

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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MATERNITY BENIFIT IN INDIAN LAW AND IT' S GLOBAL PERSPECTIVE

AUTHORED BY - GANISRIKA.R

Abstract:-

The MATERNITY BENIFIT act is one of the labour legislations in India protecting the employment and well being of women during maternity. The research paper provides comprehensive analysis of the act, it's amendment, objectives, maternity leave and job security .The act not only upholds health and dignity of working mothers but also promotes gender-sensitive workplace policies. This article takes a closer look at the main features of the Maternity Benefit Act and the significant changes brought in by the 2017 amendment. It explores how the law supports maternity protection, helps safeguard women's jobs during and after pregnancy, and contributes to building a more gender-equal workplace. The article explores how the Act plays a role in supporting maternal health and encouraging more women to remain in the workforce. It also looks into real-world challenges like how well employers are following the rules and whether workers are fully aware of their rights under the law. The article also offers a global perspective by comparing maternity laws from other countries, aiming to highlight successful practices and suggest ways India's policies could be improved. In conclusion, the article recommends practical steps to boost compliance, increase awareness among employers and employees, and strengthen the overall support system for working mothers.

Historical perspectives and development of Maternity Act:-

The historical development of the Maternity Benefit Act in India reflects the country's evolving commitment to protecting the rights of working women during maternity.

1. **Pre-independence Initiatives:-**before independence there were no special legislations covering maternity benifits. some provinces and employers voluntarily provides benifits but there were no specific statue or legislation. The Royal Commission on Labour (1931) emphasized the need for maternity protection.
2. **Maternity Benefit Acts (State-level):-**every State had its own legislation leading to varied coverage & benifits,lack of inconsistency and nonuniformity among states.(e.g., Bombay Maternity Benefit Act, 1929; Madras Maternity Benefit Act,

1934).

3. **Central Legislation – Maternity Benefit Act, 1961:** The Act was introduced to safeguard both the employment and well-being of women during maternity. Initially applicable to factories, mines, and plantations, its coverage gradually expanded to include shops and other establishments. It ensured women received 12 weeks of paid leave, along with a medical bonus and protection from job loss during this period.
4. **Integration with Social Security – ESI Act, 1948:** Employees covered under Employees State insurance act get maternity benefit under sec 50 of the act. Employees not covered under Employees State insurance act get benefit from maternity benefit act
5. **The Maternity Benefit (Amendment) Act, 2017:** The Act was further strengthened by granting 12 weeks of maternity leave to adoptive and commissioning mothers. It also introduced provisions for work-from-home options, recognizing the need for flexibility during early motherhood. Additionally, establishments with 50 or more employees were required to provide crèche facilities, and employers were made responsible for informing women about their entitlements under the law.

Purpose and Objective of the Maternity Benefit Act, 1961

The Act aims to safeguard the rights and health of women employees during maternity by:

- Ensuring 26 weeks of paid maternity leave (8 weeks before and 18 weeks after delivery).
- Requiring full payment of wages during maternity leave.
- Providing a medical bonus if the employer does not offer free maternity care.
- Preventing employers from assigning strenuous or harmful tasks to pregnant women.
- Ensuring job security—a woman cannot be fired due to pregnancy and must be allowed to return to her job.
- Mandating creche and nursing facilities in larger workplaces.
- Promoting awareness of maternity rights among women employees.
- Extending 12 weeks' leave to commissioning mothers (through surrogacy).
- For Central Government employees, even men get 15 days of paternity leave if they have fewer than two children

Application of the Maternity Benefit Act (Section 2)

- **Applies to:** Factories, mines, plantations, and government establishments.
- **Covers:** Employees involved in horse shows, acrobatics, and other performances.
- **State Government Power:** Can include more establishments (industrial, commercial, agricultural) with 2 months' notice and central government approval.
- **Exceptions:** Does not apply to establishments covered under the Employees' State Insurance Act, 1948.

Employer (Section 3(d))

An employer is:

1. **Government Establishments:** A person or authority appointed by the government, or the head of the department if no one is appointed.
2. **Local Authorities:** A person appointed for employee supervision, or the chief executive officer if no one is appointed.
3. **Other Establishments:** The person or authority with ultimate control, such as a manager, managing director, or any other similar role.

