

# Maternity Healthcare

## Maternity Healthcare Laws in India – Legislative and Legal Perspectives

Maternity healthcare is a critical component of public health, encompassing the medical, social, and legal dimensions of pregnancy, childbirth, and postpartum care. The right to maternity healthcare is fundamental not only to maternal and child well-being but also to broader societal development. In India, maternity healthcare intersects with constitutional rights, labour law, healthcare policy, and social welfare legislation. Legal frameworks ensure protection for pregnant women in workplaces, guarantee access to medical services, and define obligations of employers and healthcare providers. However, challenges persist in enforcement, accessibility, and awareness, necessitating a comprehensive understanding of India's maternity healthcare legislation.

### **Constitutional Foundations**

The Indian Constitution provides the foundation for maternity healthcare laws through several provisions. Article 21 guarantees the right to life and personal liberty, which the judiciary has interpreted to include the right to health and safe maternity care. Article 42 directs the State to make provisions for securing just and humane conditions of work, including maternity relief. Article 47, as a Directive Principle of State Policy, obliges the State to raise the level of nutrition and public health, emphasizing maternal and child welfare. These constitutional provisions form the basis for both legislation and judicial interpretation relating to maternity healthcare.

### **Maternity Benefit Act, 1961**

The **Maternity Benefit Act (MBA), 1961**, is the principal legislation governing maternity protection in India. Its primary objective is to regulate employment conditions for women during pregnancy, childbirth, and the postpartum period, ensuring that they receive adequate leave, medical benefits, and job security. Under the Act, a woman is entitled to **26 weeks of paid maternity leave** for the first two children, extendable to **12 weeks for subsequent children**. The Act also provides provisions for prenatal medical bonus, leave for miscarriage, and adoption leave for mothers of children below three months of age.

The Act has undergone significant amendments to strengthen maternal protection. The **Maternity Benefit (Amendment) Act, 2017** expanded leave entitlements from 12 weeks to 26 weeks, reflecting international standards and the recommendations of the International Labour Organization (ILO). The amendment also mandated **crèche facilities** in establishments employing 50 or more women, ensuring that mothers have access to childcare while resuming work. Additionally, it recognized the importance of flexible work arrangements and allowed work-from-home options where feasible.

### **Employees' State Insurance Act, 1948**

The **Employees' State Insurance Act (ESI Act), 1948** complements the Maternity Benefit Act by providing health insurance and medical care to employees in factories, establishments, and industries. Pregnant women covered under the ESI scheme are entitled to **full medical care**, including prenatal, postnatal, and delivery-related services. The Act also provides **maternity cash benefits**, which compensate for loss of wages during leave. These provisions ensure financial security alongside healthcare access, forming a critical component of India's maternity protection framework.

### **Factories Act, 1948**

The **Factories Act** also contains provisions related to maternity healthcare. It prohibits the employment of women in hazardous processes during pregnancy and provides for **rest intervals and leave**. Factories must ensure safety and hygiene standards that protect maternal health. While initially limited in scope, these provisions complement broader maternity protections under labour law, ensuring that women in industrial employment receive adequate safeguards.

### **National Health Policy and Maternal Health Programs**

Beyond labour laws, India's **National Health Policy (NHP)** and related schemes play a crucial role in maternity healthcare. Initiatives such as the **Janani Suraksha Yojana (JSY)**, **Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA)**, and the **National Rural Health Mission (NRHM)** aim to provide free prenatal and postnatal care, institutional delivery, and skilled birth attendance, particularly for women in rural and economically disadvantaged communities. While these are primarily policy measures rather than legislation, their integration with statutory frameworks reflects India's commitment to maternal health.

### **Judicial Interpretations and Landmark Cases**

Indian courts have actively interpreted maternity-related legislation to enhance protection. In *Gaurav Kumar Bansal v. Union of India (2010)*, the Delhi High Court emphasised that access to maternal healthcare is integral to the right to life under Article 21. Similarly, in *Air India v. Nargesh Meerza (1981)*, the Supreme Court held that maternity leave provisions must be interpreted to ensure fairness and equality in employment, protecting women from discrimination. Courts have also clarified that benefits under the Maternity Benefit Act and ESI Act cannot be denied on the basis of employment type, contractual status, or organisational convenience, reinforcing universal protection for working women.

