



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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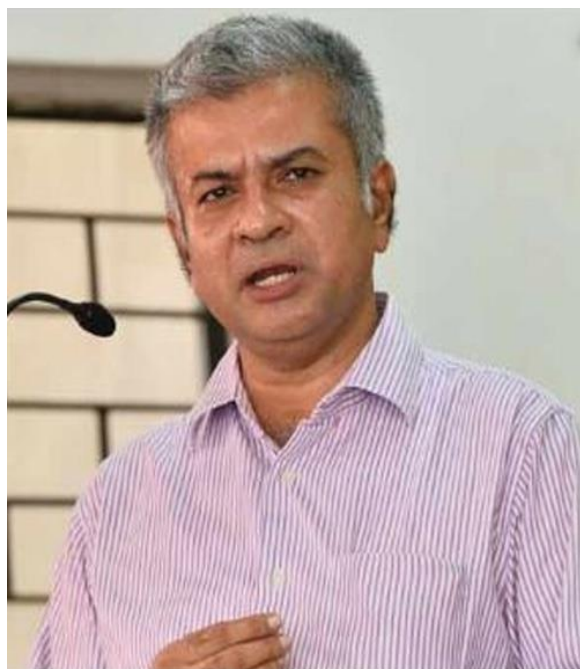
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# Analyzing Maternity Benefits Under New Social Security Code

Authored By- 1. Vyshnavi Praveen

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## Abstract

In recent times, there has been a push for increasing the role that women play in the workforce. Globally, there have been several schemes enacted to promote women's interest in entering the workforce and providing them with the necessary skills and benefits to facilitate their entry. Although these efforts have been beneficial in terms of providing encouragement, women remain a minority in the male-dominated workforce and are subject to several injustices such as sexual harassment at the workplace, discrimination, unequal pay and so on. It is for this reason that the government has to enact special legislation to protect and promote the interests of women and the Maternity Benefit Act of 1961 is only one such example. The Maternity Benefit Act protects and promotes women's maternity rights and interests and also ensures that women are not pushed into giving up their work-life after pregnancy. It is also an important tool used in integrating women back into society and providing them with the necessary resources to get settled back in. By application, the original intent of the Maternity Benefit Act was to cover a wide variety of establishments and at present covers factories, (as defined in the Factories Act, 1948), mines (as defined in the Mines Act, 1952) and plantations (means a plantation as defined in the Plantations Labour Act, 1951). It applies to both governmental and non-governmental establishments<sup>1</sup>. The Act also applies to shops and establishments that are said to employ more than 10 individuals as covered under the law. With regard to the Act and in the interest of protecting and uplifting the position of pregnant women in the workforce, the State Government is vested with the power to cover any other establishment under this Act subject to approval by the central government<sup>2</sup>. The New Code of Security 2020 replaces the existing Maternity Benefit Act and codifies several labour legislations in a bid to simplify and unify these existing laws.

*Key Words: Maternity Benefits, Women's Rights, Legal Developments, Unorganized Sector, Social Security*

<sup>1</sup> The Maternity Benefit Act, §3, 1961, No 53 of 1961.

<sup>2</sup> The Maternity Benefit Act, §2 1961, No 53 of 1961.

## **Chapter 1: Analysing The Need For New Code Of Security, 2020**

The Social Security Code, 2020 or the SS Code was passed by both the houses of the Parliament and also received Presidential assent in September, 2020. The SS Code has been enacted to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors. The main aim of the Code is to create a major reform with regard to labour laws and ensures that there is uniformity and unification of labour legislations. Social security is an important aspect of improving the working conditions of workers and also ensures increased participation by the workers and goes a very long way in ensuring that there is no exploitation. India has a long-drawn history of workers' exploitation with several individuals, especially short-term contractors and part-time workers belonging to the unorganised sector being prey to unfair working conditions and hours without getting the necessary payments. The aim of this Code is to ensure that benefits not only apply to those workers with secured jobs in the organised sector but also to other employees. A study shows that there are over 15 million gig workers in India and the new social Code aims to ensure that the benefits are not only applicable to those workers in established jobs<sup>3</sup>. Such eligible female employees are entitled to maternity benefit of 26 weeks which is not more than 8 weeks shall precede the expected date of her delivery. The 'Report of the Committee on Unorganised Sector Statistics' of the National Statistical Commission (NSC), 2012 states that the informal sector constitutes 93% of the overall workforce and contributes 50% to the Gross National Product<sup>4</sup>. There are several benefits - such as PF, maternity benefits, life insurance - that several workers have no access to. With the implementation of the new Code, more workers will get access to such benefits which will increase the quality and satisfaction among the workers.