Establishment (Section 3(e))

An establishment includes:

- Factories
- Mines
- Plantations
- Places where equestrian (horse shows), acrobatics, or similar performances happen
- Any other establishment declared under Section 2(4) of the Act

Wages (Section 3(n)) Wages include:

- Regular salary or payments in cash
- Cash allowances (like house rent and dearness allowance)
- Incentive bonuses
- Value of subsidized food and other essentials

Wages do NOT include:

- Bonuses (except incentive bonuses)
- Overtime earnings

- Employer contributions to pension or provident funds
- Gratuity paid at the end of service

Commissioning Mother (Section 3(ba))

- A commissioning mother is a woman who provides her egg for an embryo implanted in another woman (a surrogate) to carry and give birth on her behalf.
- In **Dr. Kavitha Yadav v. The Secretary, Ministry of Health and Family Welfare (2023)**, a pathology doctor working under a temporary contract was denied maternity leave beyond 11 days. The Central Administrative Tribunal and High Court rejected her claim, stating that the Maternity Benefit Act does not apply after a contract ends. However, the Supreme Court ruled that since she had continuously worked before her expected delivery date, she was legally entitled to maternity benefits.
- In **B. Kavitha v. The Registrar General, Madras High Court (2025)**, a court staff member in Tiruvarur District was denied maternity leave because she was unmarried and pregnant. The Madras High Court held that marital status cannot be a basis for denial and declared the rejection discriminatory. The court ordered the state to pay ₹1,00,000 in compensation to the employee.

Prohibition of Employment During Certain Periods (Section 4)

- A woman cannot be employed for six weeks after childbirth or miscarriage.
- Employers cannot assign physically strenuous tasks, long hours of standing, or work that may harm pregnancy or health.

Right to Maternity Payment (Section 5)

- Women receive maternity benefits at the rate of average wages.
- To qualify, they must have worked at least 160 days in the 12 months before the expected delivery date.
- Standard leave: 26 weeks for maternity leave.
- If a woman dies, payment is made up to the date of her death.
- Adoptive and commissioning mothers (adopting a child under 3 months) get 12 weeks of leave.
- Women with two or more surviving children are eligible for only 12 weeks of maternity leave.

- Employers may allow work from home during maternity leave, based on mutual agreement.

Maternity Benefit in Certain Cases (Sections 5A & 5B)

- Employees covered under the Employees' State Insurance Act, 1948 can claim maternity benefits under Section 50 of that Act.
- Employees earning beyond a certain wage limit (excluding overtime) must still meet 160 days of work in the previous 12 months to qualify.
- In **Corporation of Delhi v. Female Workers** (Muster Roll) (2000), female daily wage workers employed by the Municipal Corporation of Delhi (MCD) were denied maternity benefits, with MCD arguing that these benefits applied only to regular employees. The Supreme Court ruled that all women workers, whether permanent, temporary, or daily wage earners, are entitled to maternity benefits under the Maternity Benefit Act, 1961. The Court emphasized that maternity is a biological process and cited Article 42 of the Indian Constitution, which directs the State to ensure fair working conditions and maternity relief.

Notice of Claim for Maternity Benefit (Section 6)

- Women must submit a written notice to their employer, stating their leave period and nominating a recipient for benefits.
- Notice should be given at least 6 weeks before the expected delivery date.
- If notice is not given before delivery, it must be submitted as soon as possible.
- Employers must approve leave upon receiving the notice.
- Advance payment is given for the period before delivery, with proof of pregnancy.
- Post-delivery payments must be made within 48 hours after proof is provided.
- If a woman fails to give notice, she can apply through an inspector for benefit approval.

Payment in Case of Death (Section 7)

- If a woman dies during maternity leave, benefits must be paid to her nominee.

Medical Bonus (Section 8)

- A ₹25 medical bonus is provided for pre-natal and post-natal care, unless the

employer already provides medical facilities.

Leave for Miscarriage (Section 9)

- Women who provide proof of miscarriage are entitled to 6 weeks of leave with maternity benefits.

