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# **MATERNITY AND PATERNITY LEAVE LAWS:** **BALANCING LIFE AND CAREER**

AUTHORED BY - SRI VALLI M & PRATHIKSHA G.RAO

## **INTRODUCTION**

Maternity leave concept was recognised as important by countries all over the world as it helped enable women employees to carry on childbearing without the fear of any extortion on health or loss of pay. Apart from individual countries, international communities such as the International covenant on Economic, social and cultural rights, 1996 and international labour conventions have also come up with guidelines to encourage and promote maternity leave benefits.

In the year of 1975 the declaration the Declaration on equality of opportunity for women was adopted by the International Labour organisation in 2004 on its 92<sup>nd</sup> conference, and the members adopted resolutions which are relevant to extend maternity protection access and also help in the promotion of work life balance. (Bala, 2012). The ILO Maternity Protection Convention, 2000 also pointed out that protection of women during pregnancy should be a shared responsibility of the government and the society.

However, the Indian Government realised it falls short of the ILO recommendation. Realising this drawback, the Ministry of Labour with the help and advice from the Ministry of Women and child development agreed to amend the Maternity Benefit act of 1961. The Maternity (Amendment) bill 2017, was passed by Rajya Sabha on 11<sup>th</sup> of August, 2016 and by Lok Sabha on 9<sup>th</sup> of August 2017 along with the president's approval on 27<sup>th</sup> of March of the same year. (Maternity Benefit Act:1961) This amendment helped in increasing the maternity leave benefit of women working in the private sector from twelve weeks to twenty-six weeks. Apart from these measures like allowing nursing mothers to work from home even after the 26 weeks period if the employer agrees through a mutual understanding and agreement between both parties. However, the women employees with two or more kids will be allowed only 14 weeks instead of the 26-week time period. Similarly, commission mothers who use surrogate mothers to bear a child and mothers who adopt baby under 3 months are also entitled for a leave of 12

weeks. (Nair,2015)

## RESEARCH QUESTIONS

The current paper discussed 4 research questions, which are:

1. What role do maternity and paternity leave policies play in supporting work-life balance, and how do these policies influence the recruitment and retention of talent in different industries?
2. How do current maternity and paternity leave laws in India affect career progression and job satisfaction among working parents, and what improvements could be made to enhance their effectiveness?
3. In what ways do international labor standards and conventions influence the development and enforcement of maternity and paternity leave laws in India, and how effectively are these standards incorporated into national legislation?
4. How do the maternity and paternity leave policies in India compare to those around the world, in terms of duration, benefits, and impact on gender equality in the workplace?

## HISTORY OF MATERNITY LAWS IN INDIA

The Maternity leave concept in the constitution of India developed from the Maternity Benefit Act of 1961. According to this act working women in our country are given maternity leave up to a period of three long months along with full salary. The salary of a working women is calculated based on her daily wage or actual money she withdraws per month. For a woman to be eligible for this act the person should have worked in the work place for a minimum period of 80 days during the 12 months which is preceding her expected date of the delivery. If a woman fulfils the above-mentioned provisions and is therefore absent from her workplace the employer cannot dismiss her from work citing her absence from the place of work. Later to further strengthen the law in 1976 the Indian constitution included Article 42 of the Directive Principles which states that “The state shall make provisions for securing just and human conditions of work and for maternity relief” this Article helps the states to further develop strict laws state wise for the betterment of working expectant mothers and their children. (Johri,2017) Apart from these laws like Employees’ state insurance Act, 1948 and the central Civil services Rules, 1972 also help in providing maternity benefit to protect the interest of employees in the organized sector mainly during times like miscarriage and childbirth. (Madhok,2019).

## **PATERNITY LAWS IN INDIA**

Paternity laws in India are made with the help of Central Civil Services (Leave) Rules, 1972. However, these laws are applicable only to government employees. Based on this rule a male employee should have worked at least 80 days in the 12 months prior to the child's birth. Then he will be eligible for a paternity leave of 15 days. If he has less than two surviving children. Similar period of holiday of 15 days is given to commission fathers and fathers who opt for adoption in the government sector. However, India does not have any specific laws that mandates private sectors to provide Male employees with paternity leave benefits. However, if the employer chooses, they can provide their employees with such benefits. (Raha, 2016)

