

Wage-linked Maternity Entitlements for Women Workers in the Informal Sector

A Position Paper by National Alliance for Social Security

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Introduction

Social security entitlements for workers include maternity provisions for women workers and other provisions such as pensions, social insurance, health care, and death and disability insurance for all workers. Ensuring maternity provisions for all women workers poses additional challenges because of the gendered nature of labour markets where much of women's work is not recognised and a large proportion of women who are counted as being employed are engaged in unpaid/underpaid work.

In India, nine out of 10 women workers are engaged in informal work involving diverse forms of employment arrangements. Many of them are in self-employment with a large number working as unpaid family helpers. (90% of women workers are in the informal economy)

Ensuring universal maternity provisions, especially for women in the informal sector, therefore, needs multiple approaches beyond just legislating paid leaves, which will only address a small set of women.

Several civil society organisations, as well as academics, have argued for moving towards understanding maternity provisions as a universal right and compensation in recognition of women's work, including their contribution to social reproduction. (Maternity provision should be a universal right and women in the informal sector should be given top priority)

Maternity entitlements include women's right to exercise reproductive choices, right to health, nutrition, and care and wage compensation for lost days of work during pregnancy, childbirth and the period of exclusive breastfeeding.

Maternity provisions enable women to exclusively breastfeed their newborn infants for the first six months after childbirth. This is also a period when multiple mother and child rights are intertwined.

In this position paper, we discuss the wage compensation aspect of maternity entitlements ('maternity provisions', henceforth). Free health and nutrition support must be universally provided through other schemes and programmes such as the ICDS (Integrated Child Development Services), National Health Mission, etc.

The paper discusses the opportunities, issues and concerns and articulates the position of the National Alliance for Social Security for realising wage linked maternity provisions as a universal right for all women in the informal sector.

Women's Workforce participation in India

Most women in India are engaged in some work – productive and/or reproductive, however, a very small proportion are 'employed'

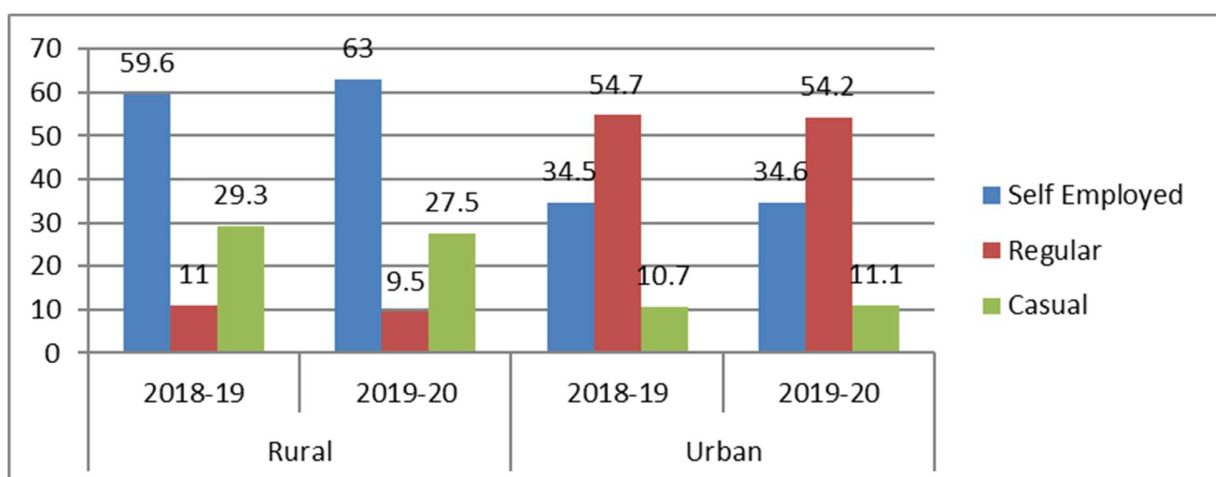
¹. Women's workforce participation in India has been consistently low with most women being engaged in low paid informal economic activities with no social security provisions. While the rural female workforce participation rate (FWPR) fell from 53 per cent to 25 per cent between 1987-88 to 2018-19, the latest round of data from the Periodic Labour Force Survey (PLFS) for 2019-20 shows an increase to 32 per cent. FWPRs have been low and stagnant in urban areas for a long, and here too a marginal increase is seen in 2019-2020. While the increase in women's

