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# **REIMAGINING CARE IN THE WORKPLACE: PATERNITY LEAVE, GENDER EQUALITY AND THE MISSING ARCHITECTURE OF SUPPORT IN THE INDIAN LABOUR LAWS**

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## **Abstract:**

The discourse on workplace equality has increasingly emphasized the need to recognize caregiving as a shared social and family responsibility rather than an obligation borne solely by women. In India, The Maternity Benefits Act historically concentrated on upholding maternity rights which offers statutory maternity leave and accompanying benefits for female employees. However, the legal recognition of paternity leave is still restricted and dispersed, especially in the private sector, despite advancements in maternity protection. This disparity is a reflection of a large structural problem in the new Indian labour laws' framework, which mainly lacks sufficient provisions encouraging parental engagement with childcare.

This research paper examines the concept of shared parental responsibility in relation to labour law reform and equality in the workplace. It examines critically how the lack of comprehensive paternity leave legislation is a "missing architecture of support" in India's changing labor law structure. The study also assesses how these disparities affect gender-equality in the workplace, specifically with regard to hiring techniques, professional development, and the ongoing gendered division of caregiving responsibilities. The research paper also attributes constitutional principles of equality and non-discrimination under Articles 14, 15, and 21 of the Indian Constitution. The study emphasizes the prospective benefits of parental leave policies that are inclusive of all genders.

The paper concludes by advocating for the integration of structured paternity leave provisions within the new Indian labour laws, arguing that such reforms are essential for fostering shared parenting responsibilities, reducing gender disparities in employment, and building a more equitable and supportive workplace environment.

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## **Traditional Gender Roles and Division of Labour**

Caregiving, in the socio-legal context, refers to the provision of physical, emotional, and psychological support necessary for the well-being of dependents, including children, the elderly, and persons with disabilities. Traditionally confined to the private sphere, caregiving has long been perceived as an informal and unpaid activity performed within households. However, contemporary legal and policy discourse increasingly recognizes caregiving as a matter of public concern, closely linked to labour rights, gender justice, and social welfare.<sup>2</sup>

From a legal perspective, caregiving intersects with employment law, social security systems, and constitutional guarantees. It directly influences workplace entitlements such as maternity and parental leave, flexible working arrangements, and social protection measures. The failure to adequately recognize caregiving responsibilities within labour law frameworks often results in structural inequalities, particularly for women, who disproportionately bear the burden of unpaid care work.<sup>3</sup>

The division of labour within families has historically been shaped by patriarchal norms that assign distinct roles to men and women. Women have traditionally been regarded as primary caregivers responsible for domestic work and child-rearing, while men have been positioned as economic providers engaged in paid employment.<sup>4</sup>

This gendered allocation of responsibilities has profound implications for equality in the workplace. It restricts women's access to employment opportunities, limits career advancement, and contributes to persistent wage gaps. Legal frameworks have often reinforced these roles by focusing predominantly on maternity protection without imposing corresponding caregiving obligations on men.<sup>5</sup>

The unequal distribution of unpaid care work also results in what scholars describe as the "double burden," wherein women are required to balance professional responsibilities with

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<sup>2</sup> International Labour Organization (ILO), *Care Work and Care Jobs for the Future of Decent Work* (2018).

<sup>3</sup> UN Women, *Progress of the World's Women 2019–2020: Families in a Changing World* (2019).

<sup>4</sup> Sylvia Walby, *Theorizing Patriarchy* (Basil Blackwell, 1990).

<sup>5</sup> Government of India, *Maternity Benefit Act, 1961* (as amended in 2017).

extensive domestic duties.<sup>6</sup> This imbalance perpetuates stereotypes that caregiving is inherently a female responsibility, thereby reinforcing systemic discrimination in both the public and private spheres.

Although social and economic transformations, including increased female workforce participation and urbanization, have begun to challenge these traditional roles, deeply embedded cultural norms continue to influence both policy and practice.

### **Emergence of Shared Parenting Ideology**

The emergence of shared parenting represents a paradigm shift from traditional gender roles toward a more equitable distribution of caregiving responsibilities. This ideology is grounded in the principle that both parents have an equal role in the upbringing and development of children, irrespective of gender.<sup>7</sup>

Shared parenting aligns with broader constitutional and human rights principles, particularly those relating to equality, dignity, and non-discrimination. It challenges entrenched stereotypes by encouraging men to actively participate in caregiving and recognizing such participation as essential to achieving substantive gender equality.<sup>8</sup>

In legal discourse, this shift has led to increasing advocacy for gender-neutral parental leave policies, including statutory paternity leave and shared parental leave frameworks. Such policies not only promote work-life balance but also mitigate workplace discrimination against women by normalizing caregiving as a joint responsibility.<sup>9</sup>

Comparative international experiences demonstrate that inclusive parental leave policies can significantly alter social attitudes and reduce gender disparities in employment.<sup>10</sup> However, in India, the absence of comprehensive paternity leave legislation highlights a gap between evolving social norms and existing labour law frameworks.

