



An Analysis of India's Maternity Benefits Act: How Far Has It Helped Women in the Workforce?

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Abstract

This paper examines India's Maternity Benefit Act of 1961 and its 2017 amendment to assess how far it has helped women in the workforce. By extending paid maternity leave to 26 weeks, the law aimed to protect women's health, job security, and financial stability during childbirth. Evidence shows that women in the formal sector have benefited through better health and workplace support. However, the law also has drawbacks. Its "employer-pays-all" model places the full cost of maternity leave and crèche facilities on businesses, leading some employers, especially in small and medium enterprises, to avoid hiring women of childbearing age. This has caused a "motherhood penalty" and, in some cases, reduced women's participation in the formal workforce. The Act also excludes most women, as over 90% work in the informal sector without such protections. The paper concludes that to be fully effective and fair, India needs a social security-based system with shared costs and gender-neutral parental leave.

Keywords: Maternity Benefit Act, 2017 Amendment, Working Mothers, Female Labor Force Participation, India, Social Security, Maternity Leave Policy, Employer Bias

I. Introduction: A Progressive Step with Complicated Results

The role of women in a country's economic story is crucial to its growth and development. Historically, in many societies, including India, women have faced a unique and difficult challenge: balancing their professional lives with the profound responsibilities of motherhood. This has often created a false and painful choice, forcing many to abandon their careers for the sake of starting a family. The Maternity Benefit Act of 1961 was created to stand against this very problem. It was a forward-thinking law designed to protect women's jobs and ensure they have a stable income during and after childbirth, offering a long-awaited safeguard for their economic independence.¹

For the first time, a central law provided

working women with paid leave and job security during one of the most physically and emotionally demanding periods of their lives. It was hailed as a powerful measure to honor motherhood and defend women's rights in the workplace. The ideology behind the law was clear: maternity benefits are not a bonus but a fundamental entitlement that gives women an equal opportunity to men with the same skills and qualifications.¹

This paper will explore a simple yet profoundly important question: how well has this law actually worked? The Maternity Benefit Act, especially after its significant amendments in 2017, has been widely celebrated and has placed India on the global map for its progressive approach to supporting mothers. At the time of the amendment, the country boasted one of the longest paid maternity leaves in the world.¹ Yet, a closer look at the data and real-world experiences shows that the law's effects have been much more complex and sometimes contradictory. It has undeniably helped some women in significant ways, but for many others, it has created new and unexpected problems. The result is a law that is a mixture of remarkable progress and perplexing paradoxes.⁴

The analysis of this situation reveals a central irony: the very strengths of the law—its long, paid leaves and mandatory benefits—have inadvertently become its weaknesses. The policy's ambitious design, which places the entire financial burden of these benefits on employers, appears to be the primary cause of its unintended negative consequences. Instead of universally increasing women's participation in the workforce, some evidence suggests that the law may have contributed to a decline in their numbers, especially in the formal, salaried sector. This points to a direct cause-and-effect relationship where the financial liability of hiring women has led some employers to prefer male candidates. This tension between the law's noble purpose and its difficult real-world outcomes is a key theme explored throughout this report.⁴

II. Understanding the Law: A Journey from 1961 to Today

The Maternity Benefit Act, 1961, has been



a cornerstone of India's labor laws, but it is a policy that has undergone a remarkable transformation over time. Understanding its evolution is essential to grasping its current impact.

2.1 The Original Act of 1961

When it was first enacted, the law was a foundational and visionary piece of legislation for its time. It was a saving grace for women who had to make a tough choice between having a career and having a family.¹ The original Act applied to establishments that employed ten or more people, including factories, mines, plantations, and shops. Its core provision was a paid maternity leave of 12 weeks, which was divided into six weeks before and six weeks after the expected delivery date.² This law provided a crucial safety net by ensuring women were paid at their average daily wage during their absence, and it prohibited employers from knowingly employing a woman in the six weeks immediately following her delivery or a miscarriage.⁹ To be eligible for these benefits, a woman had to have worked for the employer for a period of at least 80 days in the 12 months before her expected delivery.³

