

# Legislative Brief

## The Maternity Benefits (Amendment) Bill, 2016

The Bill was introduced in Rajya Sabha on August 11, 2016 by the Minister of Labour and Employment, Mr. Bandaru Dattatreya.

It was passed in Rajya Sabha on August 11, 2016 and is currently pending in Lok Sabha.

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### Highlights of the Bill

- ◆ The Act provides maternity leave up to 12 weeks for all women. The Bill extends this period to 26 weeks. However, a woman with two or more children will be entitled to 12 weeks of maternity leave.
- ◆ The Bill introduces maternity leave up to 12 weeks for a woman who adopts a child below the age of three months, and for commissioning mothers. The period of maternity leave will be calculated from the date the child is handed over to the adoptive or commissioning mother.
- ◆ The Bill requires every establishment with 50 or more employees to provide for crèche facilities within a prescribed distance. The woman will be allowed four visits to the crèche in a day.
- ◆ An employer may permit a woman to work from home, if the nature of work assigned permits her to do so. This may be mutually agreed upon by the employer and the woman.
- ◆ The Bill requires an establishment to inform a woman of all benefits that would be available under the Bill, at the time of her appointment. Such information must be given in writing and electronically.

### Key Issues and Analysis

- ◆ Several expert bodies like the WHO have recommended that 24 weeks of maternity leave is required to protect maternal and child health. However, since the costs of this leave are to be borne by the employer, it may have an adverse impact on job opportunities for women.
- ◆ Various countries have implemented different funding models in relation to maternity benefits. In some countries the employer bears the cost, while in some others it is paid by the government.
- ◆ While women will be provided with 26 weeks of maternity leave for two children, the period of leave for a third child will be 12 weeks. This could affect the growth and development of the third born child.
- ◆ The Act and Bill cover women workers employed in establishments with 10 or more employees, and other notified establishments. However, a majority of the women workforce, who are in the unorganised sectors, may not be covered.
- ◆ There are several labour laws that provide maternity benefits to women in different sectors. These laws differ in their coverage, benefits and financing of such benefits.

## PART A: HIGHLIGHTS OF THE BILL

### Context

Currently, women employed in certain sectors, like factories, mines, shops and establishments with 10 or more employees, and other establishments notified by the state government are eligible for paid maternity leave up to 12 weeks under the Maternity Benefits Act, 1961.

Various other labour laws provide for maternity benefits. The Employees' State Insurance Act, 1948 provides for payment of wages to an insured woman, during her 12-week maternity leave.<sup>1</sup> Women employed in newspapers or working as journalists are entitled to similar maternity leave under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955.<sup>2</sup> Further, women employed in the central government are provided about 24 weeks of paid maternity leave and additional child care leave up to a period of two years.<sup>3</sup>

The Unorganised Sector Workers Act, 2008 defines unorganised sector workers as those who are home based, self-employed or wage workers in an enterprise with less than 10 employees.<sup>4</sup> The 2008 Act mandates the central government to formulate health and maternity benefit schemes for women workers in the unorganised sector. The Janani Suraksha Yojana, which promotes child birth in an institution by providing financial assistance to women below poverty line, is being implemented under the 2008 Act.<sup>5,6</sup> The Indira Gandhi Matritva Sahyog Yojana (IGMSY) was launched to compensate women for loss of wages and to ensure that a mother can afford rest after a delivery and take care of health requirements of the new born child.<sup>7</sup> The IGMSY is a cash transfer scheme that provides Rs 6,000 to pregnant and lactating women above the age of 19 years with less than two children.

In 2015, the Law Commission of India recommended increasing the period of maternity leave under the 1961 Act to 24 weeks, and bringing the unorganised work force within its ambit.<sup>8</sup> Over the years, including in 2016, the Indian Labour Conference also recommended that the period of maternity leave be increased from 12 to 24 weeks.<sup>9</sup>

The Maternity Benefits (Amendment) Bill, 2016 was introduced and passed in Rajya Sabha on August 11, 2016. It is currently pending in Lok Sabha.

### Key Features

The Bill amends the Maternity Benefits Act, 1961. Table 1 captures key provisions of the 1961 Act and changes proposed by the 2016 amendments.

