
LACUNAS IN MATERNITY BENEFITS LAWS IN INDIA: A COMPARATIVE ANALYSIS WITH INTERNATIONAL STANDARDS

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ABSTRACT

Maternity benefits play an important role in ensuring wellbeing of working mothers and promoting gender equality. While the Maternity Benefit Act 1961 as amended in 2017 expanded maternity leave provisions in India, Significant legal gaps still persist, particularly in the exclusion of informal sector workers and limited provisions for paternity leave. This paper critically analysis India's maternity benefit laws comparing it with international standards. Including frameworks established by International Labour Organisation and policies of countries like Sweden, Canada and Norway etc. The steady highlights that India's legal framework disproportionately burdens women with responsibilities of caregiving while fails to accommodate single parents', adoptive parents and informal workers.

By identifying gaps in existing legal provisions and literature, this research aims to evaluate the effectiveness of maternity benefit laws of India end to propose reforms that align with global best practises. The paper outlines India's legal framework international comparison key shortcomings and recommendations for reform, emphasising the need for gender neutral parental leave, postnatal care support and inclusion of informal workers. The findings suggest that aligning India's maternity benefit policies with global practises that are progressive in nature would create more equitable, supportive and inclusive work environment for working parents.

Keywords: Maternity Benefits, Parental Leave Policies, Gender Equality, Informal Sector Workers, International Labour Standards.

INTRODUCTION

Maternity benefits are critical for improvement of the health and also well-being of working women as well as their children, as well as achieving the gender equality in the workplace. In India, the Maternity Benefit Act of 1961 is important statutory framework that governs maternity leave and related benefits for female employees.¹ While the Act was amended in the year 2017 to extend paid maternity leave to 26 weeks², which is a substantial improvement, significant gaps remain in the current structure. These inequalities not only affect women in the formal sector, but also leave informal sector workers without basic protections, causing an updated examination at current regulations.

This paper will compare India's maternity benefit laws to international standards and practices. The research aims to highlight the Indian system's strengths and flaws by investigating existing legal gaps in Indian legislation and comparing them to provisions in other nations. Through this study, the article will provide an understanding of how India's maternity benefits can be framed within a global framework, ultimately highlighting the importance of synchronizing local laws with successful international standards to ensure complete assistance for working mothers.

LEGAL FRAMEWORK OF MATERNITY BENEFITS IN INDIA

The main statute governing the maternity benefits in country is the Maternity Benefit Act 1961. The Act, enacted governs employment of women before and after childbirth, intends to provide maternity benefits and safeguard women's health and well-being.³

Main Provisions of the Maternity Benefits Act, 1961-

- i. *Applicability*: The Act applies to all of the establishments that employ women, including factories, mines, and plantations.⁴ However, it is not applied to establishments insured by the Employees' State Insurance Act, 1948, unless specified otherwise.⁵

¹The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (India).

²The Maternity Benefit (Amendment) Act, 2017, No. 6, Acts of Parliament, 2017 (India).

³The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (India).

⁴ The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961, § 1(3) (India).

⁵The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961, § 2(e) (India).

- ii. *Time frame of Maternity Leave*: The initial legislation provided for no more than of 12 weeks of maternity leave. The Maternity Benefit (Amendment) Act 2017 increased this to leave of 26 weeks for mothers who have less than two surviving children. For families with two or more living children, the longest possible period remains at 12 weeks, allowing for a flexible approach.⁶
- iii. *Eligibility requirements*: To get eligible for maternity benefits, a woman is required to worked for at least of 80 days in the 12 months preceding her anticipated delivery date, as per modifications made in 2017.⁷The purpose of this adjustment is to promote inclusivity, especially for women who may work irregular hours in the informal sector.
- iv. *Medical Bonus*: According to the Act, if the employer does not give free prenatal or postnatal care, then each woman eligible for maternity benefits must receive a medical bonus.⁸
- v. *nursing Breaks*: Every mother who returns to work is entitled to 2 nursing breaks per day till the time her child turns 15 months old or older.⁹ Additionally, businesses employing 50 people or more are required by the 2020 Code- Occupational Safety, Health, and Working Conditions to provide childcare facilities. Employers must permit mothers to visit the childcare facility 4 times a day, including rest time.¹⁰

Additional Relevant Laws

Other laws and regulations offer further maternity and parental benefits on addition of those provided by the Maternity Benefit Act:

- i. *Act of 1948 Concerning Employees' State Insurance*: This Act gives insured organized sector women employees access to maternity benefits, including 12 weeks of paid leave and prenatal and postpartum medical care.¹¹

⁶The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961, § 5 (India).