2.2 The Landmark 2017 Amendment

The most significant change to the Act occurred with the Maternity Benefit (Amendment) Act, 2017, which completely changed the landscape of maternity benefits in India. This amendment was a bold step that brought India's labor laws in line with, and in some cases even ahead of, many developed nations.¹¹ The key changes included:

- **Extended Leave:** For women with fewer than two living children, the paid leave duration was increased drastically from 12 weeks to 26 weeks. This was a monumental change, placing India among the top countries globally in terms of mandated maternity leave duration. The leave could be taken for up to eight weeks before the expected delivery date, with the remaining time to be used after the child's birth. For women who already had two or more children, the leave period was set at a maximum of 12 weeks, with up to six weeks before the delivery date.¹
- **New Kinds of Mothers:** The law was broadened to be more inclusive. For the first time, it extended maternity benefits to women who adopt a child under three months old and those who have a baby through a surrogate, known as "commissioning mothers." Both were given a paid leave of 12 weeks from the date the child was handed over to them.¹

- **Workplace Support:** The amendment introduced provisions for essential workplace support. It mandated that every establishment with 50 or more employees must provide a crèche (daycare) facility, either on its own or with other companies. The law also specified that a woman must be permitted to visit the crèche four times a day, and this includes her designated rest intervals. Additionally, it introduced the option for women to work from home after their maternity leave, if the nature of the job permitted it and both the employer and the employee agreed on the terms.¹

- **Job Protection:** The law reinforced job security for women. It made it explicitly clear that an employer cannot discharge, dismiss, or give notice of dismissal to a woman while she is on maternity leave. It also forbids the employer from changing her service conditions in a way that would disadvantage her during this period.²

- **Eligibility:** The eligibility criteria from the original Act remained, requiring a woman to have worked in the establishment for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery.³

2.3 The Future: The Code on Social Security, 2020

The Maternity Benefit Act is now set to be subsumed into a much larger piece of legislation: the Code on Social Security, 2020. This new code aims to consolidate and simplify various labor laws in India and extend social security benefits to a wider group of workers, including those in the unorganized and gig economies.¹⁸ However, as far as maternity benefits are concerned, the new code largely incorporates the same provisions and benefits that were established by the 2017 amendment, including the 26-week leave period and the crèche facility mandate. It also reiterates the eligibility requirement of 80 days of work in the preceding 12 months.¹⁹ While this move is intended to create a more unified and comprehensive framework for social security, it largely maintains the same core benefits and structural challenges of the existing law.

2.4 Comparison of the Original Act and the 2017 Amendment

The following table provides a clear comparison of the Maternity Benefit Act of 1961 and its landmark 2017 amendment, illustrating the significant changes that were introduced.



Table 1: Key Provisions of the Maternity Benefit Act: 1961 vs. 2017

Feature	The Maternity Benefit Act, 1961	The Maternity Benefit (Amendment) Act, 2017
Leave Duration	12 weeks of paid leave	26 weeks of paid leave for first two children; 12 weeks for subsequent children ¹
Beneficiaries	Biological mothers ⁹	Biological mothers, adoptive mothers (of children under 3 months), and commissioning mothers ¹
Crèche Facility	No provision	Mandatory for establishments with 50 or more employees ⁴
Work from Home	No provision	Option for a work-from-home arrangement, based on mutual agreement ¹

The legislative changes introduced in 2017 were globally recognized as a gold standard for maternity protection. However, a deeper look reveals that the policies, while progressive on paper, have not translated into universally positive outcomes for women. The new "employer-pays-all" policy, which places the full financial cost of the extended leave and crèche facilities on businesses, created a major financial disincentive for employers.⁷ This policy design, while well-intentioned, has directly led to a rise in hiring bias and a reluctance to employ women of childbearing age, as evidenced by multiple studies.⁴ The legal protection intended to help women secure their careers has become a significant financial liability for many businesses, pushing them to avoid hiring the very demographic the law was meant to protect. This complex cause-and-effect relationship shows how the design of a policy can have consequences that are the exact opposite of its stated goals.

