
**RIGHT TO MOTHERHOOD WITHOUT PENALTY: THE CASE FOR THIRD CHILD
MATERNITY LEAVE**

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ABSTRACT

This article critically analyzes the discriminatory refusal of maternity benefits to women with a third child by Indian labor legislations with particular reference to the Maternity Benefit Act, 1961, and its Amendment of 2017. It examines, through the lens of socio-legal studies, how arbitrary quantitative caps on maternity benefits lower the principles of equity, dignity, and reproductive agency promised under the Constitution of India. Relying on constitutional stipulations under Articles 14 and 21, as well as memorable cases in the form of Suchita Srivastava and K. Umadevi, the paper contends that excluding mothers of three or more children from getting equal maternity leave constitutes indirect gender discrimination and contravenes the right to motherhood. The article also underscores the disproportionate impact of this policy on working-class women and those working in the unorganized sector, who frequently have poor access to contraception and health care—thus aggravating social and economic injustices. A cross-national comparison yields the finding that a number of countries have more comprehensive maternity regimes, viewing caregiving as a collective social responsibility rather than an individualistic one. The discussion ends by calling for legal reform, expanded coverage, and more effective enforcement mechanisms in order to make maternity rights available everywhere and constitutionally aligned. This research confirms that maternity benefits are not privileges but necessary social protections. Justice can truly be served only when motherhood is honored without penalty or prejudice, and when the law

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catches up with the lived experiences of all women—not only those who live within demographic limits.

KEYWORDS

Maternity Benefit Act, 1961, Third child exclusion, Article 14, Article 21, Gender discrimination, Reproductive rights, Working-class women, Unorganized sector, Comparative maternity laws, right to motherhood

INTRODUCTION

Every woman in this nation battles a silent, frequently unseen battle to balance unspoken biases, personal goals, and societal expectations. However, a mother's battle is more intense. She bears the burden of a whole family in addition to her own. Additionally, the struggle becomes unrelenting when she is balancing a career, as if she were working two full-time jobs that provide no respite, recognition, or rest. Despite the fact that it is an unpaid, extremely demanding, and rarely acknowledged labor of love, she shows up every day because she has no other option.

The rights of women—particularly working mothers—cannot be curtailed on demography-based assumptions or cost-effectiveness reasoning. The Maternity Benefit Act of 1961, and its amendment in 2017, need to be interpreted and enforced based on constitutional values, international human rights treaties like CEDAW, and most importantly, the realities of the lives of Indian women. Laws are not technical tools alone—they are indicators of a society's values. And if our jurisprudence ignores the requirements of a mother of three, it is not the mother who has failed the law, it is the law that has failed the mother.

However, despite the fact that mothers bear this heavy load with dignity, fatigue, and silent fortitude, the very systems designed to assist them frequently fail. The way our laws handle maternity leave for the third child is one example of this failure. Not only should rights be granted, but they should also be based on equity, empathy, and a sincere recognition of the unsung work

that women do on a daily basis. Then and only then can we claim that our systems protect the people they are designed to protect.

Additionally, the concept of constitutional morality requires that the laws be interpreted and applied for their enforcement in a manner that maintains the dignity of persons, equality, and freedom—particularly for historically disadvantaged people. Reading the Maternity Benefit Act through the prism of constitutional morality, the act has to safeguard all mothers regardless of the number of children they have, since motherhood as a contribution to society deserves to be supported.

Transformative constitutionalism also demands that law shift to call out and tear down deeply entrenched patriarchal norms. A law that limits entitlements after two children quietly reinforces outmoded population control assumptions and gender discriminations. It perceives women as tools for demographic goals and not as independent rights-holders. This is not consonant with the vision of the Constitution as a living document based on justice, equality, and compassion.

REALITY OF WORKING WOMEN

Women in the past were an invisible force in the workforce but now in modern times, we see more women moving into the workforce so that the household can have dual income. But despite moving into it, their primary responsibility is of household work, child care, this exacerbates during time of pregnancy or when they have children to look after. Many firms and factories are insensitive to the needs of women during pregnancy. It is important to have an established law in order to enforce certain ethics to help women.