### **CASE-LAW DISCUSSING PARENTAL LEAVE LAWS IN INDIA**

#### **B.Saravanan vs The Deputy Inspector General Of Police**

In this case the petitioner 43 is an inspector in Tamil Nadu, his wife had conceived through IVF method. She faced complications in pregnancy therefore the petitioner has requested for a 90 days holiday for the special care of his wife to the Superintendent of Police (SP) through a special leave letter from 01/05/2023 to 29/07/2023. Looking into his leave letter the SP had granted him leave. But however, a day prior to the start of the paternity leave the SP sent a cryptic order cancelling the leave. As his leave was cancelled, he was asked to come to work however the petitioner challenge this through a writ. The petitioner's wife was about to give birth on 30/5/2023 and the petitioner hence approached the lower court the court dismissed the issue by stating the petitioner to rejoin to duty by 16/06/2023 and asked the respondent to revisit the issue. Based on the court order the petitioner resubmitted his representation to the respondent to grant him leave from 01.05.2023 to 15.06.2023. The respondent after revisiting the issue granted leave from 01/05/2023 to 30/05/2023. However, the delivery was delayed and the respondent's wife gave birth on 31/05/2023. The petitioner informed this to the respondent through a WhatsApp text. As his wife was weak, he also asked for extension of his leave. However, an impugned order was issued asking him to appear before the DIG of Police with 60 days of commencement of desertion and asked him to submit an explanation for his long leave.

The court here ruled in favour of the petitioner and quashed the impugned order it also considered the child's right to survive, live and develop under Article 21 of the constitution. (B.Saravanan v. The Deputy Inspector General Of Police, 2023)

## CASE-LAWS DISCUSSING MATERNAL LEAVE LAWS IN INDIA

### **Air India vs Nargesh Meerza**

This is a landmark case decided by the Supreme court of India in the year 1981. In this case female employees of Air India challenged Air India's discriminatory workplace policy which asked the female flight attendants to resign their jobs if they were married 4 years post their posting, reaching 35 years or pregnancy while such rules were not applicable to male flight attendees. Here the petitioners argued that these policies were discriminatory in nature and it violated Articles 14 and 16 of the constitution.

However, Air India on the other side argued that it was necessary for the smooth function of the Airlines. The court held that the policy in itself was arbitrary in nature and it was discrimination on a particular sex. Right now, Air India provides up to 26 weeks of Maternity leave for its women employees. (Air India v. Nargesh Meerza, 1981)

### **Dr. Mandeep Kaur v. Union of India**

In this case the petitioner was working as a contract employee in a state-run clinic in Himachal Pradesh. She has applied for Maternity leave of 180 days based on the maternity Leave policy however her request was rejected. (Dr. Mandeep Kaur v. Union of India, 2020)

Here the court said that the clinic comes under the ambit of section 2 of Maternity Benefit Act, 1961 hence the petitioner's request for maternity leave cannot be refused by the clinic. The court here also pointed out the case of *Municipal Corporation of Delhi v/s Female Workers and another, 2000* where the Supreme court held that maternity leave should be given to all employees despite being casual, permanent, or contractual employees.

### **J. Sharmila v. The Secretary to Government, Edu. Deptt. Madras (2010)**

In this case the petitioner was a government employee who took maternity leave for her second Pregnancy, however the employer refused to grant her the wages as per the maternity provisions stating that she already had twins and that it is her third child.

Here the court said that it does not matter how many kids a woman gets through one pregnancy the state should give importance to only a woman's health and not the number of babies she gets in a delivery. Hence the woman was granted wages for her entire time of second pregnancy. (J. Sharmila v. The Secretary to Government, Edu. Deptt. Madras, 2010)

## **INTERNATIONAL LABOUR STANDARDS AND THEIR INFLUENCE ON MATERNITY AND PATERNITY LEAVE LAWS IN INDIA**

Although maternity benefits were introduced in India in the 1960s, these laws underwent many changes post international recognition and adoption of the concept. Various women's rights groups brought international attention to the need for maternity benefit by lobbying to International Organizations. With an increase of women in the workforce, there was a need for policies with a female-centric approach. (Erin K. Fletcher et al., 2017).

Maternity has been a major concern of the International Labour Organization [ILO] since its inception, when the Maternity Protection Convention (1919) was adopted. In 1975, the ILO adopted the "Declaration on Equality of Opportunity for Women Workers", where maternity benefit was envisioned as an opportunity to create and enable work-life balance for women. (International Labour Office et al., 2010).