⁷The Maternity Benefit (Amendment) Act, 2017, No. 6, Acts of Parliament, 2017, § 5(2) (India).

⁸The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961, § 8 (India).

⁹ The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961, § 11 (India).

¹⁰The Code on Occupational Safety, Health and Working Conditions, 2020, No. 37, Acts of Parliament, 2020 (India).

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

- ii. *The 1972 Central Civil Services (Leave) Regulations*: Under these regulations, men working as employees of the central government are granted 15 days parental paid leave for the birth of child, to be utilized either before or within six months after the child's delivery.¹² This clause emphasizes the need for a more balanced approach to parental leave and recognizes the role that fathers undertake in providing care.
- iii. *Central Civil Services (Leave) (Amendment) Rules, 2023*: These regulations provide male central government employees with 15 days of paternity leave if they take a child in foster care prior to adoption or if they legally adopt a child under one year of age. This leave must be utilized within six months from the date of accepting the child.¹³ On the other hand, in comparable circumstances, female employees are entitled to 180 days (6 months) of child adoption leave. This discrepancy emphasizes the need for more equitable caregiving frameworks by highlighting the varying degrees of support given to mothers and fathers throughout the adoption process. This disparity emphasizes how mothers and fathers are given different caregiving responsibilities during adoption, despite the fact that it is a non-physical occurrence.
- iv. *The National Food Security Act of 2013*: it supports overall maternal health by providing advantages related to maternal nutrition, including as food security for expecting and nursing mothers.¹⁴
- v. *Provisions for Single Parents*: At present, Indian law lacks specific provisions for either maternity or paternity leave that are intended exclusively for single parents. Under Central Civil Services (Leave) Rules, single fathers employed by the central government may be eligible for paternity leave, while single mothers can take advantage of the maternity leave benefits now given under the Maternity Benefit Act, 1961. This disparity emphasizes the necessity of changing the law to include more inclusive measures that provide equal support to single parents.
- vi. In India, the Janani Suraksha Yojana (JSY) got introduced in 2005 with the goal of reducing maternal and new born deaths through the promotion of institutional births,

¹²The Central Civil Services (Leave) Rules, 1972, Ministry of Personnel, Public Grievances and Pensions (India).

¹³The Central Civil Services (Leave) (Amendment) Rules, 2023, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Notification, 15 May 2023 (India).

¹⁴ The National Food Security Act, 2013, No. 20, Acts of Parliament, 2013 (India).

especially in states with poor performance, such as Uttarakhand. Only 38.7% of rural women used the program, despite the fact that 78.42% of women giving birth in government hospitals were registered with medical staff. This study highlights the stark differences in access to maternity benefits between rural and urban slums, where utilization was higher (83.64%).¹⁵

This emphasizes how crucial it is to increase outreach and oversight in order to guarantee that women from all socioeconomic backgrounds have equal access to maternal health care.

Amendments and the challenges

The Maternity Benefit (Amendment) Act, 2017, stated safeguards for commissioning mothers and adoptive mothers, giving them maternity benefits for a duration of 12 weeks from the date the child is given to them.¹⁶ Even with these developments, there are still significant obstacles in the way of properly putting the Act into practice, especially when it comes to the exclusion of workers in the informal sector. These women's coverage gap emphasizes the necessity of a comprehensive maternity benefits strategy that guarantees protection for all working mothers.

There is a crucial need for comprehensive reforms to bridge these gaps and align India's local laws with effective international standards as the country navigates the complexities of modern family dynamics. The following comparison will examine India's maternity and paternity benefits in comparison with standards globally, offering valuable insights for potential improvements to support Working parents of India.

Judgements-

Municipal Corporation of Delhi v. Female Workers (Muster Roll), 2000¹⁷ - In this case Supreme Court ruled that maternity benefits should not be limited to these regular employees. The court held that female workers employed on a muster roll (temporary or daily wage workers) are also entitled to maternity benefits, ensuring greater protection and equality for all working women.