Many employers, particularly in unorganized sectors, continue to show a deep insensitivity to the needs of pregnant women and new mothers. Lack of paid maternity leave, absence of childcare facilities, workplace discrimination, and subtle discouragement from hiring or promoting mothers are just a few of the everyday challenges working women face. This forces many women to make an impossible choice: their job or their child. As a result, the law must serve as a moral compass in addition to a set of rules. Enforcing ethical workplace practices, protecting working women's

rights during and after pregnancy, and preserving their dignity all require a strong legal framework. Laws like the Maternity Benefit Act are lifelines that guarantee women are not penalized for choosing to become mothers and careers. Only when the workplace changes to accommodate women's entire humanity including their roles as mothers—can true equality be attained.

True equality can only be achieved when the workplace adapts to women's full humanity, including their roles as mothers. A society that is truly inclusive must acknowledge that motherhood is an essential aspect of the human experience that merits compassion and institutional support rather than being viewed as a liability. Women shouldn't have to sacrifice their professional identities in order to carry out their personal responsibilities. They shouldn't be the only ones forced to choose between nurturing and ambition. More than just following the law, workplaces that offer flexible work schedules, parental leave for both parents, safe working conditions, and career re-entry pathways following maternity breaks uphold the worth and dignity of every working woman.

Progressive workplace practices like flexible work schedules, paid parental leave for parents, return-to-work programs, and safe working conditions need to become the rule, not the exception. They are not corporate philanthropy but mandates of justice. When lawmakers and employers put the lived realities of women at the center of policymaking, they assert not merely the rights of persons but also the dignity of work itself.

So, then, the problem is not merely legal, it is systemic and cultural. The law does not just represent the norms we decide to enforce, but also the values we decide to adopt. And only when women are regarded not simply as workers, but as full human beings—able to care, strive, and lead—will the task of gender equality be done.

As a result, the law reflects the values of society as a whole rather than just serving as a tool for enforcement. When women feel seen, respected, and supported—not just as workers but as whole persons—only then can we say we are progressing toward genuine gender justice.

A valuable but hitherto neglected aspect of the maternity benefits debate is the situation of women employed in India's enormous unorganized sector. Around 90% of women in India are employed in informal or unorganized work—domestic work, agricultural work, construction, home

production, and street vending. These women are the pillars of the Indian economy, but remain very much outside the ambit of formal labor laws, including the Maternity Benefit Act.

All of these women lack written contracts, social security, or access to grievance redressal. Paid leave is hardly ever provided by their employers, and in most instances, they are dismissed or replaced when they are pregnant. The current maternity leave structure, though progressive on paper, provides no safeguard to this majority unless conscious policy measures are initiated to extend its coverage.

Additionally, women working in the informal sector have more children because they have less access to healthcare, contraception, and reproductive counselling. These are the very women who would benefit most from maternity benefits, yet they are the first to be barred under limiting legal interpretations. This double disadvantage—structural exclusion plus child-based discrimination—traps women in an unfair system that punishes vulnerability rather than protecting it.

In order to enact real gender justice, the state needs to make maternity benefits not a privilege for the select few but a right for all. Universal maternity entitlements, which are transferable between types of work and anchored in social protection programs such as Janani Suraksha Yojana and Pradhan Mantri Matru Vandana Yojana, are needed. The law must develop according to the lived experiences of India's working-class women, not merely the salaried classes.