Traditionally, women were not part of the "working" sector, and tended mainly to the household. Even after joining the workforce, women were and are constantly subjected to lower pay and having to "prove themselves" to earn a seat at the table. Due to these issues, many working women do not have children, which is interesting in comparison to almost all working men having children (Ghosh, 2018). In order to give women an equal footing to have an established career without giving up their personal lives, the concept of maternity benefits was discussed.

During the 92<sup>nd</sup> ILO Conference in 2004, member states adopted resolutions to provide for maternity benefits. The protection of pregnant and postpartum women was considered a responsibility of the government and the society. (Ghosh, 2018)

The key-points discussed at the Conference (Du Travail, 2011) were:

1. **Scope of Maternity Protection:** There was an emphasis on the need to extend maternity benefits and pregnancy protection to all women workers, especially a need to include women working in the informal economy.
2. **Minimum Standards:** A minimum 14-week leave period was recommended and ILO's Maternity Protection Convention, 2000, also referred to as Convention 183, was reaffirmed.

3. Postnatal care: The conference also discussed postpartum mothers and breastfeeding support, including breastfeeding facilities and reducing stigma around breastfeeding in public spaces such as airports, stations, etc.

The resolutions included commitment to provide technical assistance to third world countries to develop effective maternity protection laws, to help them align with international standards, which reflected ILO's commitment to bringing a universal maternity benefit scheme.

The most prominent convention related to international parental leave laws is ILO Convention No. 183 and 191, both of which were adopted in the year 2000 and laid down basic standards of 14 weeks paid leave, along with the right of female employees to health protection, job security and non-discrimination.

These standards set a global benchmark, and the Indian Labour Ministry was encouraged to amend the Maternity Benefit Act, 1961 in 2017. The Act provided previously for 12 weeks of maternity, but was influenced by ILO ideals and recommendations. (Ghosh, 2018)

While India has not ratified Convention No. 183, the 2017 amendment to the Maternity Benefit Act shows India's commitment to align with international practices. The Amendment increased maternity leave for women employed in India to 26 weeks, making it one of the 42 countries where maternity leave exceeds 18 weeks, as of 2015. (*Maternity Protection: Compliance With International Labour Standards*, n.d.)

The amendment to the Maternity Benefit Act also introduces work-from-home arrangements, which are separate from the 26-week maternity leave, and must be mutually agreed upon by both the employer and employee. This provision intends to provide flexibility to nursing mothers to balance their child-care responsibilities, along with work responsibilities, especially at a stage when children need constant care, support, and attention. The Act also provides for creche services in the workplace.

Further, the amendment extends the provision of paid leave to commissioning mothers, which the Act defines as women who either use surrogates to bear a child, or adopt an infant under three months old. This provision is undoubtedly progressive for global standards, but it only provides for 12 weeks of paid leave, as opposed to 26 weeks for biological mothers.

What is more interesting and somewhat absurd is the inclusion of a mere 14-week paid leave for female employees who already have two or more children. This reduced leave and distinction implies that needs of mothers with multiple children are somehow less significant than first time mothers. (Ghosh, 2018)

The 2017 Amendment, although long overdue, faces some roadblocks and impediments in implementation and being of “real help” to working women. Some pertinent issues are:

1. Maternity period being recorded as non-performance: Companies, rather insensitive to their employees, record maternity leaves as periods of “non-performance.” This move adversely affects the employee because promotions are largely performance based and seldom tenure based. Unfortunately, it is not uncommon for companies to deny promotions to women who have returned from maternity leave, and this might be the reason the legislature is hesitant to increase maternity leave any further. (Johari, 2017)
2. Unorganized Sector: The women workforce of India’s unorganized sector requires higher standards of protection and implementation. There exist many cases of discrimination against women workers due to their menstrual cycle or pregnancy, which pushes women to leave their jobs and take on home-maker roles. For instance, contractors of the cane-cutting business in the sugar belt of Maharashtra have been forcing women workers to undergo hysterectomy surgery, that is, surgery to remove all or parts of the uterus, in a gross violation of human-rights. The plight of women in these sectors must be heard and the State must take responsibility to protect these women. (Jadhav, 2019)

The ILO’s concerns regarding maternity protection have remained the same since its inception – to preserve the health of mother and her newborn, and to help women successfully fulfill their work responsibilities, promoting a principle of equality of opportunity & non-discrimination between women and men. The scope of maternity leave has been expanded time and again, to include various minimum standards, and now, the father’s role in childcare and the need for paternity laws are also being highlighted. (International Labour Office et al., 2010).