Leave for Pregnancy-Related Illness (Section 10)

- If a woman suffers from complications due to pregnancy, delivery, premature birth, or miscarriage, she can take up to 1 month of additional leave with maternity benefits.
- In **Deepika Singh v. Central Administrative Tribunal (2022)**, a nursing officer at PGIMER applied for maternity leave after giving birth to her first biological child in 2019. Her request was denied because her husband had two children from his previous marriage, and she had previously taken childcare leave for them. The Tribunal and High Court upheld the rejection, stating she had already availed maternity benefits. However, the Supreme Court ruled in her favor, stating that parental roles evolve, and the law should serve its intended purpose. The Court granted her 180 days (26 weeks) of maternity leave, recognizing her right as a biological mother under the Central Civil Services (Leave) Rules, 1972.

Creche Facility (Section 11A)

- Establishments with 50 or more employees must provide creche facilities (either separate or shared).
- Women employees can visit the creche four times a day, including rest breaks.
- Employers must inform women about these benefits in writing or electronically at the time of appointment.

PROTECTION AND ENFORCEMENT

Protection from Dismissal (Section 12)

- Women on maternity leave cannot be dismissed or discharged due to absence.
- If dismissed, they are still entitled to maternity benefits and medical bonus.
- If maternity benefits are denied, an appeal can be made, and the decision must be communicated within 60 days.

No Wage Deduction (Section 13)

- No deductions from a woman's wages for:
 - o Work restrictions due to pregnancy (Section 4(3)).
 - o Nursing breaks for childcare (Section 11).

Appointment of Inspectors (Section 14 & 16)

- The government appoints inspectors through an official notification to oversee compliance.
- Inspectors are considered public servants under Section 21 of the IPC.

Powers & Duties of Inspectors (Sections 15 & 17)

- Government appoints inspectors to oversee compliance.
- Inspectors can request information from employers or contractors.
- They have the right to inspect workplaces, registers, and documents at any time.
- Inspectors can take copies or seize documents if necessary.
- Women employees can file complaints about unpaid maternity benefits.
- Inspectors can investigate complaints and verify information.
- Appeals against an inspector's decision must be filed within 30 days.
- If no further appeal is made, the prescribed authority's decision is final.

Penalties for Violations For Employers (Section 21)

- Violating maternity benefit rules can lead to up to 3 months of imprisonment or a fine of ₹500, or both.

For Obstructing Inspectors (Section 22)

- Failure to provide documents or hindering inspections can result in up to 3 months of imprisonment or a ₹500 fine, or both.

Legal Protection & Offenses Good Faith Protection (Section 24)

- No legal action against those who act in good faith under the Act.

Cognizance of Offense (Section 23)

- Legal action must be initiated within one year of the offense.
- Requires prior approval from an inspector within one year.

- Cases are handled by a Presidency Magistrate or First-Class Magistrate.

MATERNITY BENIFIT (AMENDMENT) ACT, 2017:-

- Maternity benifit act was amended on 2017 by central government with different sections to be implemented on different dates
- The 2017 maternity benifit act goes beyond just increasing maternity leave and includes Work from home options, creche facilities and Leave for adoptive and commissioning mothers

DEFINITION OF COMMISSIONING MOTHER:-

- The term Commissioning mother is defined in sec 3(ba)
- The MATERNITY BENIFIT AMENDMENT ACT defines Commissioning mother as A woman who uses her egg to create an embryo that is implanted in another woman (a surrogate).

Sec 5:-

- Maternity leave is increased from 12 weeks to 26 weeks.out of 26 weeks 8 weeks can be taken before delivery
- Women with 2 or more children can take 12 weeks leave,where 6 weeks leave can be obtained before delivery
- If the child is adopted below 3 months or the mother is commissioning mother 12 months leave can be obtained from the day the child is handed over
- Work from home can be allowed after delivery based on the agreement entered into between the employer and employee

Sec 11A

- Company with more than 50 employees must provide creche facilities and notify them via email or notice to make them aware of creche facility
- They can visit 4 the creche 4 times a day

Constitutional provisions

- Article 42 of the Indian Constitution highlights the responsibility of the State to

provide fair and humane working conditions, along with maternity relief for women. Although this article is part of the Directive Principles and not directly enforceable by courts, it plays a crucial role in shaping progressive social legislation.

- One such outcome of this constitutional vision was the Maternity Benefit Act of 1961, which came into effect over a decade after the Constitution was adopted. This Act was introduced to protect the rights of working women, especially around the time of childbirth, by ensuring they receive maternity leave, financial support, and job security.
- Over the years, courts have interpreted Article 42 to uphold the welfare of women.