¹⁵Parul Sharma, Jayanti Semwal & Surekha Kishore, A Comparative Study of Utilization of Janani Suraksha Yojana (Maternity Benefit Scheme) in Rural Areas and Urban Slums, 23 Indian J. Cmty. Health 11, 11–14 (2011).

¹⁶The Maternity Benefit (Amendment) Act, 2017, No. 6, Acts of Parliament, 2017, § 2(ba) (India).

¹⁷*Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, (2000) 3 SCC 224 (India).

*Sasikala Devi v. Central Provident Fund Commissioner, 2021*¹⁸- The Madras High Court's decision upheld women's entitlement to maternity benefits even in settings without official employment contracts. It reaffirmed that maternity benefits need to be provided to all people, regardless of their state of employment.

*Deepika Singh v. Central Administrative Tribunal, 2022*¹⁹- Supreme Court in this case said that a woman who had children from her husband's prior marriage should be eligible for maternity benefits under central government regulations. Refusing such benefits would be against both fundamental principles for protection of maternity and right to equality.

INTERNATIONAL LEGAL FRAMEWORK ON MATERNITY BENEFITS

Internationally maternity benefits are considered as an important component of a worker's right various international instruments including instruments established by International Labour organisation and national legal frameworks which are progressive, ensures that maternity protection is not just a right but a fundamental to gender equality in a workplace. This section deals with international conventions and national regulations that provides important safeguards for working mothers regarding maternity benefits.

1. ILO Conventions on Maternity Protection

International Labour organisation has played a very important role in setting up international standards for maternity protection the following guidelines and framework define the standards for maternity benefits:

- i. *ILO Convention on Maternity Protection (C183)*: This convention is adopted in 2000 and is the most comprehensive global standard for maternity protection it recommends for a minimum of fourteen weeks of paid leave for working mothers and also financial benefits that covers either the full salary or substantial portion during their leave. In addition, the convention requires non-discrimination against pregnant women in all fields, medical care, job stability, and health protection.

¹⁸Sasikala Devi v. Central Provident Fund Commissioner, 2021 SCC OnLine Mad 298 (India).

¹⁹Deepika Singh v. Central Administrative Tribunal, (2022) 7 SCC 73 (India).

C183 promotes governments to extend coverage to informal and unconventional workers, making it a key norm for developing economies like India.²⁰

- ii. *ILO Maternity Protection Recommendation No. 191*: A minimum of eighteen weeks should be added to maternity leave, according to C183, Recommendation No. 191. Additionally, it emphasizes the need for extra health protection measures for working women and supports the right to nursing breaks.²¹ Even if the Maternity Benefit (Amendment) Act, 2017 in India grants 26 weeks of paid maternity leave, the ILO cautions that include workers in the informal sector is still challenging.

2. Directives on Maternity and Parental Leave of the European Union

All member states of the European Union (EU) are subject to detailed directives covering maternity and parental leave.

- i. *EU Directive 92/85/EEC Concerning Pregnant Workers*: According to this order, maternity leave must be for at least 14 weeks, with at least two weeks of leave required to be taken either before or after childbirth. The directive requires the right to continue working, the right not to be fired, and the right to have favourable working circumstances.²²
- ii. *The EU's 2019/1158 Work-Life Balance Directive*: Parental leave policies that are gender-neutral are introduced under this directive. It stipulates that each parent must have a minimum of four months of paid leave, of which two months cannot be shared by two parents. The intention is to encourage fathers and mothers to share in the caregiving duties.²³

Following on these directions, nations like Sweden and Norway have developed some of the most advanced parental leave programs in the world.

²⁰ Maternity Protection Convention, No. 183, International Labour Organization (2000).

²¹ Maternity Protection Recommendation, No. 191, International Labour Organization (2000).

²² Council Directive 92/85/EEC on the Safety and Health of Pregnant Workers, Council of the European Union (1992).

²³ Work-Life Balance Directive, Directive 2019/1158, Council of the European Union (2019).