MATERNITY BENEFIT ACT

The Maternity Benefit Act of 1961² governs maternity leave and benefits in India. Women working in approved establishments are entitled to take maternity leave for up to 3 months, which covers both the prenatal and postpartum phases and allows them to continue working during this time. In order to avail this, she must have worked for a period of 80 days during the 12 months preceding

² Maternity Benefit Act 1961, No 53 of 1961 (India)

the expected date of her delivery. No employer allowed to employ a woman, 6 weeks after giving birth, miscarriage or medical termination of the baby. The Maternity Benefit (Amendment) Act of 2017³ brought about important changes, granting a woman 26 weeks of paid leave (prenatal leave extended to 8 weeks), but only for her first two children, if more than that she is liable to only 12 weeks (prenatal leave of 6 weeks). This act also provides for adoption leave.

As if a mother's need for rest, recuperation, or bonding with her newborn somehow matters less with each child, as if her body heals faster or her heart doesn't hurt the same way the third time, the support then drastically decreases to just 12 weeks. Whether a woman is experiencing motherhood for the first time or expecting her third child, she deserves the exact amount of support and care. Maternity leave benefits provided to a working woman cannot be restricted based on the number of children she already has.

- Maternity leave ensures the well-being of mothers and their children by providing time to recover and nurture their children.
- Any woman on maternity leave is entitled to receive the entire salary for the period of leave and medical benefits, thus providing her financial security.
- Employers cannot dismiss or fire women employees only due to pregnancy or when they are on maternity leave, thus providing job security during pregnancy.
- Maternity leave allows women to take time off for the delivery of their children while continuing their employment, which helps them to maintain their career progression.
- Maternity leave provides time for new mothers to recover from childbirth and care for their health physically.

³ Maternity Benefit (Amendment) Act 2017, No 6 of 2017, Gazette of India, Extraordinary, Part II, Section 1, 27 March 2017 (India)

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- Maternity leave gives new mothers time to spend with their newborns, essential for bonding and attachment.

SOCIETAL AND POLICY BIAS

Every law has a mentality behind it. Not only is the third child's maternity leave reduced by law, but it also reflects a pervasive bias in society; a bias that subtly suggests that having more than two children is reckless. Decades of family planning campaigns, economic narratives about population growth, and patriarchal presumptions that link a woman's value to her ability to fit into the "ideal" family unit have all influenced this way of thinking. A woman is supported in this framework, but only if she complies with specific guidelines. Don't have too many children. Work, but not at the expense of providing care. Maternity benefits are frequently viewed as financial burdens rather than investments in human dignity, a bias that permeates policymaking. Women who have a third child are viewed as statistics that are out of the ordinary rather than as unique people in need of care and rehabilitation. "Why did she choose to have a third child if she can't manage?" is a common shrug used to dismiss their difficulties. This narrative is dangerous because it dehumanizes the experience of motherhood, ignores economic disparities, and erases context.

Women from the working class are particularly affected by this. They are least protected by official maternity policies, but they are more likely to have more than two children because they lack access to healthcare and contraception. This bias is frequently reflected in corporate policies.

Motherhood must be viewed as a shared social responsibility rather than as a favor that is given to women in a truly progressive society. Because all children, first, second, or third, should have a mother who is healthy and takes care of them. Furthermore, all women should be treated with respect rather than regulation, regardless of the number of children they have.

In a genuinely progressive, rights-oriented approach, motherhood needs to be considered as public, not private, good. Maternity leave does not come as concessions—it is positive assurance embracing the biological and social work of care. They are investments in human dignity and inter-generational welfare.

India needs to overcome the prejudices inherent not just in its laws but also in its collective awareness. Because justice cannot be unequal, and dignity cannot be negotiable.

While India's 2017 amendment to the Maternity Benefit Act gave paid leave for 26 weeks, placing the country among the world leaders on paper, the limit to just two children negate its potential to transform. In contrast to nations that consider maternal well-being as a universal right, India continues to have conditions that mirror unfashionable family planning ideologies.

There is also a wide implementation-gap between law and action. Private employers mostly ignore the Act, and enforcement systems are weak. Non-compliance fines are few, and sensitization among workers, especially in small businesses, is low. Failure to provide mandatory crèches, despite being included in the 2017 amendment, is yet another sign of poor follow-through.