**Table 1: Key changes proposed in the 2016 Bill compared with provisions of the 1961 Act:**

The Maternity Benefits Act, 1961	The Maternity Benefits (Amendment) Bill, 2016
<b>Duration of Maternity Leave</b>	
<ul style="list-style-type: none"> <li>▪ Women employed in factories, mines, shops and establishments with 10 or more employees, and other notified establishments, are entitled to maternity leave of 12 weeks, with full wages.</li> <li>▪ This maternity leave should not be availed before six weeks from the date of expected delivery.</li> <li>▪ Maternity leave applicable irrespective of number of children.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Duration of maternity leave increased to 26 weeks.</li> <li>▪ Changed to eight weeks.</li> <li>▪ For a woman who has two or more children, the maternity leave will be 12 weeks, which can only be availed six weeks before the date of the expected delivery.</li> </ul>
<b>Maternity leave for adoptive and commissioning mothers</b>	
<ul style="list-style-type: none"> <li>▪ No provision.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Provides 12 weeks of maternity leave to:               <ul style="list-style-type: none"> <li>(i) a woman who legally adopts a child below three months of age; and</li> <li>(ii) a commissioning mother. A commissioning mother is defined as a biological mother who uses her egg to have a surrogate child.</li> </ul> </li> <li>▪ The 12-week period of maternity leave will be calculated from the date the child is handed over to the adoptive or commissioning mother.</li> </ul>
<b>Creche facilities</b>	
<ul style="list-style-type: none"> <li>▪ No provision.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Requires every establishment with 50 or more employees to provide crèche facilities within a prescribed distance. The woman will be allowed four visits to the crèche in a day. This will include her interval for rest.</li> </ul>

<b>Option to work from home</b>	
<ul style="list-style-type: none"> <li>▪ No provision.</li> </ul>	<ul style="list-style-type: none"> <li>▪ An employer may permit a woman to work from home, if the nature of work assigned permits her to do so.</li> <li>▪ This option can be availed of, after the period of maternity leave, for a duration that is mutually decided by the employer and the woman.</li> </ul>
<b>Employer to inform the woman of maternity benefits</b>	
<ul style="list-style-type: none"> <li>▪ No provision.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Every establishment has to inform a woman at the time of her appointment of the maternity benefits available to her. This communication must be in writing and electronically.</li> </ul>

Sources: The Maternity Benefits Act, 1961; The Maternity Benefits (Amendment) Bill, 2016; PRS.

## PART B: KEY ISSUES AND ANALYSIS

### Implications of increasing maternity leave to 26 weeks

#### Advantages and disadvantages of raising maternity leave

*Act:* Section 5 (3)  
*Bill:* Clause 3  
 The Maternity Benefits Act, 1961 requires the employer to provide its women workers with maternity leave of upto 12 weeks, with full wages. The Bill raises this period of maternity leave to 26 weeks.

Several expert bodies including the Law Commission of India and the Indian Labour Conference have highlighted the need to provide maternity leave up to a period of 24 weeks.<sup>9</sup> The World Health Organisation recommends that children must be exclusively breastfed by the mother for the first 24 weeks to improve their survival rates and for the healthy development of both mother and child.<sup>10</sup> It has also been argued that the absence of adequate maternity leave and income security leads to women dropping out of the labour force.<sup>11</sup> Women employees in the central government are currently entitled to maternity leave of 24 weeks and additional child care leave up to a period of two years.<sup>3</sup>

On the other hand, it could be argued that increasing maternity leave from 12 to 26 weeks could have an adverse impact on the job opportunities available for women. Since the Bill requires the employer to pay full wages during maternity leave, it could increase costs for employers and result in a preference for hiring male workers.<sup>11</sup> Also, the increase in costs could impact the competitiveness of industries that employ a higher proportion of women workers. Some countries have addressed this issue by creating different mechanisms for financing maternity leave.

#### Financing of maternity benefits

Under the 1961 Act, the employer is liable to pay women workers maternity benefits up to a period of 12 weeks. The Bill increases this period to 26 weeks. This implies that employers will have to pay their women workers full wages for this period. The question is whether employers should bear the cost of providing maternity benefits. It could be argued that since maternal and child health is a public good, it would be appropriate for the government to finance such social security measures.