3. Sweden and Norway: Gender-Neutral Leave for Parents

In terms of gender-neutral parental leave laws, Sweden and Norway are global leaders:

- i. *Sweden*: Both parents are entitled to 480 days of parental leave under Swedish law. Ninety days are set aside especially for fathers to promote father participation in child care. During the leave, which can be prolonged for up to 18 months at a reduced rate, parents are entitled to 80% of their salary.²⁴
- ii. *Norway*: Parental leave is available for 49 weeks at full pay or 59 weeks at 80% pay in Norway. To ensure that both parents take part in childcare duties, the law sets aside 15 weeks for mothers and fathers, respectively.²⁵ This divide promotes equity in the provision of care, serving as a model for nations such as India where paternity leave is still limited.

4. Canada: All-inclusive Maternity and Parental Leave

Combining maternity and parental leave under a single, common framework, Canada offers one of the most flexible parental leave schemes in the world:

- i. In addition to the 69 weeks of parental leave that can be shared by both parents, mothers are entitled to 15 weeks of maternity leave. Either 33% of their compensation for 69 weeks or 55% of their earnings for 40 weeks will be given to the parents.²⁶

This concept moves toward a gender-neutral approach to childcare by encouraging both parents to be equally involved in parenting their child.

5. Brazil and South Africa: Maternity Protections for Informal Workers

Significant progress has been made in providing maternity benefits to workers in the informal sector in nations like South Africa and Brazil:

- i. *Brazil*: Through social security payments, Brazilian law requires all working women, including those in the unorganized sector, to receive 120 days of paid maternity leave.

²⁴Parental Leave in Sweden, Swedish Social Insurance Agency (2020).

²⁵Parental Benefits, Norwegian Labour and Welfare Administration (2020).

²⁶Employment Insurance Act, S.C. 1996, c. 23 (Can.).

Even the most vulnerable workers are safeguarded due to this inclusive approach.²⁷

- ii. *South Africa*: Four months of unpaid maternity leave are required by the Basic Conditions of Employment Act. Nonetheless, women can receive up to 60% of their pay during maternity leave through the Unemployment Insurance Fund (UIF), a social insurance program that also provides benefits to unpaid workers.²⁸

These global frameworks and national laws represent the growing recognition of maternity benefits and parental leave as essential rights for working parents. Though India's Maternity Benefit (Amendment) Act, 2017 represents a significant step forward, the country stands to improve by adopting gender-neutral laws and protections for informal workers closer to international norms. As Sweden, Norway, and Canada show, establishing equitable caring systems is advantageous for society as a whole, not just for families.

LACUNAS IN INDIAN MATERNITY LEAVE LAWS

The Maternity Benefit (Amendment) Act, 2017 increased the length of maternity leave to 26 weeks for working women in India, although there are still some significant legal loopholes in place. These gaps show significant challenges particularly of enforcement, gender equality and inclusivity. The section covers the key issues in India's maternity laws which need to be addressed to create more comprehensive and inclusive system.

1. Workers in the Informal Sector Are Excluded

One of the important legal gaps in India's maternity laws is that it excludes informal sector workers from maternity benefits. According to the study by National Commission for Women over 95% of working women in India are employed in unorganised sector.²⁹ Since these women lack former employment contracts, they are not covered under Maternity Benefit Act of 1961. Thus, they are deprived of important protections such as paid leave, job security and prenatal care.

Some of these gaps are intended to be filled by the Janani Suraksha Yojana (JSY), which offers pregnant women living below the poverty level conditional cash transfers.

²⁷Constituição Federal [C.F.], Art. 7, XXII (Braz. 1988).

²⁸Basic Conditions of Employment Act, No. 75 of 1997 (S. Afr.).

²⁹NCW Maternity Benefit Study, Centre for Social Research, National Commission for Women (India, 2013).

But the NCW analysis shows that because of administrative roadblocks and general ignorance, these benefits are frequently insufficient and unavailable to a large number of women. The lack of a comprehensive state-supported maternity policy for informal workers echoes the greater inequity in access to social security in India.

2. Gender-neutral policies and paternity leave

India's maternity rules, which virtually solely place the burden of childrearing on women, are a reflection of traditional gender roles. Even for central government employees, the Maternity Benefit Act restricts paternity leave to a maximum of 15 days. Private sector employees are not eligible for any kind of paternity leave. This indicates that there is no gender-neutral caregiving rules in Indian law, which stands in contrast to the generous maternity leave provisions.