¹ See https://www.indiaspend.com/uploads/2021/03/26/file_upload-446784.pdf for a discussion and data on 'Women in the Indian Informal Economy'

participation in the workforce is indeed positive, a more cautious approach is warranted as most of the increase in this period is accounted for by agriculture in rural areas and low paying services in urban areas.

What is more relevant in the present context of women's access to maternity benefits is the nature of employment that women are engaged in.

Fig 1: Percentage of women in different types of employment (in percentage)

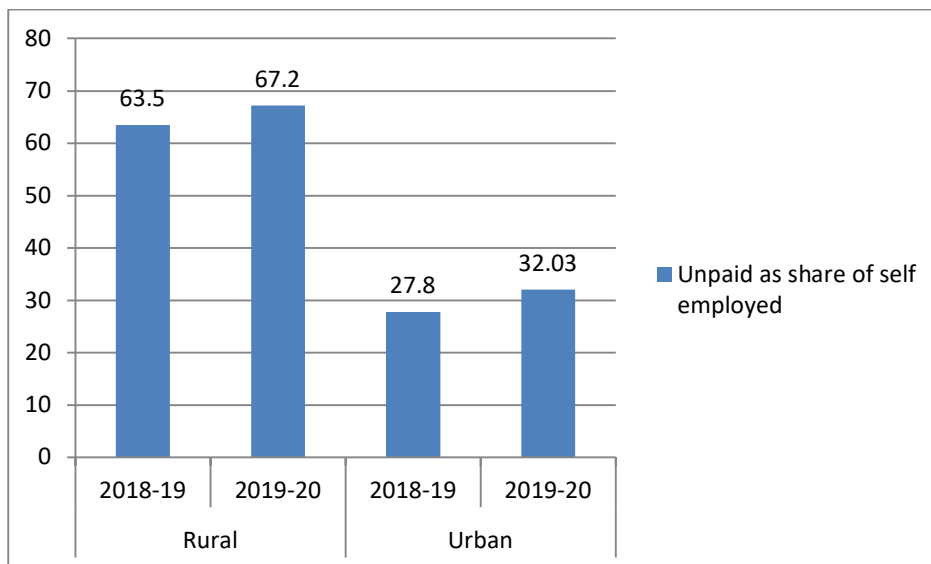


Source: Periodic Labour Force Surveys of 2018-19 and 2019-20

As seen in Figure 1, a large proportion of women who are in the labour force are either in self-employment or casual employment. For instance, almost 60% of the female workforce in rural areas was engaged in self-employment in 2018-19 and this increased to 63% in 2019-20. Levels of casual employment are also high, with regular employment being least common in rural areas. In urban areas, while the share of regular employment is high (1 out of 2), most of these are in informal work arrangements such as domestic work which usually have no social security benefits. An analysis done by WEIGO shows that in urban India 78.4% are in informal employment and they are concentrated in home-based work (6.7 m), paid domestic work (2.8 m), street vending (0.6 m), waste picking (0.5 m) and informal construction work (1.1 m). Further *most of

the women in self-employment, especially in rural areas, are engaged in unpaid work and this has also increased in the recent period (Figure 2).

Fig 2: Unpaid as a share of self-employment (in percentage)



Source: PLFS 2018-19, PLFS 2019-20

The data underlines the fact that the vast majority of women in both urban and rural India, are either outside the labour force or are in the workforce but still engaged in unpaid work.