The institutionalization of shared parenting, therefore, requires both legal reform and a

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<sup>6</sup> Arlie Russell Hochschild, *The Second Shift: Working Families and the Revolution at Home* (Penguin, 1989).

<sup>7</sup> OECD, *Parental Leave Systems* (OECD Family Database, 2020).

<sup>8</sup> Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (New Press, 2004).

<sup>9</sup> International Labour Organization (ILO), *World Social Protection Report 2020–22*.

<sup>10</sup> Janet C. Gornick & Marcia K. Meyers, *Families That Work: Policies for Reconciling Parenthood and Employment* (Russell Sage Foundation, 2003).

transformation in societal attitudes. Recognizing caregiving as a shared responsibility is essential for building an equitable workplace and achieving genuine gender equality.

### **Legal Framework Governing Maternity Benefits in India**

The Maternity Benefit Act, 1961 forms the cornerstone of maternity protection in India, aiming to safeguard the employment and well-being of women during and after childbirth. It provides paid maternity leave, prohibits dismissal during maternity, and ensures financial and medical support, thereby recognizing maternity relief as a key aspect of labour welfare and social justice.<sup>11</sup> The Act reflects India's alignment with global standards promoted by the International Labour Organization, which emphasize the protection of motherhood as an essential labour right.<sup>12</sup>

Significant reforms were introduced through the *Maternity Benefit (Amendment) Act, 2017*, which extended paid maternity leave from 12 to 26 weeks, making it one of the more progressive policies globally.<sup>13</sup> The amendment also included benefits for adoptive and commissioning mothers, mandated crèche facilities in certain establishments, and introduced flexible work arrangements such as work-from-home options.<sup>14</sup> These provisions have contributed to improved maternal health, job security, and better work-life balance for women, marking an important advancement in labour law.

However, the maternity-centric nature of the framework presents notable limitations. The absence of statutory paternity leave reinforces traditional gender roles and places the burden of caregiving primarily on women, thereby perpetuating workplace inequality.<sup>15</sup> Additionally, the employer-funded model may lead to hiring biases against women, and the Act's limited applicability excludes a large portion of women in the informal sector.<sup>16</sup> Therefore, while the Act is a significant step forward, a more inclusive approach incorporating paternity and parental leave is essential for achieving substantive gender equality.

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<sup>11</sup> Government of India, *Maternity Benefit Act, 1961*.

<sup>12</sup> International Labour Organization, *Maternity Protection Convention, 2000 (No. 183)*.

<sup>13</sup> Government of India, *Maternity Benefit (Amendment) Act, 2017*, § 5.

<sup>14</sup> *Id.*

<sup>15</sup> UN Women, *Progress of the World's Women 2019–2020*.

<sup>16</sup> International Labour Organization, *Women and Men in the Informal Economy* (2018).

## Status of Paternity Leave in India

Unlike maternity protection under the Maternity Benefit Act, 1961, India lacks a comprehensive statutory framework governing paternity leave. There is no uniform legislation mandating paternity benefits across sectors, and existing labour laws remain largely silent on the issue.<sup>17</sup> Although proposals such as the Paternity Benefit Bill have been introduced from time to time, none have been enacted into law, resulting in a fragmented and inadequate legal position. This absence reflects a broader policy gap and reinforces the traditional perception of caregiving as primarily a maternal responsibility.<sup>18</sup>

In the government sector, limited provisions for paternity leave do exist. Male employees working under central government rules are entitled to a short duration of paid paternity leave, typically around 15 days, to be availed around the time of childbirth or adoption.<sup>19</sup> While this marks some recognition of paternal involvement, the duration and scope remain minimal compared to maternity benefits. Moreover, these provisions are restricted to government employees and do not extend universally across the workforce.

