
MATERNITY AND PARENTAL LEAVE LAWS IN INDIA: A LEGAL ANALYSIS ON NEED FOR GENDER NEUTRALITY

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ABSTRACT

India's maternal and paternal leave laws are biased toward women and ignore the roles of men and other caregivers. While India is a leader in providing protections to employed mothers through the Maternal Leave Act of 1961 (Maternity Benefit Act), it fails to recognize that the way we care for our children is evolving. Amendments made to the law in 2017 to provide benefits for commissioned and adopted mothers failed to provide statutory paid leave for new fathers or other male caregivers who may also become parents. In addition to leaving male caregivers without support under the law, the fact that many workers within India's informal labor market do not receive adequate time off from work to parent their children exacerbate this issue. This article reviews the existing laws governing parental leave and court decisions that have shaped those laws as they relate to promoting a gender-neutral approach to family-based caregiving. An analysis comparing international models used for gender-neutral parental leave policies demonstrate how such policies can help achieve greater gender equity and encourage co-parenting among both men and women. Finally, this article highlights the shortcomings in today's system and provides several recommendations to amend India's parental leave legislation so that it supports modern families and aligns with international standards.

Keywords: Gender-neutral parental leave, Maternity Benefit Act 1961, statutory paternity leave, shared parenting, work-life balance, informal sector, adoptive parents' rights.

I. INTRODUCTION

Gender equality in caregiving is undermined by the gender bias demonstrated by India's maternity and paternity leave regulations. Although the Maternity Benefit Act of 1961 provides working women with extensive safeguards, such as paid maternity leave and job stability, it largely focusses to the needs of women and makes very little provisions for fathers or non-biological caretakers. Even if the Act was changed in 2017 to provide benefits to adoptive and commissioning mothers, fathers and other caretakers are still ignored, which fosters the gender bias idea that women should provide care.¹

This difference in parental leave regulations is both a legal and a sociocultural issue. Scholars have pointed out that traditional roles continue to exist by the exclusion of fathers and the lack of gender-neutral legislation, which ignore contemporary family structures.² Despite recent improvements to the Maternity Benefit Act, the 2017 Paternity Benefit Bill has not yet been put into effect, depriving fathers and adoptive parents of sufficient statutory leave.

The majority of the literature to far has focused on expanding maternity rights; however, paternity leave and gender-neutral caregiving legislation have received less attention.³ Additionally, a sizable section of India's labour is left unprotected by the legal system's injustices, as evidenced by the exclusion of workers in the informal sector from parental leave.

This paper aims to address these gaps by examining current Indian legislation and suggesting changes that encourage shared caring duties. Based on international best practices, particularly those in Sweden, Norway, and Canada, the paper will make the case for equal leave for adoptive and single fathers, statutory paternity leave, and partial payment while on leave. The goal is to establish a more comprehensive laws that facilitates gender parity in duties of caregiving and harmonizes Indian legislation with contemporary family structures.

The paper uses a doctrinal research technique, analysing policy documents, case law, and legal texts to find gaps in India's parental leave system. Additionally, it uses a comparative methodology, assessing effective gender-neutral parental leave programs around the world in

¹ Maternity Benefit Act, 1961, § 5(3), No. 53, Acts of Parliament, 1961 (India).

² Laura Addati et al., *Maternity and Paternity at Work: Law and Practice Across the World* (International Labour Organization 2014).

³ Christina Boll et al., *Paternal Childcare and Parental Leave Policies: Evidence from Industrialized Countries*, 12 Rev. Econ. Household 19 (2014).

order to suggest practical changes. The framework of the paper involves an evaluation of Indian laws and judicial interpretations, a comparison of international practices, an analysis of existing gaps, along with specific suggestions for reform. In order to promote gender equality at home and at work, the study conclude by advocating laws that guarantee all parents equal access to caregiving leave.

LEGAL FRAMEWORK OF MATERNITY LEAVE IN INDIA

a) Statutory Provisions for Maternity and Paternity Leave in India

The Maternity Benefit Act of 1961 serves as the foundation of the Indian legislative framework for maternity leave. It controls women's employment during and after childbirth to safeguard their health, job security, and financial stability.⁴ Women who have two or more surviving children are exempt from the Act's 26-week paid maternity leave requirement, which is lowered to 12 weeks.⁵ It has some additional features such as medical bonuses⁶, leave for miscarriage⁷, and up to 15 months of postnatal nursing time off.⁸ The act however, maintains traditional notions of gender roles because it does not address how fathers or joint caregivers will be involved in the care of children even though it has progressive provisions for women.