The International Labour Organisation (ILO) Maternity Protection Conventions have stated that employers should not be exclusively liable for the cost of providing maternity benefits to their women employees.<sup>12</sup> It has recommended that the benefits should be provided through compulsory social insurance or public funds.

Various countries have implemented different funding models in relation to maternity benefits. A 2014 ILO study on maternity leave provisions in 185 countries observed:<sup>11</sup>

- In 25% of the countries, maternity benefits are paid solely by the employer (e.g. Kenya, Puerto Rico, Nigeria, Pakistan).
- In 16 % of the countries, maternity benefits are financed by a combinations of funds from the employer and the government (e.g. United Kingdom, Germany).
- In 58% of the countries, cash benefits are provided to pregnant women through national social security benefits (e.g. Norway, Australia).
- In the remaining 1% of the countries, there was no provision for maternity benefits (namely, US and Papua New Guinea).<sup>11</sup>

Table 2 on the following page details the duration of maternity and paternity leave provided in different countries, the percentage of wages given during this period, and sources of funding for such maternity benefits.

**Table 2: International Comparison of laws and financing in relation to maternity leave**

Country	Maternity Leave	Paternity Leave	Percentage of wages	Source of Funding
India*	Act: 12 weeks Bill: 26 weeks	No provision	100%	Employer
UK	52 weeks	14 consecutive days	<ul style="list-style-type: none"> <li>▪ Women: 6 weeks paid at 90% of average weekly earnings; flat rate or 90% (whichever is less) for weeks 7-39; weeks 40-52 unpaid</li> <li>▪ Men: Flat rate benefit or 90% of average weekly earnings, whichever is less</li> </ul>	Mixed (employers reimbursed up to 92% by public funds)
South Africa	17 weeks	3 days	<ul style="list-style-type: none"> <li>▪ Women: 60%</li> <li>▪ Men: 100%</li> </ul>	<ul style="list-style-type: none"> <li>▪ Women: Mixed (contributions from employer, employee, government)</li> <li>▪ Men: Employer Liability</li> </ul>
Singapore	16 weeks	7 days	100% for first and second child	Mixed (8 weeks employer and 8 weeks public funds)
Brazil	17 weeks	5 days	100%	<ul style="list-style-type: none"> <li>▪ Women: Mixed (contributions from employer, employee, government)</li> <li>▪ Men: Employer Liability</li> </ul>
China	14 weeks	No provision	100%	Employer contribution via insurance scheme
France	16 weeks	11 days	100% up to a ceiling	Social insurance scheme
Australia	52 weeks	14 days	<ul style="list-style-type: none"> <li>▪ Women: 18 weeks at the federal minimum wage level</li> <li>▪ Men: Federal minimum wage</li> </ul>	Public funds
Canada	17 weeks (federal)	No provision	55% for 15 weeks up to a ceiling	Public Funds
USA	12 weeks (federal)	No provision	Unpaid	No provision

Note: \*India: Covers benefits under the Maternity Benefits Act, 1961 only.

Sources: Maternity and paternity at work: Law and practice across the world, ILO, 2014; laws of various countries; PRS.

## Woman with two or more children entitled to only 12 weeks of leave

Act:  
Section 5

(3)  
Bill:  
Clause 3

The Bill extends the period of maternity leave from 12 to 26 weeks. However, this increase in maternity leave does not apply to women with two or more surviving children. Such women will be entitled to 12 weeks of leave.

The government has stated that the Bill seeks to extend the period of maternity leave to 26 weeks to ensure maternal care to the child during early childhood. It has also noted that such early care is essential for the growth and development of the child.<sup>13</sup> This objective could be defeated if sufficient maternity leave is not given in the case of a third born child. Currently under the 1961 Act, the minimum maternity leave of 12 weeks applies in all cases, regardless of the number of previous children.