In the private sector, the availability of paternity leave is largely dependent on individual corporate policies rather than statutory mandates. Some progressive organizations have introduced paternity or parental leave policies to promote work-life balance and gender equality, while many others provide little to no such benefits.<sup>20</sup> This results in inconsistency and unequal access across industries. Consequently, a significant gap persists between maternity and paternity benefits in India, both in terms of legal recognition and practical implementation. While maternity leave has been expanded to 26 weeks under the 2017 amendment, paternity leave remains minimal or absent, thereby reinforcing gendered divisions of caregiving and contributing to workplace inequality.<sup>21</sup>

### The “Missing Architecture of Support” in Indian Labour Laws

The framework of Indian labour law, despite undergoing significant reforms in recent years, continues to exhibit structural gaps in addressing caregiving responsibilities in a holistic manner. While protections for women have been strengthened through laws such as the

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<sup>17</sup> Government of India, *Maternity Benefit Act, 1961* (no provision for paternity leave).

<sup>18</sup> International Labour Organization, *World Social Protection Report 2020–22*.

<sup>19</sup> Government of India, Central Civil Services (Leave) Rules, 1972.

<sup>20</sup> UN Women, *Progress of the World's Women 2019–2020*.

<sup>21</sup> International Labour Organization, *Care Work and Care Jobs for the Future of Decent Work* (2018).

Maternity Benefit Act, 1961, the broader legal architecture fails to incorporate a gender-inclusive approach to parental care.<sup>22</sup> Labour reforms have largely focused on consolidation and simplification of laws rather than reimagining social support systems within the workplace. As a result, caregiving continues to be treated as a gender-specific issue rather than a shared societal responsibility, revealing a critical absence of institutional support mechanisms.

An analysis of the newly enacted Labour Codes—namely the Code on Wages, 2019, Industrial Relations Code, 2020, Occupational Safety, Health and Working Conditions Code, 2020, and Code on Social Security, 2020—further highlights this gap. Although these Codes aim to modernize labour regulations and expand social security coverage, they remain largely silent on the issue of paternity leave and gender-neutral parental benefits.<sup>23</sup> The continued reliance on maternity-centric provisions, without integrating corresponding paternal or shared parental leave policies, demonstrates a lack of alignment with evolving global standards and constitutional principles of equality.

This policy imbalance has significant implications for caregiving responsibilities and workplace equality. By placing the primary burden of childcare on women, the legal framework reinforces traditional gender roles and contributes to discrimination in hiring, promotion, and retention of female employees.<sup>24</sup> It also discourages active paternal involvement in early childcare, thereby limiting the realization of shared parenting ideals. The absence of a comprehensive support structure not only perpetuates gender inequality but also undermines broader socio-economic goals, including increased workforce participation and equitable distribution of unpaid care work.<sup>25</sup> Addressing this “missing architecture of support” requires a shift toward inclusive labour policies that recognize caregiving as a shared responsibility and provide adequate legal backing for both parents.

### Constitutional Perspective

The Indian constitutional framework provides a strong foundation for promoting gender equality and protecting labour rights through its fundamental rights provisions. Article 14 of the Constitution of India guarantees equality before the law and equal protection of the laws to

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<sup>22</sup> Government of India, *Maternity Benefit Act, 1961*.

<sup>23</sup> Government of India, *Code on Wages, 2019; Industrial Relations Code, 2020; Occupational Safety, Health and Working Conditions Code, 2020; Code on Social Security, 2020*.

<sup>24</sup> UN Women, *Progress of the World's Women 2019–2020*.

<sup>25</sup> International Labour Organization, *Care Work and Care Jobs for the Future of Decent Work* (2018).

all persons. This principle mandates that any differentiation in legal treatment must be reasonable and non-arbitrary. In the context of labour laws, the absence of paternity leave and the exclusive focus on maternity benefits may raise concerns regarding substantive equality, as it places unequal caregiving burdens on women while limiting the role of men in childcare.<sup>26</sup>

Article 15 of the Constitution of India further strengthens this framework by prohibiting discrimination on grounds of sex, among others. While Article 15(3) permits the State to make special provisions for women and children, such protective discrimination must not reinforce traditional gender stereotypes.<sup>27</sup> The emphasis on maternity benefits without corresponding recognition of paternal responsibilities risks perpetuating the notion that caregiving is inherently a woman's role, thereby undermining the broader goal of gender equality.

Article 21 of the Constitution of India has been expansively interpreted by the judiciary to include the right to live with dignity, health, and livelihood. In the context of labour rights, this provision encompasses the right to humane working conditions and work-life balance.<sup>28</sup> The lack of a comprehensive parental leave framework affects not only women's dignity and autonomy but also restricts the ability of both parents to participate meaningfully in childcare, thereby impacting family life and personal well-being.