In 2017, the Act was amended and included new provisions regarding benefits for commissioned and adoptive mothers. Commissioned and adopted mothers can take a twelve week leave from the date they receive the child.⁹ Employers who have fifty employees or more must provide childcare services through crèches so that mothers can continue to work and tend to their personal lives.¹⁰ While this legislation addressed a few of the gaps left in other legislation, it is clear that there is still a serious need for gender neutral and paternity leave.

There are a couple of legislative structures that offer limited assistance beyond what is offered in the Maternity Benefits Act: The Employees' State Insurance Act, 1948 (ESI), provides maternity leave provisions to all female employees in an establishment that has been insured through ESI. In addition to the entitlement of a twelve week leave duration, females employed

⁴ Maternity Benefit Act, 1961, pmbi., No. 53, Acts of Parliament, 1961 (India).

⁵ See Maternity Benefit Act, 1961, § 5(3), No. 53, Acts of Parliament, 1961 (India).

⁶ *Id.* § 8.

⁷ *Id.* § 9.

⁸ *Id.* § 11.

⁹ Maternity Benefit (Amendment) Act, 2017, § 5(4), No. 6, Acts of Parliament, 2017 (India).

¹⁰ *Id.* § 11A.

in establishments that have coverage under ESI are eligible for medical inducements.¹¹ It does not, however, include any provisions for paternity leave, which maintains the gendered character of caregiving responsibilities.

In according to The Factories Act, 1948¹², Although it does not specifically address parental leave or maternity leave benefits, the Act does contain protective measures for pregnant women, such as limitations on working hours for labour-intensive occupations. For leave arrangements, factory workers typically rely on the Maternity Benefit Act.¹³

According to Central Civil Services (Leave) Rules, 1972, government workers enjoy a total of 180 days of maternity leave, which is significantly exceeding the statutory minimum. Additionally, male employees who have less than two surviving children been eligible for a 15-day paternity leave.¹⁴ Adoptive fathers now enjoy 15 days of paternity leave within six months of adoption according to recent legislation.¹⁵

As per Paternity Benefit Bill 2017, which was introduced in order to remedy the lack of statutory paternity leave in the private sector, suggested that private employees be granted paternity leave. Employees in the private sector are nevertheless still reliant on company-specific policies because it has not been implemented.¹⁶

There are restricted provisions for adoptive parents under both the Central Civil Services Rules and the Maternity Benefit Act. Adoptive fathers are not eligible for the 12 weeks of leave that woman who adopt children under three months are entitled to, unless they are covered by the Central Civil Services (Leave) Rules.¹⁷

One major obstacle to guaranteeing gender equality in India is the absence of adequate paternity leave laws. Although there have been certain advancements, such as the extension of leave benefits to commissioning mothers and adoptive mothers, the lack of comparable provisions for fathers feeds the myth that women are primarily responsible for providing care.

¹¹ Employees' State Insurance Act, 1948, § 46, No. 34, Acts of Parliament, 1948 (India).

¹² *Id.*

¹³ Factories Act, 1948, § 66, No. 63, Acts of Parliament, 1948 (India).

¹⁴ *Id. r. 43-A.*

¹⁵ Central Civil Services (Leave) (Amendment) Rules, 2023, Gaz. of India, pt. II, sec. 3(i) (notified by the Ministry of Personnel, Public Grievances, and Pensions).

¹⁶ Paternity Benefit Bill, 2017, Lok Sabha (2017).

¹⁷ Maternity Benefit Act, 1961, § 5(4), No. 53, Acts of Parliament, 1961 (India).

b) Judicial Interpretations and Gender-Specific Policies

Indian courts have been essential in interpreting and extending the use of maternity leave legislation, making sure that they are consistent with the social justice and equality tenets of the constitution. Although women's rights have been the main emphasis of these interpretations, they also highlight the judiciary's dedication to expanding the range of protections provided by the Maternity Benefit Act of 1961.

