



Hanns
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Stiftung



JUSTICE
adda

MATERNITY BENEFITS ACT 2017

CONTEXT

Maternity benefits, such as paid maternity leave, flexible working hours, rest breaks and crèches, are employment benefits that are meant to recognise a working woman's right to raise a child. These contribute to the well-being of the mother and the child, and respect the woman both as a worker and a parent. This is articulated in the Indian Constitution, which calls upon the state to provide 'just and humane conditions of work and maternity relief'.

All over the world, in societies where women are considered the primary caregivers of children, an increasing number of women are forced to choose between raising a family and remaining employed. Without maternity support in the workplace, women must either give up their jobs to have children, or else not join the workforce in the first place.

This directly affects the labour force participation of women in a country's economy. A 2015 study revealed that women in India constitute only 24% of the paid labour force, versus the global average of 40%.

Against this backdrop, the Ministry of Labour and Employment in India introduced the The Maternity Benefits (Amendments) Act, 2017.

The Act, which amended the former Maternity Benefits Act, 1961, applies to both public and private organised formal sectors, including factory, mines, plantations, shops and other establishments.



KEY PROVISIONS

DURATION OF LEAVE

A woman can avail of six months (26 weeks) of paid maternity leave. This is an increase from 3 months (12 weeks) in the old 1961 Act. The leave can be taken 8 weeks before the expected date of delivery. This applies to workplaces with more than ten employees.



MOTHER OF TWO

If a woman is a mother of two, she can avail of 3 months (12 weeks) of paid leave` for her third pregnancy and beyond.

ADOPTIVE MOTHER

A woman who adopts a baby (no more than three months old) has the right to 3 months (12 weeks) of paid leave.

SURROGACY:

A 'commissioning mother', that is, a woman who parents a child through surrogacy, can avail of 3 months

(12 weeks) of paid leave calculated from the day the baby is given in to her care.

RIGHT TO CRECHES

Employers of more than 50 staff are legally obliged to provide creche facilities, where women can meet their children four times in a day.

RIGHT TO BE INFORMED & WORK-FROM-HOME:

The employer is legally obliged to inform the woman, electronically and in writing, about her right to 26 weeks of paid leave, after which she can also negotiate a work-from-home option.

ACTION POINTS

96% of the women in India work in the unorganised, informal sector (in farms, at construction sites, in home-based work etc.). These women are excluded from the scope of the Act, limiting its effectiveness in providing protection for women at work.

The Act mandates only 12 weeks of paid leave for a mother of two children, an adoptive or a commissioning mother. This further limits the scope of the Act's protection of women.



By focusing only on maternity benefits, the Act may reinforce gender roles in society. A ‘parental leave’ policy that includes maternity, paternity, adoptive, surrogate and alternative parenting leave could provide a more equitable way to provide government support to parents.

It is an open question whether the monitoring framework accompanying this Act is strong enough to ensure that women are able to avail of the rights that it sets out.