N. Mohammed Mohideen v. Deputy Commissioner of Labour (2008), the court reinforced the idea that the State is duty-bound to provide maternity relief.

The District Collector Sivagangai v. K.R. Kanimozhi (2022), it was observed that while the Constitution recognized the need for maternity support in 1950, it was formally brought into effect through legislation in 1961.

Article 15(3) of Indian constitution states that “Nothing in this article shall prevent the State from making any special provision for women and children.” It allows the State to take affirmative action to uplift women and children by: Framing special laws or policies for their welfare, Granting maternity benefits, Providing reservations in education or jobs and, Ensuring protection from exploitation.

LEGISLATIONS COVERING MATERNITY BENEFIT:-

A. Employees’ State Insurance (ESI) Act, 1948:-

- This act applies to those establishments which has 10 or more employees working in it .
- Sec 46 of ESIC provides Sickness Benefit, Maternity Benefit, Disablement Benefit, Dependants’ Benefit, Funeral Expenses, Other Cash Benefits and other medical benefits. To insured persons and their family
- **Sec 50** provides maternity benefit to eligible women who can take maternity leave and receive regular payment. It is calculated as 100% of average daily wages.
- **Conditions:** At least 70 days of contributions in the two immediately

preceding contribution periods. Provides 26 weeks of paid leave and medical care.

B. Unorganised Workers' Social Security Act, 2008

- Applies to workers in unorganised sectors
- Section 3(1) of the Unorganised Workers' Social Security Act, 2008 places a clear responsibility on the Central Government to design and introduce welfare schemes aimed at supporting unorganised sector workers. These schemes are expected to cover essential areas like health care, maternity benefits, life and disability insurance, and financial support during old age. The government is required to notify such schemes as needed, ensuring that the evolving needs of unorganised workers are addressed over time.

C. National Food Security Act

- Applies to pregnant and lactating women across India
- Section 4 of the National Food Security Act (NFSA), 2013 focuses on supporting the health and nutrition of pregnant and breastfeeding women.
- It guarantees that all such women receive free, nutritious meals through local Anganwadi centers during pregnancy and up to six months after delivery, as per the nutritional guidelines laid out in Schedule II of the Act.
- In addition to meals, the law provides for a maternity benefit of at least ₹6,000, which is to be given in installments as decided by the Central Government.

D. Social security code, 2020

- Applies to all shops, factories, mines, plantations (including Government-run ones). Applies if the establishment had 10 or more employees in the Past 12 months. Also includes any shops/establishments notified by the Government.

Section 59 – Work Restrictions for Women After Delivery:-

- A woman cannot be employed for 6 weeks after her delivery, miscarriage, or abortion. Employers cannot assign work that is: Physically strenuous, Requires long hours of standing & work that Might harm the baby or her health

Section 60 – Right to Maternity Leave with Pay:-

- Women are entitled to paid maternity leave based on their Average daily wage. Average daily wage = Average of wages earned in the 3 months before leave starts. To qualify, a woman must have worked at least 80 days in the last 12 months before her due date.

Section 61 – Continuation of Benefit:-

- Women already receiving maternity benefits under ESIC Section 32 (Chapter IV) will continue to get them.

Section 62 – Claiming Maternity Benefit:-

- Formal notice or claim must be given to receive maternity benefit and payment.

G.O. Ms. No. 45, dated 13.05.2022 Department: Human Resources Management (FR-II)

- The Government has made an important amendment to the Fundamental Rules concerning maternity leave. As per this order, the duration of maternity leave granted under Rule 101(B) has been extended. Earlier, eligible employees were entitled to 9 months (270 days) of maternity leave, but this has now been increased to 12 months (365 days). This change, which amends Rule 101(a), has been formally approved and orders have been issued accordingly

“Maternity Benefits vs. Private Contract Terms**P. Brinda v. Tamil Nadu Dr. Ambedkar Law University, 2020**

In this case, the petitioner was denied maternity benefits based on the specific terms of her employment contract. However, the court emphasized that statutory rights granted under the Maternity Benefit Act, 1961 cannot be taken away by private agreements. According to Section 23 of the Indian Contract Act, 1872, any agreement that goes against the law or undermines its intent is considered void. Therefore, the court ruled that the clause in the contract denying maternity benefits was invalid, and the petitioner was rightfully entitled to those benefits under the Act.