Further, many times women are in multiple occupations such as working as construction workers and agricultural workers during the same calendar year. Moreover, for the majority of women in the workforce in both rural and urban areas, either there is no employer, or there are multiple employers or the identification or pinning down of employers who have the responsibility for providing social security is difficult even though women are many times in multiple occupations. For instance, in home-based work and construction work, it is difficult to pin down employers as workers are mainly employed by labour contractors who are not the owners of capital. The paid domestic workers many times are under multiple employers and so on.

While analysing the existing maternity provisions in the country, how these complexities influence access needs to be kept in mind.

Existing National Provisions for Maternity Provisions in India

In India, maternity provisions are the rights of biological mothers, commissioning mothers and surrogate mothers. These rights are enshrined in various labour laws and associated schemes. The Constitution of India explicitly recognises the right to maternity entitlements under the Directive Principles of State Policy. The state has committed to ensuring provisions for maternity relief under Article 42 which provides for just and humane conditions of work and maternity relief.

(i) Maternity Benefit Act, 1961 and Maternity Benefit (Amended) Act, 2017

The Maternity Benefit Act (MBA), 1961 amended in 2017 provides the following:

- a) 26 weeks of paid leave during childbirth for up to two children
- b) Crèches on the worksite
- c) Two nursing breaks per day
- d) 21 days of paid leave during abortion/miscarriage
- e) 12 weeks of paid leave to commissioning mothers and women who adopt a child below 3 months
- f) Prohibits termination due to and during pregnancy

While the amended Maternity Benefit Act, 2017 is progressive in its commitment to women in formal employment and rightly so, by definition leaves out most women in the country who are in the informal sector. The Maternity Benefit Act, of 1961 defines eligibility in terms of a “woman employed, whether directly or through any agency, for wages in any establishment” therefore excluding a large proportion of working women in the country who do not work in ‘establishments. Further, it is also stated that “No woman shall be entitled to maternity provision unless she has worked in an establishment of the employer from whom she claims maternity provision for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery”. Such a provision once again excludes many women given the precarity of work where even when employed in formal establishments, the nature of employment is informal with no fixed employer for long periods. This requirement

has been reduced to eighty days in the Social Security Code passed in 2020, which is an improvement but it still does not respond to the current reality of women workers in the country.

There is no data in the public domain on how many women access maternity provisions through the amended Maternity Benefit Act, of 2017. There is also no data on worksite crèches functioning under this act. A study done by VVGiri National Labour Institute on IT/ITES companies in 2019² shows that 41.7% of the employers interviewed had no idea that the law had been amended while 71% were aware of the 1961 Act. When asked about the availability of crèches, 75% of the employers said that even though there were more than 50 employees there were no crèche facilities.

(ii) Sectoral Labour Rights' Legislations

Sectoral labour laws, such as the Factories Act, 1948, and Plantation Labour Act, 1951 are linked to the provisions of the Maternity Benefit Act, 1961.

Other labour legislation such as the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 provide a consolidated amount (to be notified by the state) as maternity benefit. The amounts provided under these legislations vary across states. Once again, there is not much data available on the implementation of the benefits under these schemes. Experience of various unions has shown that there are difficulties in accessing these provisions due to lack of awareness amongst the workers, poor registration of workers and absence of monitoring and proactive implementation by the governments of any of these legislations.

(iii) Unorganised Sector Workers Social Security Act, 2008

The Unorganised Sector Workers Social Security Act, 2008. In this Act, even though the unorganised sector worker is defined quite broadly, the maternity provisions themselves are poorly defined. The Act only says that the central government will notify a scheme for maternity benefits. The central government notified Janani Suraksha Yojana (JSY), as a scheme, which is

²https://vvgnli.gov.in/sites/default/files/132-2019_-_NLI%20Research%20Studies%20Series%20.pdf

highly inadequate and does not fit the objectives or vision of a maternity benefit scheme as social security for women workers. The JSY was a scheme that already existed before this Act was passed. It is a conditional cash transfer scheme aimed at incentivising institutional deliveries and therefore pays a cash incentive (Rs. 1400 or Rs. 700 in rural areas and Rs. 1000 and Rs. 500 in urban areas depending on the level of the maternal mortality rate of the state) for women who deliver in government health centres (in some states the scheme is open also to delivery in private hospitals with other eligibility criteria such as belonging to a BPL household and so on³. Even though notified under labour law, the scheme has no link or intent to paying wage compensations.