## Unorganised women workers not covered under the Act

Act:  
Section 2  
(1)

The 1961 Act covers women workers employed in factories, mines, plantations, shops and establishments with 10 or more employees, and any other establishments. This constitutes about 18 lakh women workers.<sup>13</sup> Note that about 90% of working women are in the unorganised sector and are not covered by the 1961 Act.<sup>14,15</sup> In 2015, the Law Commission of India recommended that the provisions of the 1961 Act should cover all women, including women working in the unorganised sector.<sup>8</sup>

Women workers in the unorganised sector include agricultural labourers, seasonal workers, domestic workers or construction workers. They often work in unstructured conditions, and may have multiple employers. Due to such employment conditions, they may not be able to prove eligibility under the 1961 Act such as continuous employment for a period of 80 days in the one year prior to the date of delivery.

Currently, such women may claim maternity benefits under the Indira Gandhi Matritva Sahyog Yojana, a conditional cash transfer scheme.<sup>7</sup> Under the scheme, Rs 6,000 is provided to a pregnant woman for the birth of two children. Such schemes provide a lump sum payment but do not fully address the issue of loss of income or assure job security. This could make it difficult for such women to afford rest from work to take care of their child and their own health.

### Lack of uniformity across labour laws related to maternity benefits

Currently, there are various labour laws that provide maternity benefits to women in different sectors. These laws differ in their coverage, benefits and financing of the benefits. The Second National Commission on Labour (2002) had recommended rationalisation of various labour laws with regard to providing social security, including maternity benefits.<sup>15</sup> Table 3 below details the various labour laws that provide maternity benefits.

**Table 3: Labour Laws across different sectors that provide maternity benefits**

Labour Law applicable to women	Coverage	Maternity benefit provisions	Financing
<b>Maternity Benefit Act, 1961</b>	<ul style="list-style-type: none"> <li>▪ Factories; mines; plantations;</li> <li>▪ Shops and establishments with more than 10 employees;</li> <li>▪ Other establishments notified by the state government.</li> </ul>	<ul style="list-style-type: none"> <li>▪ 12 weeks (with full wages).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Employer.</li> </ul>
<b>Employees State Insurance Act, 1948</b>	<ul style="list-style-type: none"> <li>▪ All factories, other than seasonal factories;</li> <li>▪ Others establishments notified by the central or state government, and with employee salary at Rs 15,000 or less.*</li> </ul>	<ul style="list-style-type: none"> <li>▪ 12 weeks (with full wages).*</li> </ul>	<ul style="list-style-type: none"> <li>▪ Mixed. (Employer contribution: 4.75% of wages; Employee contribution 1.75% of wages)</li> </ul>
<b>All India Services (Leave) Rules, 1955</b>	<ul style="list-style-type: none"> <li>▪ Indian Administrative Service;</li> <li>▪ Indian Police Service;</li> <li>▪ The Indian Service of Engineers (Irrigation, Power, Buildings and Roads);</li> <li>▪ The Indian Forest Service;</li> <li>▪ The Indian Medical and Health Service.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Women:</b> 24 weeks, if less than two surviving children (with full wages);</li> <li>▪ Includes adoptive mothers;</li> <li>▪ Child care leave up to 730 days, for 2 children, until they turn 18 years (with full pay);</li> <li>▪ <b>Men:</b> 15 days, if less than two surviving children (with full pay).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Employer (central government).</li> </ul>
<b>Central Civil Services (Leave) Rules, 1972</b>	<ul style="list-style-type: none"> <li>▪ Government servants appointed to the civil services and posts in connection with the affairs of the Union;</li> <li>▪ Railways servants, casual workers, industrial workers, etc. not covered.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Women:</b> 180 days, if less than two surviving children (with full pay);</li> <li>▪ Adoptive mothers: 60 days, to be taken within one year, if less than 2 children.</li> <li>▪ Child care leave up to 730 days, for 2 children, until they turn 18 years (with full wages);</li> <li>▪ <b>Men:</b> 15 days, if less than two surviving children (with full pay).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Employer (central government).</li> </ul>
<b>The Factories Act, 1948</b>	<ul style="list-style-type: none"> <li>▪ Workers employed in factories, as defined in the Act.</li> </ul>	<ul style="list-style-type: none"> <li>▪ 12 weeks (with full wages).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Employer.</li> </ul>
<b>Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957</b>	<ul style="list-style-type: none"> <li>▪ Women journalists employed in newspapers.</li> </ul>	<ul style="list-style-type: none"> <li>▪ 3 months (with full wages).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Employer.</li> </ul>
<b>The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996</b>	<ul style="list-style-type: none"> <li>▪ Building workers employed by an establishment with 10 or more buildings workers in any building or other construction work.</li> </ul>	<ul style="list-style-type: none"> <li>▪ State welfare boards to make maternity benefit payments to female beneficiaries.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Mixed. [Payment through a fund with contributions from the central government, beneficiaries, and other sources.]</li> </ul>
<b>Unorganised Workers' Social Security Act, 2008</b>	<ul style="list-style-type: none"> <li>▪ Enterprises engaged in the sale of goods or services with less than 10 employees.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Directs the central government to formulate schemes for maternity benefits.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Central government.</li> </ul>