### **Intersection with Labour Laws and Workplace Rights**

Maternity healthcare laws in India intersect with broader labour legislation, ensuring comprehensive protection. The **Payment of Gratuity Act, 1972**, the **Equal Remuneration Act, 1976**, and the **Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013** collectively support maternity welfare by guaranteeing fair wages, protection against discrimination, and safe workplace conditions. Employers are legally

prohibited from terminating pregnant employees or denying leave and benefits related to maternity, reflecting the principle of job security as a core element of maternity protection.

### **Challenges and Loopholes in Indian Maternity Healthcare Laws**

Despite the robust legislative framework, several challenges persist. First, **informal and unorganised sector workers**—constituting a large portion of India's female workforce—often fall outside the scope of statutory protection, leaving them vulnerable to exploitation. Second, **lack of awareness and enforcement** hampers effective utilisation of benefits. Many employers fail to comply with provisions related to leave, medical bonuses, and crèche facilities, and women may be reluctant to assert their rights due to fear of discrimination. Third, **intersectional challenges**, such as caste, socio-economic status, and rural residence, affect access to maternity healthcare, highlighting gaps in both law and implementation.

Additionally, maternity healthcare laws primarily focus on **pregnancy and immediate postpartum care**, while **comprehensive maternal health** requires attention to nutrition, mental health, reproductive rights, and childcare support. Current legislation provides limited guidance on mental health support, postnatal counselling, and long-term medical care, revealing a scope for improvement.

### **International Obligations and Comparisons**

India is a signatory to several international conventions related to maternity protection, including **ILO Convention No. 183 (Maternity Protection Convention, 2000)** and the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**. These instruments mandate minimum maternity leave, cash benefits, workplace safety, and protection from discrimination. India's legislative reforms, such as the 2017 amendment to the Maternity Benefit Act, demonstrate alignment with these international standards. However, gaps remain in coverage, particularly for women in informal employment, highlighting the need for legislative expansion and better implementation.

### **Scope for Reform and Legislative Improvement**

Several measures can enhance maternity healthcare legislation in India. First, **extending protection to informal sector workers** is critical, given their large population share. Second, **mandatory awareness campaigns** for employers and employees would improve compliance and benefit utilisation. Third, legislation could integrate **mental health support, postpartum rehabilitation, and extended childcare provisions** to ensure holistic maternal well-being. Fourth, **monitoring and enforcement mechanisms**, including penalties for non-compliance and regular audits, can strengthen adherence to statutory requirements. Fifth, digital platforms for registering maternity benefits and tracking compliance could increase accessibility and reduce bureaucratic hurdles.

## Corporate Compliance and Private Sector Role

In addition to statutory obligations, private sector organisations play a vital role in promoting maternity healthcare. Companies increasingly adopt **voluntary policies**, such as extended maternity leave, flexible work arrangements, health insurance coverage for childbirth, and onsite childcare facilities. These measures, while not always legally mandated, reflect the principles of corporate social responsibility (CSR) and align with both ethical imperatives and legal expectations. Compliance with statutory provisions alongside voluntary initiatives ensures that women in the workforce receive comprehensive support during maternity.

Maternity healthcare laws in India represent a significant legislative effort to safeguard the rights, health, and welfare of pregnant women. The **Maternity Benefit Act, 1961**, along with the **ESI Act, 1948**, and associated labour and health regulations, provide a statutory framework for leave, medical benefits, and workplace protection. Judicial interpretations reinforce these rights, while national health policies and welfare schemes expand access to care. However, challenges remain in **coverage, enforcement, awareness, and holistic maternal support**, particularly for women in informal employment. Aligning legislation with international conventions, enhancing monitoring mechanisms, integrating mental health and childcare support, and promoting corporate compliance are essential steps toward comprehensive maternity protection. A robust, inclusive, and enforceable maternity healthcare framework not only safeguards maternal and child health but also contributes to gender equality, workforce participation, and broader societal development, reflecting India's commitment to human rights, social justice, and sustainable growth.

### Loopholes in the current Construct of these Laws

#### 1. Limited Coverage for Informal Sector Workers

A significant loophole is that **most statutory maternity protections apply primarily to formal sector employees**, leaving women in agriculture, domestic work, small-scale industries, and gig economy jobs largely unprotected. While schemes like the Pradhan Mantri Matru Vandana Yojana (PMMVY) provide some support, these benefits are often inadequate compared to the entitlements under the Maternity Benefit Act.