As per the Ministry of Health and Family Welfare's (MoHFW) Annual Report (AR) of 2020-21, the JSY scheme reaches at least 1 crore women a year (pg 47 of the Annual Report). The same report shows that the number of beneficiaries has dropped from 10 million in 2019-20 to 4.2 m in 2020-21 (please refer to Table 2 of Annexure 1) which is a significant fall. The same report informs that 78.9% of deliveries in India are institutional deliveries (AR 2020-2021). JSY is linked to Janani Shishu Suraksha Karyakram, providing free delivery in public hospitals. It includes free drugs, blood transfusion, diagnostics etc and also up to 30 days of hospitalization for the newborns who need the same after birth. The HMIS April-June 2020-21 data highlights that nearly 17% of pregnant women received free drugs, 19% of pregnant women received free diagnostics, 19% of pregnant women received free diet, 7% of pregnant women received free transport (home to the facility) and 7% pregnant women received free transport (drop back) Thus even though its reach is higher than PMMVY, JSY is far from being universal even though the amount committed under the scheme is extremely low.

(iv) National Food Security Act, 2013

The National Food Security Act (NFSA), 2013 mandates a cash provision of at least Rs.6000 to all pregnant women. However, the Pradhan Mantri Matru Vandana Yojana (PMMVY), which is the scheme notified under this Act restricts the benefit to the first birth. Some further conditionalities

³https://www.nhp.gov.in/janani-suraksha-yojana-jsy-_pg

are also included. Further, the amount of cash provision under the PMMVY is only Rs. 5,000 while the Act specifies **at least** Rs 6,000. Many times, it is argued that both PMMVY and JSY together fulfil the commitment of Rs. 6000 under NFSA. However, the eligibility criteria of JSY are such that no urban woman can get paid Rs. 6000 as per the legal mandate. On the other hand, it leaves out the non-BPL women in high performing states. More importantly, as discussed above these schemes have been started for different purposes and cannot be combined in this manner.

The coverage under the PMMVY has also been low. As per a Press Information Bureau announcement⁴, from its inception on January 1, 2017, till November 2021, 4.3million⁵ women have received the provisions. Given the fact that there are about 25 million births per year, the coverage in 5 years is a fifth of the total births in one year in the country.

The PMMVY excludes a large number of women due to its conditionalities, complex documentation processes and eligibility being restricted to the first-born child. There is data to show that, in India districts with higher infant mortality rates have higher fertility rates too. Thus, the socially and economically marginalised women are the ones who are falling through the cracks created by the design of the scheme.

(v) Social Security Code, 2020

The newly passed Social Security Code 2020 repeals and subsumes the Maternity Benefit Act, 1961 and provisions provided under other labour laws. While it claims to be the framework for the provision of universal social security provisions it continues with the unequal treatment and neglect of women in informal work. For women in the formal sector, the Social Security Code offers progressive provisions with the same benefits and definitions as the Maternity Benefit (Amended) Act, 2017 (MBA). The only difference as mentioned above is that there is a reduction in the minimum number of days the woman should have worked in an establishment to be eligible for maternity provisions. For women who are not eligible under the MBA, the social security code only specifies that schemes will be notified by the central government and

⁴<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1781676>

⁵Statewise break up of access is available in Annexure 1

implemented and monitored by the state governments with no clearly articulated commitments for women in the informal sector.