Judicial interpretation has played a crucial role in advancing gender equality and labour protections in India. In *Air India v. Nargesh Meerza*, the Supreme Court struck down discriminatory service conditions imposed on air hostesses, emphasizing equality in employment. Similarly, in *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, the Court extended maternity benefits to casual workers, recognizing maternity relief as a fundamental right linked to dignity under Article 21.<sup>29</sup> These judgments highlight the judiciary's progressive approach; however, the absence of parallel recognition of paternity rights indicates a continuing gap that must be addressed to achieve substantive gender equality in labour law.

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<sup>26</sup> Article 14 of the Constitution of India.

<sup>27</sup> Article 15 of the Constitution of India.

<sup>28</sup> Article 21 of the Constitution of India.

<sup>29</sup> *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*.

## Comparative Analysis with International Frameworks

A comparative analysis of international frameworks reveals that several countries have adopted progressive and inclusive parental leave policies that promote shared caregiving responsibilities. Nations such as Sweden and Norway are often regarded as global leaders in this domain. Sweden provides a comprehensive parental leave system that allows both parents to share up to 480 days of paid leave, with a portion reserved exclusively for fathers to encourage their participation in childcare.<sup>30</sup> Similarly, Norway has implemented a “father’s quota,” mandating a specific portion of parental leave for fathers on a use-it-or-lose-it basis, thereby institutionalizing paternal involvement. In contrast, the United Kingdom offers a Shared Parental Leave (SPL) system, enabling parents to divide leave between themselves, although uptake among fathers remains relatively low due to socio-economic factors.<sup>31</sup>

These international models highlight key best practices in designing gender-neutral parental leave policies. One significant feature is the concept of non-transferable leave for fathers, which ensures that paternal participation is not merely optional but actively incentivized.<sup>32</sup> Additionally, wage replacement mechanisms funded through social security systems, rather than solely by employers, help reduce discrimination in hiring and promote wider acceptance of such policies. Flexible leave arrangements and inclusive definitions of parenthood further contribute to creating a supportive and equitable framework for caregiving. For India, these models offer important lessons in bridging the gap between maternity and paternity benefits. The introduction of statutory paternity or shared parental leave, supported by state-funded mechanisms, could help redistribute caregiving responsibilities and reduce gender-based discrimination in employment.<sup>33</sup> Furthermore, adopting gender-neutral policies would align Indian labour laws with constitutional principles of equality and evolving global standards. Ultimately, integrating such best practices into the Indian context would not only strengthen labour protections but also foster a more balanced and inclusive approach to caregiving and workplace equality.

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<sup>30</sup> OECD, *Parental Leave Systems* (OECD Family Database, 2020).

<sup>31</sup> UK Government, *Shared Parental Leave and Pay* (2015).

<sup>32</sup> International Labour Organization, *World Social Protection Report 2020–22*.

<sup>33</sup> UN Women, *Progress of the World’s Women 2019–2020*.

## Challenges in Implementing Paternity Leave in India

The implementation of paternity leave in India faces significant cultural and societal barriers rooted in deeply entrenched gender norms. Caregiving has traditionally been viewed as a woman's responsibility, while men are expected to fulfill the role of primary breadwinners. This perception discourages men from actively participating in childcare and often stigmatizes those who seek leave for caregiving purposes.<sup>34</sup> As a result, even in organizations where paternity leave is available, its utilization remains limited due to social expectations and workplace culture, thereby hindering the broader acceptance of shared parenting.

Employer resistance and economic concerns also pose major challenges to the introduction of comprehensive paternity leave policies. In the absence of a state-funded framework, employers may be reluctant to bear the financial burden of providing paid leave to both parents.<sup>35</sup> This concern is particularly pronounced in small and medium enterprises, where workforce constraints and cost considerations play a critical role. Additionally, there is apprehension that expanding leave benefits could disrupt productivity and increase operational costs, leading to hesitation in adopting such policies voluntarily within the private sector.

Policy and enforcement issues further complicate the implementation of paternity leave in India. Unlike maternity benefits governed by the Maternity Benefit Act, 1961, there is no comprehensive legislation mandating paternity leave, resulting in fragmented and inconsistent practices across sectors.<sup>36</sup> The absence of a clear statutory framework leads to weak enforcement mechanisms and limited accountability. Moreover, a large portion of India's workforce is employed in the informal sector, where labour protections are minimal or non-existent, making it difficult to extend any form of parental leave benefits effectively.<sup>37</sup> Addressing these challenges requires not only legislative intervention but also a shift in societal attitudes and the development of supportive institutional mechanisms.