Paternity leave usually refers to a short leave period for the father to care for his child and help the mother in her postpartum. This leave is usually provided immediately after the birth of the child. Unfortunately, there are no ILO standards with specific regard to paternity leave. (Ryder & International Labour Organization, 2014)

In 2009, the ILO recognized the need for fathers to spend time and care for their new-borns, and adopted a Resolution concerning gender equality. This resolution discussed inclusion of paid or incentivised paternity leave to provide better balance of work and family responsibilities.

In 1994, the ILO reported that, out of 141 countries, 41 had paternity leave provisions, and this number increased to 78, out of the total 167 countries. However, studies show that take-up rates of these leaves are minimal because of existing social norms that dictate that childcare is a “woman’s” responsibility. (Ryder & International Labour Organization, 2014)

In India, the primary legislation for paternity law is the Central Civil Services (Leave) Rules, 1972, which provides male government employees with 15 days [2 weeks] of paid paternity leave. The provision also states that such an opportunity to take 15 days paid leave can either be utilized before the birth of the child, or within six months after the birth [biological/adopted]. This provision is only applicable to central government employees, and there exists no law that mandates private and unorganized sector to provide for paternity leave policies. (Mukherjee, 2022)

In 2017, the Paternity Benefit Bill was introduced in the Rajya Sabha, and it aimed to safeguard the rights of working men, in relation to paternity rights. The bill extended its coverage to all sectors – government, private and unorganized, and provided that all male employees were entitled to two weeks of paid leave. It also discussed the working duration, payment, and overall paternity benefit schemes. In order to be eligible, a man must have worked in an establishment for a minimum of 80 days within the 12 months immediately preceding the delivery. It is interesting to note that the bill only provides paternity benefit to male employees with less than two children. Unfortunately, no such bill was passed in India. (Lobo, 2019)

Despite the fact that the private sector is not required legally to provide for paternity benefits, many companies in India create their paternity leave policy as a benefit for their employees. For example, TCS [Tata Consultancy Services], Wipro, and Zomato are known for their family-friendly paternity leave policies (Mukherjee, 2022). Further, the India judiciary has discussed case-laws pertaining to need of paternity benefits, by stating that:

1. In (Chander Mohan Jain v. N.K. Bagrodia Public School , 2009): The Delhi High Court held that all male employees of unaided private schools were entitled to paid paternity leave. In this case, a male employee’s salary was reduced and a request for paternity leave to take care of his wife and newborn was denied by the school.
2. In (Rakesh Malik v. State of Haryana , 2023): The petitioner sought the Court to

formulate paternity leave policy or provide directions for a paid leave policy, but unfortunately, no such policy was formed.

## **COMPARATIVE ANALYSIS OF MATERNITY AND PATERNITY LEAVE POLICIES ACROSS THE GLOBE**

Maternity and paternity leave policies play a crucial role in promoting gender equality in the workplace. Moreover, attention and care from both parents is important for the child's growth. In this context, it is not only important to assess India's policies, but also important to understand how they compare to policies implemented globally.

Comparative analysis of Maternity and Paternity Benefit Policies:

### ***1. United States of America***

The USA is the only developed country in the world that does not have any legislation or federal mandate on parental leave benefits. The Family and Medical Leave Act [FMLA] allows employees to take up to 12 weeks of leave without termination, but such leave is unpaid and caters only to certain employees and not working women at large. According to the USA Statistics Bureau, only a mere 11% of working women in the private sector have the opportunity to avail paid maternity leave and only 40% of working women are eligible under FMLA. (Digvijay, 2022)

This lack of legislation, and policies from private sector companies indicates the need for change in the US, which unfortunately thrives on an extremely capitalist society that does not take into account basic social and human needs.

In comparison, India's various provisions to maternity and policies regarding paternity laws are undoubtedly much more progressive. The USA needs to evaluate their working conditions and promote better living and work-life balance.

### ***2. The United Kingdom***

The U.K., unlike the US, provides for an extremely comprehensive parental leave benefit scheme. Working women are offered 52 weeks of maternity leave, with 39 weeks of paid leave, where the first 6 weeks they are paid 90% of their earnings, which is then followed by 33 weeks of earnings at the statutory rate decided by the legislation. Fathers in the U.K. are entitled to 2 weeks of paid paternity leave, and the country also offers a shared parental leave with earnings provided at a statutory rate. (Santhiya et al., 2023)

These policies promote gender equality and reduce discrimination by encouraging women to take the time needed during their pregnancy and post child-birth. Moreover, it encourages fathers to take up an active role in childcare and reduces the burden of the mother.