There are both gains and challenges associated with the new Social Security Code, 2020 that is yet to be enforced. The Code defines unorganised sector workers as per the definition of under the Unorganised Sector Workers Social Security Act, 2008. The definition includes paid domestic workers, self-employed workers and home-based workers. Chapter IX in the Code on Social Security, 2020 mentions social security entitlements to healthcare, income security during maternity, and pensions. The Code mentions that the central government will make schemes for life and disability cover, health and maternity provisions, old age protection, education and so on. Thus, designing the schemes for maternity provisions for 9 out of 10 women workers in the workforce remains the responsibility of the central government.

There is some hope that there might be better access to social security provisions including maternity provisions through the current attempt to register all informal workers, through the thee-shram portal. It is yet to be seen whether complex documentation processes and confusing institutional procedures will continue to exclude women from provisions as before.

Creches/Childcare under Social Security Code

Earlier, crèches in industrial premises that employed 30 or more women were mandated. The new Code does mention crèches for establishments with 50 or more workers. Gender neutrality in the provision of crèches is a welcome move. There are minimum guidelines provided by the Ministry of Women and Child Development on the quality of infrastructure and human resources for crèches. But the new Code does not mention crèches under the section on the unorganised sector except for platform and gig workers. The unorganised workers continue to remain unrecognised, as workers with a need for childcare services.

Challenges/Gaps Towards Universal Maternity Provisions'

While there are national and international commitments towards recognising women workers' rights to maternity provisions as seen above in practice more than 90% of women workers in India remain excluded from accessing maternity provisions which are wage linked. Therefore, there is a need to bring the issue of maternity provisions for women in the informal work to the centre stage. While formulating policies and schemes for all women several issues need to be kept in mind.

First, just as women in informal work are invisible and neglected when it comes to most labour legislation and social security provisions, much of women's work itself remains unrecognised. Many activities that women are engaged in within their households such as tailoring, preparing or collecting fuel or water, processing agricultural produce, and livestock care are often underreported and undercounted. Most of this work, although in the productive sphere remains unpaid. On top of this is the burden of unpaid care work that women bear in most households. In a context such as India, where most women are engaged in some work or the other, in recognition of their work, maternity provisions need to be defined universally so that no woman is left out.

Second, even among women who are counted as workers, most remain ineligible for maternity provisions as they are concentrated in informal jobs with low pay, lack of continuity in employment, multiple occupations, etc. As seen above, a large proportion of women in the labour force are in unpaid work falling in the category of self-employment and within this, as unpaid helpers in family enterprises. Better systems of registering women workers and including them in the social security net need to be worked out.

Third, related to the above, there is a need to move away from the imagination of a typical employer-employee relationship when designing maternity provisions for women in the informal workforce. The state needs to take responsibility and devise mechanisms where it is primarily accountable for ensuring maternity provisions for all women while putting in place systems for collecting employer contributions. A centralised maternity and childcare welfare fund, for this purpose, has been proposed by many.

The current schemes such as the PMMVY and JSY are inadequate insofar as substituting for providing wage compensation which is available to women in the formal sector through paid leaves under the MBA. The coverage is too low, there are conditionalities attached and the amount is not linked to wages. While there is a need for different implementation mechanisms for different groups of women depending on their nature of work, there must be a uniform principle applied to all women. This would be a right to wage-linked maternity provisions for at least six months. For women in the formal sector with regular jobs and identified employers, this is operationalised as paid leave for six months, for women in informal work it has to be linked to minimum wages for six months.

The multiplicity in design regarding eligibility and entitlements creates different tiers of citizenship and different tiers of provisions for different groups of workers. The Social Security Code, 2020, carries forward the discriminatory behaviour of the state toward its workers. The formal sector workers are recognised as economic contributors to the state and are provided wage linked maternity provisions. The informal sector workers on the other hand are not treated as equal economic contributors and hence are not provided with any wage linked provisions. This discrimination in effect also leads to treating children born to different groups of workers differently. The children start their lives as unequal citizens.