## Recommendations and Legal Reforms

A crucial step toward achieving gender equality in the workplace is the statutory recognition of paternity leave within the Indian legal framework. At present, while maternity benefits are governed by the Maternity Benefit Act, 1961, there is no corresponding legislation ensuring

<sup>34</sup> UN Women, *Progress of the World's Women 2019–2020*.

<sup>35</sup> International Labour Organization, *World Social Protection Report 2020–22*.

<sup>36</sup> Government of India, *Maternity Benefit Act, 1961*.

<sup>37</sup> International Labour Organization, *Women and Men in the Informal Economy* (2018).

paternity rights across sectors. Introducing a dedicated statutory provision for paternity leave would formally acknowledge the role of fathers in caregiving and help redistribute parental responsibilities more equitably.<sup>38</sup> Such recognition would also contribute to reducing gender-based discrimination in employment by normalizing caregiving as a shared duty rather than a female-specific obligation.

In addition, there is a pressing need to move beyond gender-specific benefits toward comprehensive gender-neutral parental leave policies. These policies should allow both parents to share leave, include non-transferable portions to encourage paternal participation, and provide adequate wage replacement through state-supported mechanisms.<sup>39</sup> Adopting such an approach would align India with global best practices and promote work-life balance, child welfare, and substantive equality in the workplace.

The integration of parental leave provisions into existing labour law frameworks, particularly the Code on Social Security, 2020, is essential for ensuring uniformity and effective implementation. Rather than treating maternity benefits in isolation, labour codes should incorporate a broader conception of family welfare that includes paternity and shared parental responsibilities.<sup>40</sup> This would also facilitate better enforcement and extend benefits across both formal and, gradually, informal sectors through structured social security mechanisms.

Finally, both the judiciary and policy-makers have a significant role to play in advancing this reform agenda. Courts can adopt a progressive interpretation of constitutional principles under Articles 14, 15, and 21 to recognize parental equality and caregiving rights, while the legislature must take proactive steps to enact inclusive policies.<sup>41</sup> Collaborative efforts between government institutions, employers, and civil society are necessary to create a supportive legal and social environment that fosters shared parenting and reduces gender disparities in the workplace.

## Conclusion

The examination of India's labour law framework highlights a persistent imbalance in the recognition of caregiving responsibilities, with a predominant focus on maternity protection

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<sup>38</sup> Government of India, *Maternity Benefit Act, 1961*

<sup>39</sup> International Labour Organization, *World Social Protection Report 2020–22*.

<sup>40</sup> Government of India, *Code on Social Security, 2020*.

<sup>41</sup> UN Women, *Progress of the World's Women 2019–2020*.

under the Maternity Benefit Act, 1961 and a notable absence of comprehensive provisions for paternity leave. While legislative developments, particularly the 2017 amendment, have significantly strengthened maternity benefits, they remain limited in addressing the broader concept of shared parental responsibility. This reflects a structural gap in the legal system, where caregiving continues to be treated as a gender-specific obligation rather than a collective social responsibility.

The lack of statutory paternity leave and gender-neutral parental policies reinforces traditional gender roles, placing a disproportionate burden on women and contributing to workplace inequalities. Such an imbalance affects hiring practices, career progression, and overall participation of women in the workforce. At the same time, it restricts men from actively engaging in early childcare, thereby limiting the realization of shared parenting ideals and perpetuating unequal divisions of unpaid care work.

Recognizing caregiving as a shared responsibility is crucial for achieving substantive gender equality. Inclusive parental leave policies can help redistribute domestic responsibilities, challenge entrenched stereotypes, and create a more supportive work environment. These reforms are not only beneficial for gender justice but also contribute to improved child development, enhanced family well-being, and increased economic productivity by enabling greater workforce participation.

In this context, the need for legal reform becomes imperative. The introduction of statutory paternity leave and the adoption of gender-neutral parental leave frameworks should form an integral part of India's evolving labour law regime. Integrating such provisions into existing labour codes and social security mechanisms would ensure uniformity, accessibility, and effective implementation across sectors.

Ultimately, reimagining care within the workplace requires a shift in both legal policy and societal attitudes. A comprehensive and inclusive approach to parental leave would bridge the existing gaps in the labour law framework and align it with constitutional principles of equality and dignity. Such reforms are essential for building a more equitable, progressive, and inclusive society where caregiving responsibilities are shared, valued, and supported.