### **3. Norway**

Norway has one of the best maternity policies in the world, and provides 49 weeks of paid leave at 100% of the woman's earnings or 59 weeks at 80% of her earnings. It also allows fathers to take 15 weeks of 100% paid leave, and provides for schemes to increase parental leave post this stipulated period. (Santhiya et al., 2023)

### **4. Netherlands**

Pregnant employees in the Netherlands are entitled to at least 16 weeks of paid leave, divided into 6 weeks pre-birth and at least 10 weeks post. Fathers are provided 5 weeks of paid leave within 6 months of the child's birth, at 70% of the salary. Mothers are entitled to receive 100% of their earnings for the first 6 weeks and 70% for the remaining weeks. Further, parents are allowed to take up to 26 weeks of unpaid parental leave until the child turns 8.

Apart from this, employees in the Netherlands also receive a maternity care package, which includes essentials for childcare. Safe and standardized public day care is available for all children under the age of 7, the provision of which is to help the mother manage her work responsibilities without the stress of childcare responsibilities. (Ngene, 2024)

Although Indian provisions offer creche facilities, it must be noted that the government does not take any responsibility in setting up such daycares and the same is unfairly placed on the employer. The Netherlands serves as an example for India to change its childcare policies to better benefit working parents with children.

### **5. China**

While China's society, like most Asian countries, does enforce the stereotypical role of a woman as a mother and homemaker and man as a father and breadwinner, Chinese leave policies do provide for gender equality and encourage parental involvement in childcare.

The maternity leave for a child is 98 days paid, with additional time up to 158 days depending on local regulations. Fathers however were usually entitled to only one week [7 days] of paid leave. These policies could be improved by increasing the father's leave period, in order to change the idea that the mother is solely required to tend to her newborn. (Wu, 2023)

To summarize, while India is a leading nation with undoubtedly progressive laws regarding

maternity and paternity leave, there remains much to be improved on in the future. A comparison with leading countries in the world, except the USA, shows that India is lagging behind, and such a fact is seen with the low number of women in positions of power in the workplace and harassment of women in the workforce – with sometimes subtle discrimination against menstrual cycles and pregnancy issues. The 2017 Amendment was much needed, to move forward from 1961, but in today's world – there need to be more changes to bring real-world implementation and realise the dream of social justice in our country.

## CONCLUSION

Although India's maternity and paternity laws have significantly improved over the years in our country through amendments and court Judgements there still remain few drawbacks. Although laws in India have helped improve the maternity leave benefits from prior 12 weeks to present 26 weeks still there remains a huge scope for improvement. Some countries like Sweden, Bulgaria, Greece etc offer up to a year of maternity leave (Singh,2016). India also should improve its maternity leave programs in similar ways to encourage good parental bonds for children from a very young age. Maternity benefits apply primarily to just organized sectors, women working in unorganized sectors and daily laborers still don't get the benefit of these paid leaves. These women don't have the proper access to court facilities too and are unaware of the country's laws so many times they are unable to avail the benefits. Government therefore should create more awareness among these women. Although the court has given judgements to consider even adoption and surrogacy arrangements same as biological childbirth there still remains sectors which do not provide proper maternity leave to women if they undergo adoption or get a child through a surrogate mother. From the above-mentioned cases we can figure out that women had struggled for a long time through litigation battles to achieve their basic rights. For example, Air India changed its policies only after it was directed by the court to do so. Similar situations can also be seen in cases like *Dr. Mandeep Kaur v. Union of India*, *J. Sharmila v. The Secretary to Government, Edu. Deptt. Madras* Where women had to struggle for years to get the rights provided to them by the Government. More Awareness programs should be arranged by government and other private organizations to create awareness among employees and employers about maternity leaves and its importance. In the case of paternity laws, they are completely underdeveloped in our country. Currently the government provides only 15 days of holiday for its employees whereas in the case of private it is completely at the discretion of the company to decide whether to provide or not. As a result, many private companies don't provide such facilities to male employees.

Parenthood is very important for a child's development and it can be only achieved when both the parents equally contribute to the child's development. Lack of holidays or minimum number is inadequate for fathers who want to actively help their partners in child rearing. However, there are many countries like Norway, Iceland, and the Netherlands which actually provide fathers adequate holidays to support their partners. The Indian government should also introduce laws to increase the present holidays in the government sector and introduce paternity holidays in the private sector. Apart from this the government should also make facilities to provide paternity holidays for single fathers and same sex couples.

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