#### 2. Inadequate Enforcement Mechanisms

Despite clear provisions under the **Maternity Benefit Act** and **ESI Act**, enforcement is weak. Many employers fail to provide maternity leave, medical bonuses, or crèche facilities. Lack of effective inspection, penalties, and monitoring mechanisms allows non-compliance to persist, especially in small and medium enterprises.

#### 3. Insufficient Awareness Among Employees

Many women are **unaware of their legal entitlements**, leading to underutilization of maternity leave and benefits. Fear of job loss or workplace discrimination further

discourages women from asserting their rights, highlighting a gap in practical accessibility of the law.

#### **4. Limited Scope of Benefits Beyond Pregnancy**

Current legislation primarily focuses on pregnancy, delivery, and immediate postpartum care. Areas such as **postnatal rehabilitation, mental health support, long-term childcare, and nutrition** are inadequately addressed. The laws do not mandate extended health coverage for complications arising after childbirth or mental health support, creating a critical gap in holistic maternal care.

#### **5. Ambiguity in Definitions and Applicability**

The Maternity Benefit Act leaves certain aspects open to interpretation, such as the applicability to **contractual, part-time, or work-from-home employees**. Courts have addressed some of these ambiguities, but inconsistencies remain in implementation across sectors.

#### **6. Crèche and Childcare Provisions Are Weak**

While the 2017 amendment mandates crèche facilities in establishments employing 50 or more women, **implementation is inconsistent**, and no clear penalties exist for non-compliance. Furthermore, small establishments employing fewer women are not required to provide crèche facilities, leaving many mothers without childcare support.

#### **7. Gender-Based Discrimination Risks**

Even with statutory protection, women sometimes face **indirect discrimination**, such as denial of promotions, bonuses, or employment opportunities due to pregnancy. The law protects formal rights but is less effective in addressing subtle workplace biases.

#### **8. Insufficient Integration with Public Health Systems**

Legislation focuses on employment benefits rather than **linking maternity healthcare with public health infrastructure**, particularly for rural women. Access to institutional deliveries, prenatal care, and skilled birth attendance remains inconsistent in underserved areas, reflecting a legislative gap in comprehensive coverage.

#### **9. Enforcement Challenges in Small and Informal Enterprises**

Smaller businesses may avoid compliance due to limited awareness or financial constraints. There is **no statutory obligation** for third-party monitoring or audit in many sectors, leaving enforcement largely reactive rather than proactive.

#### **10. Limited Protection for Adoption and Surrogacy**

While the law provides adoption leave for mothers, **surrogacy-related maternity rights** are not fully codified. Legal clarity is needed on leave entitlements, medical benefits, and workplace protections for surrogate mothers and intended parents.

#### **11. Inadequate Focus on Mental Health and Psychosocial Support**

Current statutes do not explicitly address **postpartum depression, anxiety, or counselling**,

despite the growing recognition of mental health as part of maternal well-being. This omission leaves a critical aspect of maternity care unprotected.

## **12. Fragmentation Across Laws and Policies**

Maternity healthcare protections are spread across multiple statutes (Maternity Benefit Act, ESI Act, Factories Act, Labour Codes) and policy schemes (JSY, PMMVY, PMSMA). This **fragmentation creates complexity**, making compliance and awareness difficult for both employers and employees.

The main loopholes in India's maternity healthcare laws arise from **limited coverage for informal workers, weak enforcement, inadequate scope of benefits beyond childbirth, and poor integration with public health systems**. Ambiguities in definitions, inconsistent implementation of crèche provisions, and neglect of mental health and surrogacy-related rights further weaken the protective framework. Addressing these loopholes requires **legislative expansion, stricter enforcement, awareness campaigns, and integration of holistic maternal healthcare services**, ensuring that maternity rights translate into effective protection and well-being for all women.

## **Way Forward to Strengthen Maternity Healthcare Laws in India**

While India has made substantial progress in legislating maternity healthcare, significant gaps remain in coverage, enforcement, and holistic care. Strengthening maternity healthcare laws requires a combination of legislative reforms, policy interventions, awareness campaigns, and corporate engagement. The following recommendations outline a comprehensive way forward:

### **1. Expand Coverage to Informal and Gig Economy Workers**

A major limitation of existing laws is their focus on formal sector employees. To address this, legislation must **extend maternity benefits to women in informal employment**, including domestic workers, agricultural laborers, gig economy participants, and small-scale industry employees. Integration with schemes like **Pradhan Mantri Matru Vandana Yojana (PMMVY)** can be strengthened to provide consistent cash benefits, medical coverage, and job protection for all women, irrespective of employment type.