The Supreme Court reviewed the denial of maternity benefits to a woman who had children from her husband's previous marriage in the case of *Deepika Singh v. Central Administrative Tribunal*¹⁸. The decision of the court confirmed that such a rejection violated the constitutional right to equal treatment and protection of motherhood (Articles 14 and 15) as well as legal requirements of protection of the mother. The decisions emphasize that maternity entitlements, including all forms of maternity leave, are essential to protect the health and dignity of all women, regardless of marital status or family arrangements.

The progressive development of maternity law through jurisprudence has also been supported by several important judgments. The Supreme Court made it clear in *B. Shah v. Presiding Officer, Labour Court*,¹⁹ that Sundays were part of the week defined by the Maternity Benefit Act; therefore, ensuring that working women receive the full entitlement to their leave. In *Rasitha C.H. v. State of Kerala & Anr.*,²⁰ the Kerala High Court extended maternity benefits to contract labourers, indicating that these entitlements extend far beyond statutory obligations or contracts to encompass broader issues of health and dignity.

In *Pooja Jignesh Doshi v. The State of Maharashtra*²¹, the Bombay High Court provided clarification regarding paternal leave for fathers and leave for commissioning mothers from surrogacy. These rulings demonstrate the flexibility of the courts regarding changes in family structures and caregiving relationships.

While there have been many recent developments extending the scope of maternity benefits, the majority of these have focused solely upon the rights of women and none have addressed the issue of parental leave or joint care-giving responsibilities. At this time, the courts have not

¹⁸Deepika Singh v. Cent. Admin. Tribunal, (2022) 7 SCC 73.

¹⁹ B. Shah v. Presiding Officer, Labour Court, AIR 1978 SC 12.

²⁰ Rasitha C.H. v. State of Kerala & Anr., (2016) 7 SCC 731.

²¹Pooja Jignesh Doshi v. State of Maharashtra, (2018) 3 SCC 224.

established a definitive framework for equitable caregiving based on gender.

These decisions of the courts with respect to providing protections for maternity benefits indicate the role of the judiciary in promoting social justice and equality. It will require both legislative and judicial actions to create a comprehensive structure that addresses the disparity that exists currently in terms of the lack of attention paid to policies related to gender neutral parenting and paternity leave.

II. INTERNATIONAL LEGAL FRAMEWORKS ON PARENTAL LEAVE

Parental Leave Laws Across the World Have Been Amended to Better Represent Cultural Changes and Create Equal Opportunities for Men and Women When it Comes to Caring Responsibilities for Children. The majority of countries and international organizations have developed a framework to support joint responsibility between both parents through comprehensive gender-neutral parental leave programs. International Practices are evaluated within this document as well as recommendations made regarding potential parental leave law amendments in India.

ILO Guidelines and Suggestions

Maternal health is protected through ILO guidelines to protect mothers at work. The ILO Maternity Protection Convention No. 183 was adopted in 2000.²² A global minimum of fourteen (14) weeks of paid maternity leave with an additional six (6) weeks of unpaid mandatory postpartum leave.²³ Cash benefits for maternity leave are to be funded from public sources such as social insurance funds or government funds, rather than placing the full cost burden on employers.²⁴ In addition to supporting an extension of maternity leave to 18 weeks, Maternity Protection Recommendation No. 191 offers measures for flexibility for parents, workplace health protection, and nursing breaks.²⁵

Despite these strong recommendations, many countries implement them differently, particularly in developing countries where the informal sector predominates. Despite providing 26 weeks of maternity leave under the Maternity Benefit Act, 2017, India has not yet fully

²² Maternity Protection Convention, 2000, art. 4, June 15, 2000, 2181 U.N.T.S. 277.

²³ *Id.* art. 4(1).

²⁴ *Id.* art. 6.

²⁵ Int'l Labour Org., Maternity Protection Recommendation, No. 191 (2000).

extended these benefits to informal workers, resulting in a sizable social protection gap.

Directives on Parental Leave from the European Union

One of the main policies of the European Union (EU) to promote workplace equality is gender-neutral parental leave. In order to ensure that both parents actively participate, member states are required under the 2019 Work-Life Balance Directive to provide at least four months of parental leave per parent, with two months of such leave being non-transferable.²⁶ A minimum of 14 weeks of maternity leave is also required by the Directive on Pregnant Workers (92/85/EEC), which also includes special safeguards against discrimination in the workplace.²⁷

Sweden and Norway are prime examples of how these directives are put into practice. In order to encourage equitable caregiving responsibilities, Sweden permits 480 days of parental leave, with 90 days set up specifically for fathers.²⁸ In order to ensure that men actively participate in childcare, Norway's system offers parents an option between 49 weeks at full pay or 59 weeks at 80% pay, with a paternal quota of 15 weeks.²⁹ These regulations have improved gender equality in the workplace and effectively contested long-standing misconceptions about caregiving.

