

# **INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]**

ISSN: 2584-1513 (Online)

Volume 4 | Issue 1 [2026] | Page 539 – 546

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# “MATERNITY RIGHTS IN TRANSITION: GAPS UNDER THE SOCIAL SECURITY CODE, 2020”

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## 1. ABSTRACT

Women face a lot of physical pain, mental stress and emotional changes during pregnancy due to which maternity protection is a need. In India maternity benefits were commonly governed by the Maternity Benefit Act, 1961 and later it was amended in 2017 for further changes. The implementation of the Social Security Code of 2020 marked a move toward consolidation of the labour laws.

This paper mainly highlights the comparison between the provisions of maternity benefit in both Act and the new Code. It evaluates if the new structure efficiently addresses the gaps relevant to inclusivity for unorganised sector workers, surrogate mothers and the paternal leave. The paper also checks the extent to which judicial interpretations have formed the maternity benefit rights in India. With an analysis of the judicial interpretation, legal provisions and the gaps the paper finds the present challenges. These include lack of lucidity, implementation issues and confined recognition of emerging forms of motherhood like surrogacy and the paternal leave.

## 2. INTRODUCTION

The Maternity Benefit Act is important for all the working women in order to protect their health, dignity and economic safety. The DPSP Article-42<sup>2</sup> talks about the Maternity Benefit stated in the Indian Constitution. Initially the Act came into effect to regulate employment during maternity as it offers paid leave and other similar benefits. The new Code targets to consolidate labour laws into a common framework. It retains the provisions of earlier Acts but also tries to expand scope to a broader workforce.

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<sup>1</sup> First Year Law Student, Nirma University.

<sup>2</sup> INDIA CONST. art. 42.

### **3. MATERNITY BENEFITS UNDER MATERNITY BENEFITS ACT, 1961 (INCLUDING 2017 AMENDMENT)<sup>3</sup>**

The Maternity Benefit Act 1961<sup>4</sup> protects women with jobs during pregnancy and childbirth and provides them some benefits for the same. The leading purpose of this law is to secure women and make sure they are treated fairly at work. This law applies to companies that have ten or more employees, like factories and shops. This law provides women paid maternity leave of up to 26 weeks. It specifies that women will get paid leave during their pregnancy. This law does not only cover the mothers who are pregnant but also the one who adopts the child or has a child using mother (commissioning mothers). These women get 12 weeks of leave so they can look after their baby. The law also describes that companies with 50 or more employees have to keep creche facilities where women can take care of their babies while doing their job. This law ensures that women are not treated unfairly and not losing their jobs while they are on their maternity leave. This law helps women to balance their work and family life without worrying about losing their job. But, this law does not cover the women who are working in an unorganised sector and all the burden of giving women paid leave is on the company and this might make companies to not hire women employees who are of childbearing age. This law only states that a women need maternity leave and not a male which shows the division of work and even promotes patriarchy. This act is still important for the working women and its main key features are as follows-

#### **Key Features**

- It provides 26 weeks of paid maternity leave to pregnant mothers.
- It applies to establishments employing 10 or more persons.
- Crèche facilities for establishments with 50 or more employees.
- Benefits for commissioning mothers (intended legal mother)

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<sup>3</sup> The Maternity Benefit (Amendment) Act, 2017, No. 6 of 2017, India Code (2017).

<sup>4</sup> The Maternity Benefit Act, 1961, No. 53 of 1961, India Code (1961).

→ Safeguarding from dismissal during maternity leave

## **4. MATERNITY BENEFITS UNDER CODE ON SOCIAL SECURITY, 2020**

The Code on Social Security 2020<sup>5</sup> is a law which integrates many diverse social security laws into one. This law embraces requirements for maternity benefits. Attempts to aid more women, including those who work in non- traditional jobs like gig workers and platform workers. This method of law helps to keep many of the rules as before like old law defining how long women can pull out for maternity leave. It conveys that women who work in jobs can enjoy the same benefits.

One benefit about this law is that it seeks to help women who do not work in jobs. The law proposes the government to generate security schemes to help these women. This will make a way for women who do not have passage to these benefits now.. These benefits are not guaranteed and it is not evident how they will work. The law too leaves features which need to be determined later that can make it difficult to understand and impose. While the law is trying to help women it also left some traces of issues which need to be addressed. Some of them are big issues like how companies will pay for these benefits and how women can gain benefits by getting access to them. It summarizes that the law has the potential to aid women but it needs to be executed carefully to make sure it operates well.

### **Key Features**

- It subsumes the provisions of the earlier Act.
- It recognises the unorganised, gig and platform workers and seeks to extend benefits to them.
- It mandates that employees must use an Aadhar number to establish their identities.

The effectiveness of these provisions depends on implementation and rule-making.

## **5. COMPARATIVE ANALYSIS**

The shift from the Maternity Benefit Act, 1961 to the Code on Social Security 2020 reflects a change from a law that helps people to a bigger system that covers social security. The Code on Social Security

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<sup>5</sup> The Code on Social Security, 2020, No. 36 of 2020, India Code (2020).

2020 retains most of the points from the old Act but it also questions about the ambit of the act and if it includes every female employee who needs maternity benefit or not.

At first glance, it seems that the code covers the women employees in the unorganised sector. Such as gig and platform workers as the earlier act does not cover them. This new addition does not automatically give protection to these people but states that the benefits will depend upon the government policies and schemes in future, which makes things unclear and harder to enforce whereas the earlier act was narrower but it gives clear and enforceable rights to women.

In the Maternity benefits act, 1961 the whole liability to provide paid leave is carried by the employer while the new code talks about the social security schemes to help it does not completely address the problem faced by the employers which tends to hire less women of childbearing age into their companies. So, it does not fix one of the problems of the old act.