1. Condonation of Delay in Attendance**A. Arulin Ajitha Rani v. The Principal, Film and Television Institute, 2008**

This case dealt with the issue of delay in fulfilling attendance requirements. The rules allowed condonation of delay only when a student had at least 80% attendance, with a shortfall of no more than 5%. Beyond this, there was no authority under the regulations to excuse additional shortage. The ruling highlighted that the system for condoning delays is very limited and strictly governed, leaving little room for

exceptions.

2. No Limit on Maternity Claims

N. Megamala v. Deputy Commissioner of Labour, 2008

The court addressed whether a female employee could be denied maternity benefits for her third childbirth. The employer argued there should be a limit, but the court disagreed, pointing out that Sections 6(6) and 13 of the Maternity Benefit Act do not impose any restriction on the number of times maternity benefits can be claimed. Reinforced by Article 42 of the Constitution, which calls for humane working conditions and maternity relief, the court declared the denial of benefits illegal and instructed the employer to pay as per the law.

Critics and challenges of maternity benefit act

1. **Lack of Awareness:** Many women and employers aren't fully informed about their rights and duties under the Act, which results in many missing out on the benefits or not complying with the law.
2. **Supportive Work Environment:** Many workplaces lack the necessary support, like having creche facilities or offering flexible working hours, making it difficult for women to juggle work and childcare responsibilities.
3. **Financial Burden on Employers:** Smaller businesses, in particular, struggle with the financial pressure of paying for maternity leave, which can make them hesitant to hire or promote women.
4. **Limited Flexibility After Leave:** Not every workplace offers flexible options, like work-from-home arrangements, after maternity leave, which limits a woman's ability to ease back into work.
5. **Inconsistent Enforcement:** Many smaller or informal businesses don't properly follow the Act, which means some women miss out on maternity benefits that they're entitled to.
6. **Impact on Women's Employment:** Employers sometimes shy away from hiring or promoting women, fearing the additional cost and disruption of maternity leave, which can limit women's career opportunities.
7. **Gender Bias:** By placing the responsibility for maternity leave solely on women, the Act could unintentionally reinforce outdated gender stereotypes, contributing to discrimination in hiring and promotion decisions.

8. **Limited Scope:** The Act mostly applies to the formal sector, leaving women in informal jobs—like domestic workers or those in agriculture—without the same level of protection.
9. **Disadvantages for Women with Larger Families:** Women with more than two children are only entitled to 12 weeks of maternity leave, which some argue is unfair, especially if they need more time to recover.
10. **Difficult Claim Process:** Navigating the process of claiming maternity benefits can be challenging, especially for women who lack the support or resources to manage the paperwork and procedures involved.

Reference table with respect to maternity benefit act

Section	Details
Leave Duration	
For first or second child	26 weeks (maximum 8 weeks can be taken before the expected delivery date)
For third child or more	12 weeks (maximum 6 weeks before delivery)
For adoptive mother (child < 3 months)	12 weeks from the date the child is handed over
For commissioning mother	12 weeks from the date the child is handed over
In case of miscarriage	6 weeks from the date of miscarriage
After tubectomy surgery	2 weeks post-surgery
Illness related to pregnancy	Up to 1 month in addition to regular leave
Eligibility	
Establishment size	Act applies to organizations with 10 or more employees
Minimum working day	Must have worked at least 80 days in the last 12 months
Type of employee	Includes both full-time and contractual workers
Adoptive/commissioning mother	Child must be less than 3 months old
Penalties for Non-Compliance	
Failure to provide maternity benefits	Imprisonment up to 1 year and/or fine up to ₹5,000
Termination during maternity leave	Imprisonment up to 3 months and/or fine up to ₹5,000
Other breaches of the Act	Fine/imprisonment/b

Global laws on maternity benefit:-

Global laws on maternity vary from country to country but they are guided by International Labour Organisation.

1. International Standards (ILO Guidelines)

- ☐ The International Labour Organization's Convention No. 183 on Maternity Protection, adopted in 2000, sets global benchmarks.
- ☐ It recommends that all working women be entitled to a minimum of 14 weeks of maternity leave, with cash benefits of at least two-thirds of their previous earnings.
- ☐ It also emphasizes the right to return to the same or a comparable job after maternity leave and calls for protecting expectant mothers from tasks that could be hazardous to their health.