South Africa, Brazil, and Canada are examples of national models- A number of non-EU nations have also shown creative parental leave policies. In Canada, families can divide caregiving duties however they deem fit because mothers are entitled to 15 weeks of maternity leave and 69 weeks of shared parental leave.³⁰ To accommodate a range of family demands, payment alternatives include either 33% of earnings for a longer absence or 55% for a shorter one.³¹

Despite being progressive in providing 26 weeks of leave, India's maternity leave policy is not as inclusive or gender neutral as other countries.³² Traditional caregiving roles are maintained and prospects for shared responsibilities are limited by the lack of statutory paternity leave and

²⁶ Directive 2019/1158, of the European Parliament and of the Council of 20 June 2019 on Work-Life Balance for Parents and Carers, 2019 O.J. (L 188) 79.

²⁷ Council Directive 92/85/EEC, 1992 O.J. (L 348) 1.

²⁸ *Parental Leave Regulations*, Swedish Soc. Ins. Agency, <https://www.forsakringskassan.se> (last visited Oct. 2024).

²⁹ *Parental Leave Benefits in Norway*, Norwegian Lab. & Welfare Admin., <https://www.nav.no> (last visited Oct. 2024).

³⁰ *Maternity and Parental Leave Overview*, Gov't of Can., <https://www.canada.ca> (last visited Oct. 2024).

³¹ *Id*

³² Maternity Benefit (Amendment) Act, 2017, No. 6, Acts of Parliament, 2017 (India).

inadequate coverage for informal workers.

India may learn a lot from nations like Brazil and South Africa, which provide benefits to informal workers, and Sweden and Norway, where paternity quotas encourage father participation. Adopting such approaches will address workplace disparities and societal hurdles, promoting a fairer parental leave system, in addition to bringing India's laws into compliance with international standards.

III. CHALLENGES IN LEGAL CONTEXT

There are major weaknesses in India's maternity and parental leave laws that reinforce gender stereotypes and ignore the diverse nature of modern caregiving duties. The structural weaknesses in the existing laws are highlighted by the following challenges, such as:

a) Disparity in Adoption Leave Provisions

Under Indian law, adoptive parents are subject to significant disparities. With the exception of the 15 days of paternity leave allowed by the Central Civil Services (Leave) Rules, 1972, adoptive fathers are typically not eligible for the 12 weeks of leave that adoptive mother working in government jobs are entitled to under the Maternity Benefit (Amendment) Act, 2017. This discrepancy perpetuates the notion that childcare is primarily the mother's job and ignores the caregiving requirements of adoptive fathers. In addition to failing to encourage shared parenting, these unfair provisions distance men from actively providing care.³³

b) Lack of Adequate Leave for Single Fathers

The legal structure gives inadequate support for single fathers, who are completely excluded from maternity-like benefits. According to government law, single father get only 15 days of paternity leave while single mother receives standard maternity leave entitlements.³⁴ Government policy ignores the fact that both single dads and single moms have caregiving responsibilities. Lack of acknowledgment by government agencies regarding single father roles as caregivers, indicates an institutionalized prejudice against recognizing them as the primary caregiver.

³³ Central Civil Services (Leave) Rules, 1972, r. 43-A (as amended by 2023 Rules).

³⁴ *Id.*

c) *Lack of Gender-Neutral Caregiving Laws*

The laws governing parental leave in India are essentially biased in favor of mothers, disregarding fathers and other caretakers as equal partners in childcare. Despite being advanced in providing 26 weeks of paid maternity leave, the Maternity Benefit Act of 1961 does not include provisions for fathers beyond its restricted application to commissioning fathers in surrogacy situations.³⁵ Additionally, the Paternity Benefit Bill of 2017, which called for statutory paternity leave across all industries, has not been put into effect, leaving workers in the private sector reliant on corporate policy.³⁶ This results in a disjointed system that denies many families access to benefits related to equal leave.