\*Note: The Ministry of Labour and Employment has recently released two draft amendments to the Employees' State Insurance (Central) Rules, 1950.<sup>16</sup> The draft Rules seek to raise the period of maternity benefit to 26 weeks, and extend its coverage to adoptive and commissioning mothers.

Sources: Various central Acts and Rules;<sup>17</sup> PRS.

1. Rule 56 (2), Employees State Insurance (Central) Rules, 1950.
2. Rule 29, Working Journalists and Other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Rules 1957.
3. Rule 18, The All India Services (Leave) Rules, 1955; Rule 43(1), Central Civil Services (Leave) Rules, 1972.
4. Section 2 (1), The Unorganised Workers Social Security Act, 2008.
5. Schedule I, The Unorganised Workers Social Security Act, 2008.
6. Janani Suraksha Yojana, National Health Mission, Ministry of Health and Family Welfare, <http://nrhm-components/rmnch-a/maternal-health/janani-suraksha-yojana/background.html>.
7. Indira Gandhi Matritva Sahyog Yojana: 2011 Guidelines and 2013 notification, Ministry of Women and Child Development, <http://wcd.nic.in/sites/default/files/IGMSYscheme.pdf>; <http://wcd.nic.in/sites/default/files/nfsigmsydt10012013.pdf>.
8. Report no. 259: Early Childhood Development and Legal Entitlements, August 2015, Law Commission of India.
9. 46th Session of Indian Labour Conference, July 2015, Ministry of Labour and Employment, <http://www.labour.nic.in/46th-session-indian-labour-conference>.
10. 'Infant and young child feeding: Factsheet', World Health Organisation, September, 2016, <http://www.who.int/mediacentre/factsheets/fs342/en/>.
11. Maternity and paternity at work: Law and practice across the world, International Labour Organisation Report 2014, <http://www.ilo.org/global/topics/equality-and-discrimination/maternity-protection/publications/maternity-paternity-at-work-2014/lang--en/index.htm>.
12. International Labour Organisation Maternity Protection Conventions Nos. 3 and 103; [http://www.ilo.org/travail/aboutus/WCMS\\_119238/lang--en/index.htm](http://www.ilo.org/travail/aboutus/WCMS_119238/lang--en/index.htm).
13. "Amendments to the Maternity Benefits Act, 1961", Press Information Bureau, Union Cabinet, August 10, 2016, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=148712>.
14. "The Challenge of Employment in India: An Informal Economy Perspective", National Commission for Enterprises in the Unorganised Sector, Volume II, April 2009, [http://nceuis.nic.in/The\\_Challenge\\_of\\_Employment\\_in\\_India\\_\(Vol.%20II\).pdf](http://nceuis.nic.in/The_Challenge_of_Employment_in_India_(Vol.%20II).pdf).
15. Report of the Second National Commission on Labour, 2002, <http://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf>.
16. "Draft Rules: Employees' State Insurance (Central) Amendment Rules, 2016", Notification G.S.R. 958(E), Notification G.S.R. 957(E), October 6, 2016, Ministry of Labour and Employment.
17. Maternity Benefit Act, 1961, Employees State Insurance Act and Rules, 1948, The Factories Act, 1948, Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957, All India Services (Leave) Act and Rules, 1955, Central Civil Services (Leave) Rules, 1972, Unorganised Workers' Social Security Act, 2008, The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

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