour Code aims to cover a wide range of establishments and workers, it may not apply uniformly to all sectors. Some smaller establishments might be exempted from certain provisions, which could affect the availability of maternity benefits for women working in those establishments.

Maternity benefits include both child bearing and child care. There should be no distinction between a surrogate mother and a biological mother. Various high courts across India have uniformly held that women employees who have children through surrogacy would be entitled to maternity benefits in accordance with the rules. The earliest case that seems to have addressed the issue of maternity leave in the case of children born of surrogacy is *K Kalaiselvi v. Chennai Port Trust*³⁰ decided by the Madras High Court in 2013. The court held that there is nothing wrong or per se illegal in granting maternity benefits under the Port Trust's leave regulations. The regulations relating to maternity are interpreted to mean and include surrogacy as well, and the court found that there was no reason to deny such leave even if there is no specific mention of surrogacy. According to General Comment 14 of the International Covenant on Civil and Political Rights (CESCR)³¹, maternal healthcare is an essential duty of the state that cannot be disregarded. The state is obligated to provide maternity benefits to surrogate mothers and cannot withhold such support from them.

It is important to note that the benefits under the Maternity Benefit Act, 1961 was availed only by women workers employed in the organized sector. The moment a woman becomes pregnant she is seen as a burden. But the Social Security Code, 2020 has drastically changed this scenario. Like the 1961 Act, even the Code contains no provision for paternity leave. It put the onus of the newborn's rearing exclusively on the mother. The inclusion of paternity leave is felt to be important to create a system through which a balance can be achieved to meet the responsibilities.

7. Conclusions and Suggestions

The evolution of maternity benefits in India reflects a journey towards recognizing the fundamental need to support women before and after childbirth, while ensuring their continued participation in the workforce. There have been significant developments, from early 20th-century legislative attempts to the comprehensive framework provided under the Code on Social Security, 2020. While strengthening the legal framework relating to maternity benefits is a welcome step, the government needs to understand the challenges in extending these benefits to women workers in the private and unorganized sectors and

³⁰ 2013 SCC Mad 811

³¹ International Covenant on Economic, Social and Cultural Rights, 1967.

address them effectively. Otherwise, these statutory safeguards will remain only on paper for the vast majority of working women.