d) *Neglect of Informal Sector Workers*

The majority of India's labour force, which works in the informal sector, is mainly exempt from the legal requirements for parental leave.³⁷ Informal workers are left to rely on employer discretion because the Maternity Benefit Act primarily pertains to women in regular employment. Socioeconomic disparities are made worse by the lack of a comprehensive legal framework for workers in the informal economy, which disproportionately affects lower-income households.³⁸

e) *Limited Judicial Recognition of Gender-Neutral Caregiving*

Even while the judiciary has taken progressive measures to broaden the definition of maternity leave—such as providing benefits to commissioning mothers and contractual workers—its primary focus is still on women's rights. Although significant court decisions such as *Deepika Singh v. Central Administrative Tribunal*³⁹ and *Pooja Jignesh Doshi v. The State of Maharashtra*⁵ have emphasized the importance of preserving maternity benefits, cases supporting paternity leave or gender-neutral caregiving legislation are notably lacking. The possibility of developing a more inclusive legal system is constrained by this lack of judicial emphasis.

³⁵ *Supra* note 11.

³⁶ *Supra* note 17.

³⁷ *Supra* note 30.

³⁸ *Supra* note 22.

³⁹ *Supra* note 19.

f) Inconsistent Provisions for Public and Private Sector Employees

Government workers are entitled to comparably greater benefits under the Central Civil Services (Leave) Rules, which include 15 days of paternity leave and 180 days of maternity leave. However, workers in the private sector are bound by the rules set forth by their specific companies, which frequently do not grant fathers or adoptive parents any statutory leave. This discrepancy reinforces sector-based and gender-based inequality by resulting in unequal access to benefits related to caregiving.

IV. PROPOSED LEGAL REFORMS

The following changes are suggested in order to fill the loopholes in India's parental leave laws and advance gender equality:

a) Implement Comprehensive Paternity Leave Laws

All sectors of India should implement statutory paternity leave, which would give fathers at least eight weeks of paid time off. This would promote a shift in culture towards shared parenting and align caregiving obligations.

b) Provide Partial Payment for Paternity Leave

Employers' financial concerns should be reduced and adoption could be encouraged by a partial compensation model that offers 50–70% of average earnings during paternity leave. This strategy, which was influenced by nations such as Canada, strikes a balance between financial viability and incentives for caregiving.⁴⁰

c) Ensure Equal Leave for Adoptive and Single Fathers

While single fathers should be given 26 weeks of leave equal to that of single women, adoptive fathers should be given the same 12 weeks of leave as adoptive mothers. Discriminatory gaps in caregiving provisions would be eliminated by such methods.⁴¹

⁴⁰ *Supra* note 28.

⁴¹ *Supra* note 11, § 5(4).

d) Increased Leave to Informal Sector Workers

To ensure equal protection for India's largest labour group, parental leave benefits should be extended to informal workers through a government-supported social security structure.

V. CONCLUSION

This report was an analytical examination of the parent leave and maternal leave policies in India. It identified critical areas of loophole in these policies that negatively impact gender equity and are now outdated as compared to today's modern family structures. Although the 1961 Maternity Benefit Act provides significant protections for employed mothers, it is still discriminatory toward women because it does not provide men and other caregivers e.g., adoptive fathers with similar rights. Some of the specific issues addressed in this report included, but were not limited to, the lack of paternity leave; inequitable provisions for adoptive versus single fathers; and the fact that employees in non-unionized sectors do not receive the same level of statutory entitlements. The courts have recently extended maternity leave, but neither the court system nor legislators have prioritized developing enforceable rules on paternity leave and/or gender-neutral caregiving.

This report provided comparative analyses of gender-neutral parental leave policies in countries such as Sweden, Norway, and Canada, and examined how they compare to international legal frameworks. These examples provide valuable lessons to India regarding gender equality and shared parenting responsibilities.

Recommendations in the report include enacting comprehensive legislation on paternity leave, paying a portion of the salary during paid paternity leave, providing single and adoptive fathers with equal leave time, and extending parental leave benefits to all employees regardless of whether they work in organized or unorganized employment.

To better support the diverse and increasing needs of families in India, there is a need to amend the current regulations surrounding parental leave. The implementation of the proposed recommendations will help foster a fairer and more gender equitable society in India while fostering an inclusive legislative structure that promotes both parents' participation in childcare responsibilities.

Future research may examine the potential cost/benefit analysis and employer views of

implementing gender neutral parental leave in India. Additionally, future research may address societal barriers to accepting paternity leave and how these factors impede development of legal reform.