Second, India has not invested entirely in public care infrastructure. Sweden and Norway subsidize parental leave with strong public childcare systems, which allow the mother to easily return to the job market without impairing her child's care. In India, childcare is still a private responsibility, predominantly shouldered by mothers and, in turn, often affecting their career paths.

Universalizing maternity benefits, subsidizing crèches, and making employers pay are steps that must be taken. So is transforming public opinion to view maternity as not a cost but a national investment in human capital and the next generation.

COMPARATIVE INTERNATIONAL PERSPECTIVE

The global average for maternity leave duration is 16.3 weeks⁴.

The majority of countries (78.9%) offer between 10 and 20 weeks of maternity leave.

9.2% of countries offer 26 weeks or more, whilst 4.3% of countries offer 39 weeks or more.

⁴ IRIS Global, 'Maternity & Paternity Leave Statistics Around the Globe' (Iris Global, May 2025) <https://www.irisglobal.com/blog/maternity-paternity-leave-statistics-around-the-globe/>

When it comes to maternity leave, countries across the globe show striking differences in their policies. At the top of the list, Bulgaria and Croatia lead by offering a generous 58 weeks of maternity leave. They are followed by Albania, Bosnia and Herzegovina, Montenegro, and the United Kingdom, each providing 52 weeks. Ireland offers 42 weeks, while North Macedonia grants 39 weeks—all reflecting strong state support for working mothers.

In stark contrast, at the bottom of the spectrum, the United States stands out by offering zero weeks of statutory paid maternity leave. Tunisia follows with a maximum of only 4 weeks, and Qatar provides just 7.14 weeks. These figures highlight the global disparities in prioritizing maternal health, family welfare, and work-life balance.

A. Scandinavian countries: generous and flexible⁵

- a) *Sweden*: Known for its progressive approach, Sweden offers 480 days of paid parental leave, which can be shared between parents. Mothers are encouraged to take at least 90 days.
- b) *Norway*: Norwegian parents can choose between 49 weeks at 100% pay or 59 weeks at 80% pay, with a mandatory period for mothers.

B. Japan: Emphasis on Parental Involvement

- Japan offers 14 weeks of maternity leave at 67% pay. Additionally, parents can take up to one year of leave with varying compensation levels, promoting both maternal health and parental involvement.

⁵ Day Off, 'Global Maternity Leave: A Comparative Guide' (Day Off, 24 December 2023) <https://day-off.app/2023/12/24/global%20maternity%20leave%20a%20comparative%20guide/>

C. Canada: Balancing Employment and Parenthood

- Canada's policy allows up to 15 weeks of maternity benefits, followed by parental benefits which can be shared between parents, totaling up to 35 or 61 weeks depending on the plan chosen.

D. Germany: supporting families

- Germany provides 14 weeks of maternity leave at full pay, followed by parental leave options that allow parents to take time off until the child's third birthday, with state support.

This international comparative framework exposes a continuum from strong welfare models to minimalist statutory regimes. Those with longer leave durations and flexibility not only encourage maternal health, but also assist in closing gender gaps in the labor market by supporting work-life integration. Nations without or with low maternity benefits, on the other hand, reinforce gender inequality and female workforce attrition.

India's own 26 weeks under the Maternity Benefit (Amendment) Act, 2017, makes it one of the more advanced countries. Still, the benefit is not extended to all- some sectors and classes of women are excluded, and restrictions like the withholding of benefits for the third child vitiate its egalitarian spirit. Based on international good practices, India has to work towards developing a more inclusive, gender-responsive, and adaptive maternity regime that does not discriminate among family sizes and that enshrines motherhood as a right rather than a conditional privilege.

RECOMMENDATIONS: TOWARDS AN INCLUSIVE MATERNITY FRAMEWORK

A. Eliminate the child-cap on maternity benefits under the Maternity Benefit Act-

Eliminate the child-cap on maternity benefits under the Maternity Benefit Act and accompanying rules like Fundamental Rule 101(a). All children, irrespective of order of birth, are entitled to equal care.