III. The Positive Impact: A Beacon of Progress for the Formal Sector

For the women it was designed to protect, the Maternity Benefit Act has provided a significant safety net and a number of measurable benefits. It has worked as a powerful tool to secure the health, well-being, and career continuity of a specific segment of the female workforce.

3.1 Better Health for Mothers and Babies

One of the most profound positive impacts of the Act is its contribution to better health

outcomes for both mothers and infants. By extending the paid leave to 26 weeks, the law ensures that a new mother has adequate time to rest and recover from childbirth, which reduces physical and mental stress during a critical period. This extended time also gives mothers an invaluable opportunity to engage in exclusive breastfeeding, which is strongly recommended by the World Health Organization (WHO) and other global health bodies. Extended maternity leave is directly linked to better infant health and survival rates, as it allows for proper postnatal care and monitoring, which is crucial for recognizing and addressing any complications that may arise in both the mother and the newborn.³

3.2 Increased Job Security and Financial Stability

The law has been particularly effective for women who are already employed in the formal sector. A central tenet of the Act is its promise of job security. It legally prohibits employers from terminating or demoting an employee due to her pregnancy or maternity leave.² For women who are eligible, this ensures they can take time off without the fear of losing their income or their position. The Act guarantees that they receive their full salary during the leave, providing crucial financial stability for the family at a time when expenses for healthcare and newborn care are high. This provision has helped many women retain their jobs, especially in larger corporations that have the resources and institutional capacity to comply with



the law.¹

3.3 Higher Awareness and Better Workplace Practices

The Act has also been a catalyst for a more supportive work culture, especially within the organized sector. By making it mandatory for employers to inform women about their maternity benefits at the time of their appointment, the law has significantly increased women's awareness of their rights.¹ This has empowered women to claim their entitlements and hold their employers accountable. Furthermore, many large, established multinational corporations (MNCs) have not only complied with the law but have gone a step further. Organizations like Microsoft India, Infosys, and PayPal have implemented support systems and leave policies that go beyond the statutory requirement of 26 weeks, signaling a positive shift in corporate attitudes towards maternity support and work-life balance.⁴

The positive impact of the law is a story of unequal application. It has worked well as a tool for affirmative action within a very specific, limited part of the workforce—the formal, organized sector. Large, well-established companies have the financial and administrative capacity to comply and even exceed the law's requirements. This creates a stark contrast with smaller businesses, revealing a segmentation in the labor market where the law's benefits are enjoyed by a privileged minority of women who are already in secure, well-paying jobs. In essence, the Maternity Benefit Act has created a two-tiered system of maternity protection in India, where the experiences of women vary drastically based on the size and nature of their employer.

IV. The Unintended Consequences and Critical Shortcomings

Despite its progressive intent, the Maternity Benefit Act and its 2017 amendment have revealed significant challenges in their practical implementation, leading to a number of unintended and sometimes counterproductive consequences.

4.1 The Financial Burden on Employers

This is arguably the most significant problem with the law's design. The entire cost of the 26-week paid leave and the mandatory crèche facility is placed solely on the employer, with no financial assistance or cost-sharing from the government.⁴ For small and medium-sized enterprises (SMEs) that often operate on tight budgets and lack the financial buffers of large corporations, this is a huge financial burden. The cost includes not only the salary paid to the

employee during her six-month leave but also the indirect costs associated with hiring and training a temporary replacement to fill the gap, which can be disruptive to workflows and reduce overall productivity.⁸

This model is a rare exception on the global stage. A comparative study of 82 countries found that 44% fund maternity benefits through social security contributions, while only 15%—including India—rely solely on employer funding, a model that is widely considered unsustainable.²³ By imposing a "100% employer-funded model" on a private entity, the law converts what should be a shared societal responsibility into a private business liability.