Way forward/Recommendations/Demands

The National Alliance for Social Security reiterates its demand for universal, wage linked maternity provisions for all workers. It recommends the following:

Recommendations	Rationale
All childbearing women and caregiving parents should be entitled to six months of paid leave/wage support/ compensation after the child is born/adopted. This should be ensured in addition to a maximum of 8 weeks of Pregnancy Leave.	<p>There should be a clear 26-week period of leave to ensure that every child enjoys the right to six months of exclusive breastfeeding and care. This leave should be in addition to (and calculated separately from) Pregnancy Leave, which the pregnant woman can take if needed. Presently women are entitled to 26 weeks in total. The universal entitlement should be 2 weeks of pregnancy leave plus 26 weeks of post-pregnancy leave.</p> <p>The term caregiving parent is very important in case of the death of the mother during or after childbirth since the father or close female relative will have to provide for the care of the infant. It is not sufficient to only provide provisions until the time of the woman's death</p> <p>Similar to the entitlements of the organised sector workers, the provisions of informal sector workers should be linked to minimum</p>

	<p>wages. Maternity should be recognised as a social contribution and the recognition should come in the form of a wage linked provision to women in the informal sector. Like, formal sector workers, all entitlements of workers should be clearly articulated as rights and not be left to arbitrary schemes.</p>
<p>No conditionalities to be tied to entitlements and documentation requirements to be minimised</p>	<p>Multiple campaigns and multiple studies have pointed out the exclusions that emerge from the complex documentation and conditionalities. Many times, the conditionalities are entitlements of beneficiaries. Such as, in PMMVY the conditions to be met on health check-ups and immunizations are health entitlements of beneficiaries. Secondly, the large number of documentation required to prove eligibility lead to exclusions. Hence there is a need to simplify documentation and do away with conditionalities to provide universal maternity provisions to all workers</p>
<p>No categorisation of beneficiaries. Universal wage linked provisions for all citizens.</p>	<p>Categorisation of beneficiaries based on the type of state and economic status leads to exclusion.</p>

Plug in data and monitor gaps

Data gaps should be plugged in. There is no data in the public domain on several women covered each year under the Maternity Benefit Act, 2017 and also no data on PMMVY years since the schemes have been merged under 'Samarthya'. There is no data available on the number of crèches functioning under the labour laws. All these data gaps need to be plugged to provide a clear picture of the physical and financial performance of the mandated provision

Annexure 1: Coverage of PMMVY and JSY

Table 1: Physical and Financial Performance of PMMVY from inception to November 2021

Sl. No.	State Name	Total Funds released (₹ in Crores)	Total Number of Beneficiaries Paid
1	Andaman And Nicobar Islands	5.23	6353
2	Andhra Pradesh	341.27	10,48,922
3	Arunachal Pradesh	18.77	21074
4	Assam	351.03	7,10,004
5	Bihar	773.22	21,93,133
6	Chandigarh	14.77	24521
7	Chhattisgarh	155.67	5,27,791
8	Daman and Diu & Dadra and Nagar Haveli	6.41	11984
9	Delhi	82.21	2,58,091
10	Goa	5.01	18158
11	Gujarat	287.3	7,63,897
12	Haryana	183.23	5,14,767
13	Himachal Pradesh	87.9	1,88,331
14	Jammu And Kashmir	99.76	2,16,539
15	Jharkhand	194.2	5,45,401
16	Karnataka	377.57	12,64,976
17	Kerala	198.24	6,72,188
18	Ladakh	1.01	3787
19	Lakshadweep	0.62	1279
20	Madhya Pradesh	737.68	24,61,484
21	Maharashtra	687.35	23,89,867
22	Manipur	27.24	48321
23	Meghalaya	21.42	33345
24	Mizoram	24.2	26488
25	Nagaland	15.52	24819
26	Odisha	75.26	5