### **2. Strengthen Enforcement and Compliance Mechanisms**

Current enforcement mechanisms are often weak, leading to non-compliance. The government could **establish specialized labor inspection units** focused on maternity benefit compliance, introduce **mandatory audits**, and enforce stricter penalties for violations. Digital reporting systems can track leave and maternity benefit disbursements, ensuring accountability and timely provision of entitlements.

### **3. Increase Awareness Among Employers and Employees**

Lack of awareness prevents many women from claiming their rights. Nationwide **awareness**

**campaigns** should educate women about maternity leave, medical benefits, crèche facilities, and job security provisions. Simultaneously, **employer training programs** can promote compliance, clarify legal obligations, and foster supportive workplace environments.

#### **4. Integrate Mental Health and Postnatal Support**

Maternity healthcare must include **mental health support, counselling, and postnatal rehabilitation**, given the rising incidence of postpartum depression and anxiety.

Amendments to the Maternity Benefit Act or separate guidelines could mandate employers and healthcare providers to offer access to professional mental health services for new mothers.

#### **5. Improve Crèche and Childcare Facilities**

While the 2017 amendment mandates crèche facilities for establishments employing 50 or more women, enforcement remains inconsistent. Strengthening regulations could include **mandatory audits, penalties for non-compliance, and subsidies for smaller establishments** to provide childcare support. Public-private partnerships could also be encouraged to expand access to quality childcare services.

#### **6. Holistic Healthcare Integration**

Maternity healthcare laws should integrate with **public health infrastructure** to ensure access to prenatal, delivery, and postnatal care, especially in rural and underserved areas. Legal provisions could mandate collaboration between employers, healthcare providers, and government programs to guarantee institutional deliveries, skilled birth attendance, and vaccination coverage for mothers and infants.

#### **7. Address Adoption and Surrogacy Rights**

Existing legislation provides limited guidance on adoption and surrogate maternity rights. Laws should **clarify leave entitlements, medical benefits, and workplace protections** for adoptive and surrogate mothers, ensuring equity and reducing ambiguity. This would also align India's legislation with global best practices in reproductive and family rights.

#### **8. Standardize and Consolidate Maternity Provisions**

Currently, maternity healthcare provisions are fragmented across multiple laws and schemes, creating complexity for employers and employees. Consolidation into a **single comprehensive maternity code** would simplify compliance, improve accessibility, and provide a clear legal framework encompassing leave, medical benefits, workplace safety, mental health, and childcare.

#### **9. Encourage Flexible Work Arrangements**

To promote workforce participation and maternal well-being, legislation should **formalize flexible work options** for mothers returning from maternity leave, including part-time work, remote work, or flexible hours. Employers could be incentivized through tax benefits or recognition programs to adopt family-friendly workplace policies.

## **10. Monitor and Evaluate Implementation**

Regular **monitoring, data collection, and evaluation** of maternity benefit programs and workplace compliance are essential. Reports on leave utilization, health outcomes, and workplace discrimination can inform policy updates and legislative amendments, ensuring that maternity healthcare laws remain effective and responsive to societal needs.

## **11. Promote Corporate Social Responsibility (CSR) Initiatives**

Companies should be encouraged to go beyond statutory requirements and adopt **voluntary maternity and childcare programs**, including extended leave, healthcare support, onsite childcare, and wellness programs. CSR frameworks can incentivize businesses to adopt practices that complement statutory protections, enhancing maternal and child welfare.

## **12. Align with International Standards**

India should continue aligning its maternity healthcare laws with **ILO Convention 183** and **CEDAW guidelines**, ensuring that leave, medical benefits, workplace protection, and social security standards meet global best practices. Legislative reforms could formally codify these international benchmarks, promoting equity and global competitiveness.

Strengthening maternity healthcare laws in India requires a multifaceted approach that combines **legislative reform, effective enforcement, public awareness, workplace compliance, and holistic healthcare integration**. Expanding coverage to informal workers, integrating mental health and childcare support, standardizing maternity provisions, and incentivizing corporate responsibility are critical steps. By addressing loopholes and adopting best practices, India can ensure that maternity healthcare is not merely a statutory obligation but a **comprehensive, accessible, and enforceable right**. Such reforms will enhance maternal and child health, promote gender equality in the workforce, and contribute to broader social and economic development, reflecting India's commitment to human rights, equity, and sustainable growth.