

# The Maternity Benefit Act

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## What's in today's article?

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## Why in News?

- The Supreme Court agreed to hear a petition challenging the constitutional validity of **Section 5(4) of the Maternity Benefit Act 1961**, which states that a woman who legally adopts a child **below three months** old will be entitled to 12 weeks of maternity leave.

## What is the Maternity Benefit Act 1961?

- It was originally passed **to regulate the employment of women** in “certain establishments” for the period **before and after childbirth** and to provide for maternity benefit and certain other benefits.
- Originally, it applied **to every establishment** being a factory, mine or plantation.
- In 1973, it was extended to **“any such establishment belonging to the Government”** and “every establishment where persons are employed for the exhibition of equestrian, acrobatic and other performances.”
- **No employer shall knowingly employ a woman** in any establishment during the **six weeks immediately following** the day of her delivery or her miscarriage.
- **The right to paid maternity leaves** was also given, although the period of such leave could not exceed twelve weeks.
- **For availing maternity benefits**, a woman is mandated to work in the establishment for at least 160 days in the 12 months immediately preceding the date of her expected delivery.
- Violating provisions of the Act could result in **3 months’ punishment**, with or without a fine

## The Maternity Benefits (Amendment) Act 2017:

- It amended Section 5 of the erstwhile Act **to allow 26 weeks of paid leave after childbirth**, although **only to biological mothers**.
- The amendment inserted **Section 5(4)** which said that adoptive or surrogate mothers legally adopting a child below three months will be entitled to a maternity benefit period of **12 weeks** from the date the child is handed over to the mother.
- Further, it inserted provisions **to allow women to work from home under Section 5(5)**, where the nature of work assigned to a woman is of such nature.
  - The employer may allow her to do so after availing of the maternity benefit for such a period.
- Under the amended Act, **every establishment having fifty or more employees** shall have the facility of **creche** and the employer must allow four visits a day to the creche as well as rest intervals for her.

## What are the Criticisms of the Amended Act?

- Women in the **unorganised** sector cannot avail maternity benefits.
- Even five years after the amendment Act was passed, it was **yet to deliver a positive impact on job opportunities for women**.
- **The women's participation dropped** in more than five out of 10 sectors (surveyed by a human resource organisation) since the implementation of the Act.
- After maternity, **women face several challenges** – 30% cited wage cuts followed by resistance or lack of support from family and access to childcare.

## News Summary Regarding Petition Challenging the Maternity Benefit Act:

- According to Section 5(4) of the amended Act, the term “**commissioning mother**” refers to a surrogate mother and has been defined as **a biological mother who uses her egg to create an embryo implanted in any other woman**.
- A woman adopting a child older than three months gets **no benefits**.
- A Public Interest Litigation (PIL) was filed challenging Section 5(4) of the Act on grounds of being “**discriminatory**” and “**arbitrary**” towards adoptive mothers and orphaned children over three months.
  - **This is completely incompatible** with the object of the Maternity Benefit Act as well as the **Juvenile Justice Act**.
- The purported benefit of 12 weeks' maternity leave (compared to the 26 weeks') **fails to stand the basic scrutiny of Part III** (Fundamental Rights) of the Constitution, which is linked to the concept of non-arbitrariness.

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### Q1) What is the Pradhan Mantri Matru Vandana Yojana (PMMVY)?

PMMVY is a Centrally Sponsored DBT scheme launched in 2017 with the cash incentive of ₹ 5000/- (in three installments) being provided directly in the bank/post office account of Pregnant Women and Lactating Mothers. It is implemented by the Union Ministry of Women and Child Development.

### Q2) What is the Code on Social Security, 2020?

It is an Act 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.

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**Source:** [Maternity benefits to adoptive mothers](#)

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