27	Puducherry	8.8	23222
28	Punjab	113.58	3,67,951
29	Rajasthan	461.56	14,03,787
30	Sikkim	5.41	9515
31	Tamil Nadu	284.57	10,12,961
32	Telangana	75.81	-
33	Tripura	34.52	73248
34	Uttar Pradesh	1211.91	39,25,356
35	Uttarakhand	95.66	1,96,873
36	West Bengal	219.53	7,35,443

Source: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1781676>

Table 2: Coverage of JSY (in lakhs)

2017-18	110.21
2018-19	100.41
2019-20	107.35
2020-21	42.99 (provisional)

Source: Annual Report of Ministry of Health and Family Welfare 2020-2021

Annexure 2: International Commitments

The following are some of the most relevant international commitments on maternity benefits.

- *ILO Convention, C 102, Social Security (Minimum Standards) Convention (No. 102), 1952*⁶: Under this convention medical care, sickness benefit, unemployment benefit, old-age benefit, invalidity benefit, employment injury benefit, family benefit, maternity benefit and survivor's benefit are included. India is yet to ratify ILO Convention 102.
- *Maternity Protection Convention, 2000 (No. 183)* is the most up-to-date international labour standard on maternity protection. It provides for 14 weeks of maternity benefit to women. Women are entitled to a cash benefit which ensures that they can maintain themselves and their children in “*proper conditions of health and with a suitable standard of living and which shall be no less than two-thirds of her previous earnings or a comparable amount*”. The convention also provides for protection from discrimination based on maternity as it prohibits employers to terminate the employment of a woman during pregnancy or absence on maternity leave. Women returning to work must be returned to the same position or an equivalent position paid at the same rate. The Convention provides women with the right to one or more daily breaks or daily reductions of hours of work to breastfeed their children. India has not ratified this Convention yet.
- *The Universal Declaration of Human Rights (UDHR) (1948)*, for the first time pronounced the special rights of the child by providing that motherhood and childhood are entitled to special care and assistance and all children, whether born in or out of wedlock, shall enjoy the same social protection as provided under the Article 25(2).
- The *Sustainable Development Goals* adopted in 2015 includes a percentage of women covered by maternity benefits as one of the indicators for the target (1.3) of achieving substantial coverage of the poor and the vulnerable by social protection systems.

⁶https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102

Annexure 3: Further Readings

Link to the contents of the Maternity Benefit (Amended) Act, 2017 - <https://labour.gov.in/sites/default/files/Maternity%20Benefit%20Amendment%20Act%2C2017%20.pdf>

Link to the contents of the Maternity Benefit Act, 1961 - <https://labour.gov.in/sites/default/files/TheMaternityBenefitAct1961.pdf>

Relevant information on Pradhan Mantri Matru Vandana Yojana (PMMVY) - <https://wcd.nic.in/schemes/pradhan-mantri-matru-vandana-yojana>

Information on Janani Suraksha Yojana (JSY) - <https://nhm.gov.in/index1.php?lang=1&level=3&lid=309&sublinkid=841>

Link to Minimum Guidelines on Crèches mandated by the Maternity Benefit (Amended) Act, 2017 - <https://wcd.nic.in/sites/default/files/National%20Minimum%20Guidelines.pdf>

Right to Food Campaign Report on implementation of PMMVY during the Covid times

Link to article by Dipa Sinha, Shikha Nehra and others, EPW, Realising Universal Maternity Entitlements: <https://www.epw.in/journal/2016/34/special-articles/realising-universal-maternity-entitlements.html>

Link to Dipa Sinha and Sudeshna Sengupta's article, The Wire, How Maternity Benefits can be extended to Informal Women Workers - <https://thewire.in/women/how-maternity-benefits-can-be-extended-to-informal-women-workers>

Link to Jean Dreze and Reetika Khera's article - <https://www.epw.in/journal/2021/47/special-articles/maternity-entitlements.html>