The Maternity Benefits Act, 1961 and the Social Security Code, 2020 both do not talk about the mandatory paternal leave which places the whole burden of child care on women and also reinforces the assumption that childcare is entirely a female responsibility. There is a sharp divide between the public and private bodies where public servant gets 15 days of paternal leave under the Central Civil Services (Leave) Rules, 1972<sup>6</sup> while there is no single paternal leave provided to the fathers.

Overall the Maternity Benefits Act, 1961 is narrower but lucid in its details whereas the new Social Security Code, 2020 is a broader framework but it lacks clarity when talking about the future rules and schemes. The new code does cover the unorganised workforce of women but it does not provide them certainty and all the burden of providing paid leave in both the acts is on the employer which can create biasness during recruitment. Both the acts remain silent on the paternal leave. These all are the main gaps in both the Maternity Benefits Act, 1961 and the Social Security Code, 2020.

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<sup>6</sup>The Central Civil Services (Leave) Rules, 1972 (India).

Aspect	Maternity Benefit Act, 1961	Social Security Code, 2020
Coverage	Organised sector	Broader
Maternity Leave	26 weeks	Retained
Nature	Employer liability	Mixed
Clarity	Well-defined	Dependent on rules
Inclusivity	Limited	Potentially wider

## 6. JUDICIAL INTERPRETATION

The judiciary has played an important role in expanding and protecting maternity rights in India.

(a) *Dr. Kavita Yadav, versus Secretary, Ministry of Health and Family Welfare (2024)*<sup>7</sup>

This deals with the Maternity Benefits After Contract Ends. A woman working on a contract was not given maternity benefits. Her contract ended before she could finish her 26-week maternity leave. The Supreme Court said that if a woman works for least 80 days she gets 26 weeks of maternity benefits. This is even if her contract ends before the leave is over.

The court confirmed that maternity benefits are not tied to a contract. This helps women working on contracts, temporary jobs or ad-hoc positions.

(b) *K. Umadevi vs. Government of Tamil Nadu (January, 2026)*<sup>8</sup>

This deals with the problem of the two-child norm.

The issue is that a woman who works for the government was not given maternity leave when she had her baby. This is because of the rules that maternity benefits can only be provided for the first two children.

The Supreme Court made a decision. They said that maternity leave is a right that every woman should have. It is not something that your employer can just give you or not give you.

<sup>7</sup> *Dr. Kavita Yadav v. Sec’y, Ministry of Health & Family Welfare, (2024) 1 SCC 421 (India).*

<sup>8</sup> *K. Umadevi v. Government of Tamil Nadu, 2025 INSC 781 (India May 23, 2025).*

The Court also said that rules like the two-child norm are not fair. They cannot stop women from getting the maternity benefits that they are supposed to get. If a woman is denied leave just because she has two kids, that is not right. It is a violation of her rights as a woman and it is against her dignity as stated in Article 21<sup>9</sup>.The two-child norm is not more important than the rights of women like K. Umadevi, vs. Government of Tamil Nadu.

(c)Hamsaanandini Nanduri v. Union of India (March, 2026)<sup>10</sup>

The Court struck down Section 60(4) of the Social Security Code,2020 which restricted 12 weeks of paid maternity leave only to adoptive mothers who adopted children under the age of three months only.

The Supreme Court of India struck down this section as unconstitutional and arbitrary of Article 14(Equality) and Article 21(Right to life). The court held that adoptive mothers are entitled to 12 weeks of paid maternity leave irrespective of the age of the child at the time of adoption.

## **7. LEGAL GAPS AND CHALLENGES**

In the Social Security Code, 2020 there are some existing challenges. There is limited practical coverage for the workers in an unorganised sector which means that they are not able to get the maternity benefits as the employees at organised sector. Then, the burden of providing paid leave is fully on employer which can create biasness towards the female employees. The provisions for the surrogacy and non-traditional motherhood is still not defined properly in the code. Then the silence on paternal leave is the main concern as it is encouraging the stereotype that only the female or mothers are the care giver not the fathers.

Apart from all of these gaps there is a lack in implementation framework which means that the theory and the practicality both are not on the same page.

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<sup>9</sup> INDIA CONST. art. 21.

<sup>10</sup> Hamsaanandini Nanduri v. Union of India, 2026 INSC 246 (India Mar. 17, 2026).

## 8. RECOMMENDATIONS

The present code needs some changes in order to fill the gaps related to Maternity Benefits, The changes can be .There should be a proper framework to include the unorganised workforce same as the organised workforce so that they both can fairly get the maternity benefits. .Along with the maternity leave for women the men should also be granted paternal leave so both the parents can equally contribute to the care of their children and to also break the ongoing stereotype that only the women are the caregiver. .There should be a proper inclusion of all sorts of motherhood like the biological mothers and they all should be provided the protection under the code. .The burden of providing leave by the employer needs a change to reduce the burden on the employer and also to remove the biases during the recruitment process.

## 9. CONCLUSION

The transition from the Maternity Benefit Act, 1961 to the Code on Social Security 2020 represents a reform. The code contains gaps but it is necessary for the female workers who are bearing their pregnancy. This act helps women to balance their family and work without the fear of losing their job. It ensures that women do not feel their pregnancy will lead their job in danger as the act provides them paid leave with the protection of their job. While the Code aims to expand maternity protection its success depends on implementation and clarity in provisions.

Maternity benefits must be viewed as components of gender justice and social welfare. This is also strengthened by Article-14<sup>11</sup> and Article-21 of the Indian Constitution. An inclusive and well-defined approach is necessary. This ensures that all women can exercise their maternity rights fully without their status of employment.

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<sup>11</sup> INDIA CONST. art. 14.

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