B. Broaden maternity protection to workers in the informal sector-

Broaden maternity protection to workers in the informal sector by integrating them with social security schemes and providing legal enforceability.

C. Strengthen monitoring and enforcement mechanisms-

Strengthen monitoring and enforcement mechanisms to ensure employers, particularly in the private sector, apply the law in letter and spirit.

D. Make available and subsidized crèche facilities in public as well as private workplaces-

Make available and subsidized crèche facilities in public as well as private workplaces to facilitate working mothers during the postnatal period.

E. Acknowledge maternity as a constitutional right based on Articles 14, 15(3), and 21-

Acknowledge maternity as a constitutional right based on Articles 14, 15(3), and 21 and see that judicial and administrative interpretations are in conformity with it.

F. Raise awareness and sensitize employers-

Raise awareness and sensitize employers and employees regarding the significance of maternity protection through continuous campaigns. India needs to transition from conditional support to universal dignity. Maternity protection is not charity but justice.

NEW RULE

In a progressive and much-celebrated move, a recent judicial pronouncement has recognized the right to maternity leave for the third child— *K. Umadevi v Government of Tamil Nadu & Ors*⁶.

⁶ *K Umadevi v Government of Tamil Nadu & Ors*, Civil Appeal No 2526 of 2025 (SC India, 23 May 2025)

The petitioner, a staff nurse working in Government Rajaji Hospital, Madurai challenged the order passed wherein her request for maternity leave spent was rejected and had also challenged the report of the Medical Board wherein she was found fit to resume duty and the request for maternity certificate was rejected on the ground that it is her third pregnancy. The petitioner while working on a temporary contract, had two children out of wedlock and for both the deliveries, didn't take benefit of maternity leave since they weren't a permanent employee. Later, the Petitioner divorced her first husband and re-married. Out of the said wedlock through the second marriage, the petitioner got conceived and she applied for maternity leave. The said application, however was rejected on the ground that the petitioner is not entitled to seek maternity leave for the third child. In the impugned order, the petitioner was told to apply for some other kind of leave if she wanted. In compliance to the same, the Petitioner sought 90 days medical leave, 169 days earned leave on medical certificate and 106 days leave on loss of pay on medical certificate totaling 365 days. However, the said request was rejected and instead was referred to the medical board in Government Rajaji Hospital, Madurai. Under the second impugned order, the medical board passed an order citing that she is fit to resume duty and the maternity certificate requested by her is not justified and it cannot be regularized as a leave on medical grounds since it is her third pregnancy. The petitioner's lawyer argued that this is the first time his client is availing maternity leave for the first time in spite of having two children from her first marriage, she never took maternity leave for them, so because of this she should be allowed to take maternity leave now for her third child. In the case of *Deepika Singh v. Central Administrative Tribunal*⁷ to contend that for that third child born through the second wedlock, an employee would be entitled for maternity leave. The government lawyer argued that Rule 101 (a) of the Fundamental Rules⁸, contended that maternity leave can be granted only to a women government servant with less than two surviving

⁷ *Deepika Singh v Central Administrative Tribunal & Ors*, Civil Appeal No 5308 of 2022 (SC India, 16 August 2022)

⁸ Fundamental Rule 101(a), Fundamental Rules, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (India)

children and in the present case, the petitioner is already having two surviving children through her first marriage and therefore her request for 12 months maternity leave is not provided for under service regulation.