The objective of the Code on Social Security, 2020 is to amend and consolidate the existing labour laws relating to social security with the wider goal of extending social security benefits to all employees and workers irrespective of belonging to the organised or unorganised sector. There was

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<sup>3</sup> Varsha Torgalkar, *India's gig economy is failing women workers*, EQUAL TIMES, ( Jul 1, 2022) <https://www.equaltimes.org/india-s-gig-economy-is-failing?lang=en#.YnTr0tpBxDtpp://14.139.60.153/bitstream/123456789/2848/1/Report%20of%20the%20Committee%20on%20Unorganised%20Sector%20Satatistics.pdf>.

<sup>4</sup> Prasanna Mohante, *Labour reforms: No one knows the size of India's informal workforce, not even the govt*, INDIA TODAY ,(Jul 1,2022) <https://www.businesstoday.in/jobs/story/labour-law-reforms-no-one-knows-actual-size-india-informal-workforce-not-even-govt-214490-2019-07-15>.

a gaping hole in the welfare structure for labourers. India is home to one of the biggest unorganised sectors in all of the world and in that light, the new security Code seems crucial to protect and promote the interests of these workers. The aim of this Code is to ensure that benefits are availed by all workers and not just those working in major establishments. By bringing the maternity benefit under this Code, the protection and well-being bestowed by the Code is extended to all women workers, thus enabling them to protect their maternal health while also preventing discouragement from the workforce. Appropriate measures for the protection of health and wages of women workers during the maternity period are of great significance for women as well as society. This Code would ensure that the maternity benefits are availed by all women workers and are not limited by the nature of their employment.

## **Chapter 2: Analysing The Changes Under The New Social Security Code With References To Maternity Benefits**

There are several benefits that are provided to women under the Maternity Benefit Act. However, in the new Code there are a few specific changes that have been brought about under the new Code relating to maternity benefits.

### **Aadhar Application:**

These provisions establish the identity of an individual in order to obtain the benefits under the Maternity Benefit Act. Under Section 142, any individuals belonging to the unorganised sector will now be required to provide proof of identification to obtain benefits<sup>5</sup>. The person further has to establish their identity and the identity of the person nominated to receive maternity benefits in the event of her death through an Aadhar number. This was a new feature brought about by the Code which previously did not exist under the Maternity Benefit Act. The primary reasoning behind such enactment was that if the government was going to increase the benefits available to individuals and extend the scope of its applicability, it is essential to ensure that there is some sort of verification to prevent exploitation and misuse of such benefits. By bringing about identification requirements, the government will be able to ensure that such benefits are not being wrongfully obtained. However, this does raise the question of what will happen to those individuals who do not possess proper identification documentation.

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<sup>5</sup> The Code on Social Security, § 142, No 36 of 2020.

As the majority of the Indian unorganised workforce is uneducated, bringing about such technical requirements might act as a deterrent and act as a roadblock to the very reasoning for creating such a Code.

### **Punishments for non-compliance:**

One of the biggest challenges of any labour statute is with respect to effective implementation. Despite there being several existing standards, employers rarely follow up and actually provide their employees with the needful. This is the reason that the labour standards in India see little to no improvement. Another crucial aspect is that often workers and employees themselves are not aware of their rights and this results in exploitation. Considering that the entire aim of the new Social Security Code is to ensure that even part-time workers and those people engaged in the unorganised sector seek access to employment benefits, it would have little to no impact unless the enforcement mechanism is strictly implemented. In order to ensure this, under the ambit of the new Code if any employer is found in contravention of the provisions of the Code or the Maternity Benefit Act and is found denying pregnant employees of their deserved benefits, then they shall be held liable for a contravention of Section 133 of the Code and accordingly be subject to imprisonment that may extend up to 6 months or even a fine of up to Rs 50000<sup>6</sup>. This provision contrasts with the provisions under the Maternity Benefit Act, which calls for punishment in the form of jail time between 3 months to one year and a fine ranging from Rs 2000 to 5000. Under the new Social Security Code, repeat offenders found guilty of denying pregnant women the benefits under the Act can be subject to imprisonment between 2-3 years or a fine that extends up to Rs 300000. When we place this side by side with the provisions of the Maternity Benefit Act relating to repeat offenders, we see that the provisions are a lot more lenient which only calls for imprisonment up to 1 year and a fine that may amount to Rs 5000. By comparing the provisions of the Code and the Maternity Act, it is evidenced that the new rules under the Code are more stringent and improve the scope for enforceability. Additionally, the Code also ensures that all those individuals in charge of providing benefits but did not do so would be liable under the provisions with the only exception being that if a few officers involved including the secretary or so on was not aware of such acts then he or she would not be held guilty under the provisions of the

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<sup>6</sup> The Code on Social Security, §133, No 36 of 2020.