2. India

- ☐ Under the Maternity Benefit Act, 1961 (last amended in 2017), eligible women are entitled to 26 weeks of paid maternity leave for their first two children, and 12 weeks for any subsequent children.
- ☐ Adoptive and surrogate mothers are also entitled to 12 weeks of leave.
- ☐ The law allows for work-from-home arrangements if the nature of the job permits it, and mandates creche facilities for organizations employing 50 or more workers.

3. United States

- ☐ The U.S. does not mandate paid maternity leave at the federal level. However, under the Family and Medical Leave Act (FMLA), eligible employees can take up to 12 weeks of unpaid leave for maternity or childcare purposes.
- ☐ Some states, including California and New York, have established their own paid family leave programs, offering varying degrees of compensation.

4. United Kingdom

- ☐ In the UK, working mothers are entitled to up to 52 weeks of maternity leave, divided into 26 weeks of ordinary leave and 26 weeks of additional leave.
- ☐ For the first 6 weeks, mothers receive 90% of their average weekly earnings, followed by 33 weeks of either a flat statutory rate or 90% of earnings, whichever is lower.

5. Canada

- ☐ Canada provides a combination of maternity and parental benefits under its Employment Insurance (EI) scheme.

- ☐ Mothers can receive up to 15 weeks of maternity benefits, with additional parental leave of 40 to 69 weeks, which can be shared between parents.
- ☐ The payment rate ranges from 55% to 33% of the claimant's average weekly income, depending on the chosen benefit plan.

6. Australia

- ☐ Australia offers paid parental leave under its Paid Parental Leave Scheme, which gives the primary caregiver up to 18 weeks of paid leave. Payments are made at the rate of the national minimum wage.

7. European Union

- ☐ The EU Directive on Work-Life Balance sets the minimum requirement for maternity leave at 14 weeks, with mandatory job protection during and after the leave.
- ☐ In practice, many EU countries offer 16 to 20 weeks or more of paid maternity leave, often supplemented by national laws.

8. Scandinavian Countries (Sweden, Norway, Finland)

- ☐ Scandinavian nations are known for some of the most generous parental leave policies in the world.
- ☐ Sweden provides 480 days of paid parental leave, which can be shared between both parents.
- ☐ Norway offers 49 weeks at full pay or 59 weeks at 80% pay.
- ☐ Finland grants 160 days of parental leave to each parent.

9. China

- ☐ Chinese law guarantees 98 days of maternity leave, with certain provinces extending this period.
- ☐ The leave is typically fully paid, funded either by social insurance or the employer, depending on local regulations.

10. Middle East (e.g., UAE and Saudi Arabia)

- ☐ Maternity leave in the Middle East varies significantly by country and sector
- ☐ In the United Arab Emirates (UAE), private sector employees receive 60 days of maternity leave—45 days paid and 15 days unpaid.
- ☐ In Saudi Arabia, female employees are entitled to 10 weeks of paid maternity leave.

Guidelines to focus on improvement

- ☐ Support all working women including informal sectors and unorganised sectors
- ☐ Ensure every company acts in accordance with the act .if not penalty/ fine is imposed for breaching the act
- ☐ Government contribution to employers on paying maternity benifit to employees
- ☐ Provide paternity leave so that fathers also take care of the child and share responsibility reducing the burden of mother
- ☐ Allow flexible work before and after pregnancy.avoiding long standing hours , providing physically strenuous work etc
- ☐ Improve nursing and creche facilities at workplace to enable the mother to take care of the child and to do the work
- ☐ Many women are unaware about the benifits and schemes provided to them.They should be informed about their rights and benifits under Maternity act
- ☐ It includes to all types of family including adoptive, single and surrogate parent

Conclusion:-

Making maternity benefits better in India isn't just a women's issue—it's about creating a caring and balanced society. When all working mothers get the support they need, whether they're in offices or doing informal jobs, it helps families stay strong and secure. By sharing costs, offering flexible work, and making sure laws are followed, we can make workplaces more welcoming for mothers. In the end, supporting new parents means building a healthier future for everyone.