The Hon'ble SC Deliberated on the order of the single bench (Justice V. Parthiban) wherein it was observed by the Madras High Court that the Fundamental Rule 101; providing cap on the number of children for entitlement of maternity benefit goes against the Maternity Benefit Act which is the central legislation, since the Act is meant to protect working mothers, it takes priority over any conflicting state rule. Also, it was held by the single bench that the term 'two surviving children' must mean children in lawful custody of the mother- not necessarily biological. A bench comprising Justices Abhay S. Oka and Ujjal Bhuyan overturned the Madras High Court's decision, emphasizing that maternity leave is integral to a woman's reproductive rights and must be protected as such. The Hon'ble SC held that there is no cap or ceiling on the number of children to claim maternity benefit under the MB Act. The only difference is that for a woman with two surviving children the statutory maternity leave is reduced from 26 weeks to 12 weeks. Further the Section 27 of the MB Act⁹ provides that in case of any inconsistency between any law, agreement, or award and the provisions of the MB Act, the provisions of the MB Act shall prevail. The Hon'ble SC also discussed the judgment in *Suchita Srivastava v. Chandigarh Administration*¹⁰, wherein it was held that right of a woman to make reproductive choice is a facet of Article 21 of the Constitution¹¹. Applying the above observations to the present factual matrix, the Hon'ble SC concluded that though the Employee has two biological children out of her first wedlock, but that was before her entering into the services. Post entering into services, this is her first child, and therefore she is entitled for maternity leave. Consequently, the SC set aside the Impugned Order, and declared that the Employee be granted maternity leave under the applicable rules.

⁹ Maternity Benefit Act 1961 (No 53 of 1961), s 27

¹⁰ *Suchita Srivastava & Anr v Chandigarh Administration*, Civil Appeal No 5845 of 2009 (SC India, 28 August 2009), (2009) 9 SCC 1, 14 SCR 989

¹¹ Constitution of India, art 21

As a result, the decision establishes a noteworthy precedent that may lead to a more rights-based and inclusive approach to maternity benefits within India's legal system.

CONCLUSION

Motherhood is not something that should be limited by numbers. Every pregnancy and child have its own set of pleasures, difficulties, and demands for support and care. The message that some children are more valuable than others and that a mother's health, dignity, and time spent bonding with her newborn somehow diminish after a certain point is conveyed when maternity leave for a third child is denied. That is not only unjust, but also cruel.

The Maternity Benefit Act was enacted with the vision of protecting mothers in the workplace, ensuring they don't have to choose between their jobs and their children. If arbitrary regulations establish exceptions that exclude women based on the size of their family, that vision cannot be realized. The recent judicial interpretation reminds us that the law must serve people—not penalize them for their personal choices.

Motherhood cannot and must not be made the subject of whimsical numerical restrictions. Every case of pregnancy has specific physical, emotional, and socio-economic factors that deserve proper care and institutional attention. Refusal of maternity benefits to a woman just because she is giving birth to her third child goes against the very purport of the Maternity Benefit Act, 1961, which was enacted to protect the health, dignity, and employment security of working women during maternity.

Restricting the scope of this welfare law by the number of children has the perverse effect of sending a chilling message—some children are worth less care and protection—and runs contrary to the larger constitutional guarantee of equality and non-discrimination. These exclusions primarily disadvantage women from economically and socially disadvantaged groups, on whom maternity benefits are a necessary economic and health protection.

The judicial reminder regarding the intent of the Maternity Benefit Act in recent decisions is a much-needed reminder that the law needs to keep pace with societal realities and be a force of empowerment—and not exclusion. If individual reproductive options are penalized by employment-based policies, the law becomes no longer a protective framework but an instrument of control and discrimination.

It is thus necessary that statutory construction and legislative reform advance in the direction of inclusivity. The ends of maternal and child well-being, gender equality in work, and social justice cannot be sacrificed to outdated presumptions grounded in demographic control. Welfare legislation needs to be dynamic, rights-promoting, and consistent with constitutional morality and international human rights undertakings, including those under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

In re-envisioning maternity rights, we need to put dignity before deterrence, protection rather than penalization, and justice rather than judgment. The right to motherhood has to be absolute—honored no matter how many times it is invoked. Because every mother should be protected, and every child deserves equal consideration under the law.

It's time to create a future in which every mother is respected and every child is accepted without reservation. The right to motherhood must come without penalty, without prejudice, and without limits. Because every mother matters. Every child matters. And justice—true justice—leaves no one behind.