Code. With regard to enforceability, the new Code appears to be the right step in the right direction as it holds employers to higher standards of care and ensures compliance by placing very high penalties. This is instrumental to ensure that there is increased compliance and protection of pregnant women in the workforce. The Code does a good job of promoting the interests of women and ensuring the benefits under the Maternity Benefit Act are delivered.

**No right to trade union office bearers to file a complaint before the courts:**

Earlier, under the provisions of Section 23 of the Maternity Benefit Act, officer bearers of a particular registered trade union of an establishment or organization - where there exists a pregnant aggrieved woman - were allowed to approach the courts with the complaints on behalf of the aggrieved<sup>7</sup>. However, under the provisions of the new Social Security Code, this power will no longer be granted to them and if the aggrieved pregnant woman is facing any issues which she would like resolved then she would be required to make a complaint on her own. Under the provisions of Section 136 of the Code, the power to make a complaint regarding the unavailability of any benefits that are owed to a pregnant woman can only be brought about by the aggrieved woman herself and not via any other intermediary<sup>8</sup>. This particular provision has garnered its fair share of criticism as it takes away the very meaning and spirit of collectivism which is a driving force in the labour law movement. For centuries, collectivism and representation have been extremely important factors with regard to furthering the rights and liberties of employees and workers and preventing women from the opportunity to represent their concerns through an intermediary is a step back. One fact to note is that women in a lot of cases tend to be subject to ill-treatment with their opinions not being given as much importance as their male counterparts and hence a lot of women, in this case, would resort to making complaints with the help of an intermediary. Denying women the right to represent themselves and asking them to come forward directly would essentially deter the movement as a lot of aggrieved women may refuse to come forward in fear of losing their job or being subject to more unfair treatment. It also might make them feel isolated and cause a sense of fear which employers may exploit and prevent aggrieved women from coming forward and exposing such unfair practices at the workplace. Furthermore, there is a major concern regarding the anonymity of the women which is something that must be given utmost importance. By protecting the anonymity of the complainant, employers can no

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<sup>7</sup> The Maternity Benefit Act, 1961, § 23 No 53 of 1961.

<sup>8</sup> The Code on Social Security, § 136, No 36 of 2020.

longer coerce or threaten the employees and this would also encourage more and more women employees to come forward and report their experiences as well. In this regard, it appears that this feature does not align with the interest of the women and the Maternity Benefit Act works better.

**The availability of a prior opportunity before punishment in any form:**

Although the provisions for non-compliance under the new Code are a lot more stringent, it appears that there is more opportunity and increased scope for employers to try and be in compliance. If it is found that any employer is not in compliance with their duties under the Maternity Benefit Act and is not providing their employees with the benefits under the same, then before the imposition of the penalties as we discussed above, they will first be given an opportunity to amend their actions and be in compliance before any legal action will be taken. The inspector or facilitator would be required to issue a written statement of direction instructing the employer to comply with the provisions of the act and do the needful within a specified time period and must be given the opportunity to do so. If the employer adheres to this written command and does the needful within such period, then no action shall be taken against him however failure to follow the orders of the inspector within the determined time frame would result in the punishment as detailed in the Code. It is, however, to be noted that the Code does not provide any sort of leniency or leniency to those individuals found repeatedly committing the same offence and ensures that strict action is taken against repeat offenders. The Code mentions that if any employee is found violating the provisions of the Maternity Benefit Act or denying women employees the pregnancy benefits repeatedly within a span of three years from when the first act was committed, in such a case no relief shall be granted and no time shall be allowed for them to be in compliance with the act and prosecution under the necessary acts will be carried out immediately under chapter XII of the Social Security Code, 2020. There are several other features under the new social security Code that work towards ensuring the upliftment of the rights of pregnant women. Section 60 of the Code states that all those women who have worked with the establishment of the organization for a minimum period of 80 days at least in the period before the 12 months from the expected date of delivery would be entitled to receive maternity benefits<sup>9</sup>. Such eligible female employees are entitled to maternity benefit of 26 weeks of which not more than 8 weeks shall precede the expected date of her delivery. This provision for example is very similar to the Maternity Benefit

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<sup>9</sup> The Code on Social Security, § 60, No 36 of 2020.