4.2 The "Motherhood Penalty" and Hiring Bias

The heavy financial burden on employers has led to a disturbing and ironic backlash. Multiple studies and reports have found that some employers are now hesitant to hire women of childbearing age to avoid the potential financial implications of maternity leave. This has been called a "motherhood penalty," where a woman's decision to have a family becomes a disadvantage in the job market.⁷

A 2019 report by TeamLease Services, for example, noted that 26% of surveyed companies admitted to hesitating to hire women after the amendment was passed due to the extended paid leave provision.⁴ This has contributed to a decrease in women's employment, with some employers reportedly subjecting female candidates to intrusive questions about their marital status and family plans—questions rarely, if ever, directed at male applicants.⁵ This is a cruel irony where a law meant to help women is making it harder for them to get a job in the first place.

The analysis shows that a policy that is not supported by a broader social security framework can be counterproductive. The law, while achieving its goal of protecting existing employees, creates a new and more significant problem of employment discrimination against prospective female employees.

4.3 The Gap Between Law and Reality

Even the progressive parts of the law, like the crèche facility, are not being implemented well in practice. While the law mandates a crèche for establishments with 50 or more employees, real-world accounts show that this provision is largely unimplemented.⁴ A study by the Indian Council for Research on International Economic Relations (ICRIER) found that only a fraction of eligible companies had set up functional crèches, citing a lack of space, resources, and regulatory clarity.⁴



Furthermore, there isn't a strong system from the government to monitor if businesses are following the law or to help women if they face a problem. The lack of a centralized monitoring or grievance redressal system hinders the policy's reach and accountability.⁴ This is particularly true in smaller cities and among casual or contractual workers, where non-compliance goes largely unchecked.¹

V. The Grand Disparity: The Unaddressed Informal Workforce

The most critical and far-reaching shortcoming of the Maternity Benefit Act is its limited scope of application. The law's benefits are primarily available to women in the organized, formal sector, which accounts for a very small portion of the total female workforce in India.

5.1 A Tale of Two Indias

A staggering majority of working women in India—over 90%—are employed in the informal sector.⁸ This includes women working in agriculture, as domestic workers, or in small, unregistered enterprises. These women are completely left out of the law's protection.² They often work without formal contracts, health coverage, or awareness of their rights, making them highly vulnerable to economic and health risks associated with pregnancy and childbirth.⁸ For these women, motherhood often poses an additional threat to their health and economic security, with no job-linked benefits to fall back on.

The law's "formal-sector bias" perpetuates and deepens existing economic inequality. The majority of India's working women, who are arguably the most vulnerable and in need of protection, are excluded from the very law that is meant to champion women in the workplace. This creates a "policy blind spot" that leaves a vast coverage gap and reinforces the economic divide between formal and informal employment.⁸

5.2 Alternative Schemes and Their Limits

The government has recognized this gap and has implemented other schemes to provide some support. The Pradhan Mantri Matru Vandana Yojana (PMMVY) is a flagship program that provides a cash incentive of ₹5,000 to pregnant and lactating women for their first live birth. This scheme is intended to partially compensate for wage loss and support better nutrition and health-seeking behaviors.¹⁸

While these schemes are helpful, they are not a substitute for the comprehensive protection

offered by the Maternity Benefit Act. They are not job-linked and do not provide the same kind of job security or full wage replacement. Furthermore, they often have strict conditions and require extensive documentation, which can be a difficult barrier for low-income women to overcome.³⁴ The existence of separate, non-comprehensive welfare schemes highlights the government's dual approach: a progressive labor law for the small formal sector and a limited, conditional welfare program for the rest. This two-track system fails to create a truly universal and inclusive social safety net for all working women.

VI. International Comparisons: Lessons from Abroad

To understand India's maternity policy more fully, it is helpful to compare it with the policies of other nations. This comparison highlights a critical difference in approach, particularly regarding funding and gender roles.

6.1 Different Funding Models

India's policy of making employers pay for everything is rare and places a significant financial strain on businesses.²³ In contrast, many other countries, including Brazil, Canada, the UK, and Germany, have adopted a more sustainable model where the cost is shared. In these countries, the government pays for a part of the leave through social security, or the cost is distributed through a mix of contributions from employers and employees.⁷ This shared-cost model makes the policy more sustainable and reduces the incentive for employers to discriminate against women in hiring to avoid a disproportionate financial burden.