Act and is in fact a reflection of Section 5<sup>10</sup>.

### **Chapter 3: A Series Of Missed Opportunities: The New Social Security Code, 2020**

While some of the provisions of the new Code are impressive and appear to work in the interest of pregnant workers, there still appears to be a major gap that the Code could have bridged. Firstly, the Code could have ensured increased flexibility in terms that women should be given maternity leave between 18-26 weeks as this would ensure that all those women who desire to return sooner have the option of doing so. With several policymakers of the opinion that prolonged maternity leave may impact women's chances of receiving promotions or moving further in their careers, some women may desire to return to the workplace sooner and such choice must be provided to them which the new Code does not do. Another approach that the new Code could have taken would be to enable women to avail a sort of credit for the period that they did not take off, a cash-in mechanism of sorts. Assuming a woman only avails 24 out of the 26 weeks that are granted as maternity leave, then she should be able to receive the two weeks of pay as an incentive to her salary. This is also a great addition to the maternity benefits available as it is a step in the direction of ensuring women's financial independence. In addition to this, women should be offered work from home policies where there is no physical labour involved as this can further ensure the safety and protection of the mother and the child she bears. It also is a great way of reducing the workload of women. Another seemingly major miss by way of the new Code is although it set out to provide benefits to all sorts of workers including gig workers and workers in the unorganised sector, the identity requirement makes this a major miss. Another important fact regarding the applicability of the entire new Social Security Code is the fact that the government seems to have overlooked the recommendation of the Sixth Central Pay Commission<sup>11</sup>. The unorganized sector is extremely wide yet somehow under the purview of the new Code, labourers from the agriculture sector, seasonal workers, domestic workers and construction workers are left out of the ambit of the new Code. So many women are engaged in agricultural activities and it is the backbone of the country yet it appears counterproductive that the act does not cover women engaged in such acts within the Code. With over 90% of the working women class in the informal sector, only a few of them are even within the purview of the Act.

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<sup>10</sup> The Code on Social Security, § 5, No 36 of 2020.

<sup>11</sup> The Report of the Sixth Central Pay Commission Highlights, EUR. PARL. Doc. 22 (2018).

While the Unorganised Workers' Social Security Act, 2008 includes maternity benefits as one of the entitlements for the unorganised, no wage-linked scheme for such purpose has yet been notified by the Government. The Janani Suraksha Yojana has been notified under this Act, but the same is a mere incentive for institutional delivery and nothing more. The Code even fails to universalise the ambit of payment of maternity benefits. Until and unless maternity benefits are universalized by way of the appropriate provision in the Code, a majority of women who work in the informal sector would be excluded from its purview

## **Conclusion: The Missing Pieces And Recommendations**

While there is much to celebrate with the implementation of the new Code, there are also several drawbacks and loopholes. Firstly, The Code fails to universalise the ambit of payment of maternity benefits. Until and unless maternity benefits are universalized by way of the appropriate provision in the Code, a majority of women who work in the informal sector would be excluded from its purview and this defeats the very purpose of the implementation of the Code. There needs to come in place a solid plan that provides for universal coverage of maternity benefits. Agricultural workers must be included under the ambit of the Maternity Benefit Act considering that they make up a considerable portion of the entire workforce. Another interesting take on the act is that it fails to make room for the possibility of paternity leave. Paternity leave can be a great mechanism by which more men are encouraged to help out and be integrated with the domestic life and may also help ease the burden on women. With several companies and countries pushing for incorporating paternity leave, the new Code could have made certain provisions to ensure a step in the right direction. The Indian system is already highly male-centric and by providing paternity leave, women may feel a sigh of relief and it might help in improving labour standards. Clause 22 of the European Union (Directive of European Parliament, 2019) specifies the need for maternity, paternity and parental benefits in case of a social security system opted by the establishments<sup>12</sup>. Additionally, appropriate provisions should be incorporated in the Code to ensure six months of paid leave to every woman worker for childbirth. This is especially the case with women employed in the unorganised sector.

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<sup>12</sup>Council Directive 2019/1/EU on empowering competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (2019).

The respective payment should be done via the unorganised sector welfare board and the government should ensure that there are strict mechanisms in place which prevent misuse of funds allocated for maternity benefits and stringent provisions should ensure that payment is made in a timely fashion.

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