By not adopting a cost-sharing or social security model, India's policy reflects a traditional view of maternity as a private, female-specific concern rather than a shared societal responsibility.¹⁵ This design choice has a ripple effect, leading to hiring bias and preventing the development of more equitable, family-friendly workplaces.

6.2 Paternity and Shared Parental Leave

India's law focuses exclusively on mothers, reinforcing the traditional societal idea that childcare is a woman's job. This is a significant contrast to countries like Sweden, Norway, and Canada, where parental leave is gender-neutral and can be shared between parents.¹² These policies allow fathers to take time off to care for their children, which helps to share the responsibility of childcare and reduces the burden on women's



careers. The absence of mandatory paternity leave in India solidifies this gendered assumption, which ultimately harms women by making them the sole targets of the "motherhood penalty." International models demonstrate that when the state and society share the financial and social burdens of childcare,

the outcomes are more equitable for both women and men in the workforce.

The following table compares India's maternity policies with those of other countries on key features, helping to put its policies in a broader global context.

Table 2: International Comparison of Maternity Policies

Country	Leave Duration	Funding Model	Paternity/Parental Leave
India	26 weeks paid leave for first two children, 12 weeks for subsequent ¹²	100% Employer-funded ²³	No mandatory paternity leave ¹⁵
UK	Up to 52 weeks (39 weeks paid) ¹³	First 6 weeks: 90% of salary, then statutory pay. State-funded ¹³	Shared parental leave available ¹³
Canada	Up to 18 months shared job-protected leave ¹²	Government-funded via employment insurance ¹³	Gender-neutral parental leave ³⁷
Brazil	17.1 weeks fully paid ³⁸	State-funded ¹³	Parental leave of up to 5 days ³⁸

VII. Conclusion and Future Recommendations

The Maternity Benefit Act and its 2017 amendment are a complex mix of great success and major failure. They represent a significant triumph for the small number of women who are employed in India's formal sector, providing them with job security and a chance to recover from childbirth. But for the vast majority of India's working women, the law has had no effect at all. For a segment of women, it has even created new barriers to employment due to the financial disincentive it places on employers. This duality points to a fundamental flaw in the law's design.

The core problem lies in the fragmented, a-la-carte approach to social welfare, where different groups of workers are covered by disjointed policies. The solution is not to simply tweak the existing law but to re-envision it as a foundational component of a universal social security system. A new vision is needed, one that recognizes that the health and economic security of mothers and families is not just a human rights issue but a critical driver of national economic growth and gender equality.

Based on this analysis, the following forward-thinking recommendations are essential to truly help all women in the workforce:

- **Recommendation 1: Establish a Social Security Fund:** The government must shift the financial burden away from individual employers. A new system, funded by contributions from employers, employees, and the government, would make maternity benefits a universal right rather than a financial liability.⁴ This would help small businesses and remove a key reason for hiring discrimination against women.

- **Recommendation 2: Create a Universal and Inclusive Parental Leave Policy:** The law should be expanded to include all workers, regardless of their sector or employment status, and it must be made gender-neutral.¹² The introduction of mandatory paternity leave would promote shared parenting and help create more equitable workplaces for everyone.

- **Recommendation 3: Implement Stronger Enforcement Mechanisms:** The government needs to create a better system to ensure that businesses are following the law. This includes regular audits, clear guidelines for compliance, and a simple, accessible process for women to report problems and seek redressal without fear of retaliation.⁴

- **Recommendation 4: Integrate the Framework:** The Maternity Benefit Act should be a fully integrated part of a wider social security system, like the Code on Social Security, to connect



all workers—formal and informal—under one comprehensive umbrella of benefits and protections.¹⁵

A unified, well-funded, and gender-neutral policy is the only way to move past the current state of "progress and paradox." By doing so, India can create a truly inclusive and equitable system that supports all working women and their families, ensuring that the promise of the law extends beyond the few and embraces the many.

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