Shared parental leave policies, such as those in Sweden and Norway, have shown that encouraging both parents to actively participate in child care increases gender equality and reduces the disadvantages women suffer in the workplace. The idea of shared family obligations is undermined and females are disproportionately burdened in India due to the lack of such provisions.

3. Insufficient Post-Natal Care and Mental Health Support

There are minimal provisions for postpartum care and mental health support in the Indian legal system. Although women are legally provided with 26 weeks of leave but employers are not mandated to offer counselling, services regarding mental health or postpartum medical care. The National Commission for women is steady shows how important it is for new mothers to have access to health care services including support for mental health since it is important for their overall wellbeing and capacity to resume their jobs.

On the other side, the nations like Australia and France provide for maternity leave programmes that include postnatal care. For example, France provides free mental health screenings for new mothers as they acknowledge psychological changes women experience after child birth.³⁰ However in India maternity benefits are very much limited

³⁰ French Labour Code, Art. L1225-4 (Fr. 2020).

to financial resistance and provisions for leave, Overlooking the broader needs of mothers who are working. Policies regarding postpartum mental health and holistic wellbeing are absent.

4. Concerns Regarding Enforcement and Company Adherence

The maternity benefit act although mandates paid leave for women in formal employment but enforcement of it still remains a challenge. Many employers especially small businesses fails to comply with law due to the various reasons such as lack of awareness or financial issues. According to National Commission for women research enforcement authorities often lack sufficient resources to monitor its compliance and thus leaving many women vulnerable to discrimination or unfair dismissal during their pregnancies.

Further many employers look at maternity leave as financial burden and this discourage them from hiring women who may plan to have children. This not only limits employment opportunity for women but inequality also get deepens in workplace. Strengthening enforcement mechanism and introduction of corporate incentives such as tax benefits for companies that comply with maternity regulations Could help address these issues.

5. Provisions Regarding Adoption and Single Parent Leave

The 2017 amendment to the maternity benefit act highlights the unequal treatment of single and adoptive parents in the country. Under Central Civil Service (Leave) (Amendment) rules, 2023, Adoptive fathers are entitled to only 15 days of paternity leave while adoptive mothers receive 12 weeks of leave. This disparity in caregiving responsibilities is unnecessary as adoption do not even include physical challenges of childbirth.

Moreover, legal provisions for single fathers are almost negligible. While single mothers receive the same maternity benefits as married woman, single fathers are not even entitled to any additional leave beyond standard paternity leave, regardless of their sole caregiving responsibilities.

On the other hand, countries like Canada and Norway Provides gender neutral parental leave policies, ensuring that both adoptive and biological parents irrespective of the marital status or gender can share caregiving responsibilities equal. Implementing reforms that provide for equal leave benefits for adoptive fathers and single parents will help India towards more inclusive and gender-neutral parent and leave system.

By including elements from global best practises India can work towards a progressive system of maternity and paternity benefits ensuring better support for all parents who are working, regardless of their gender or employment status.

REFORM MEASURES FOR MATERNITY AND PARENTAL LEAVE LAWS IN INDIA

It is clear from analysing the shortcomings in India's current parental leave and maternity policies that several amends are necessary to improve coverage, inclusivity and gender neutrality. This section covers potential reforms that could bring India's maternity laws closer to international standards.

1. Expanding Coverage to Informal Sector Workers

A major reform would be extending maternity and maternity leave benefit to workers of the informal sector, as they are also majority of India's labour force. State sponsored Social Security programme after the successful systems in Brazil and South Africa could ensure that informal workers get paid maternity leave and important health care benefits. This reform could be implemented by existing programmes such as unorganised workers social Security Act 2008, To guarantee fundamental rights of maternity for all working women.

2. Introducing Gender-Neutral Parental Leave

At present India Lake shared parental leave in its laws. To promote equality among genders in caregiving India could introduce gender neutral parental leave similar to policies in countries like sweater and Norway. A shared leave system would allow both the parents to divide equally the caregiving responsibilities which will also reduce the career impact on women and fostering a better balance between work

and family.

3. Presenting Flexibility Using a Salary Deduction Model

A flexible leaf policy that allows both parents to take extended leave in exchange for reduction of salary could provide more support additionally. Countries like Norway and Canada offer flexible options where employees can choose between longer leave with partial pay or shorter leave with full payment. India could adopt similar systems where parents can opt for extended leave receiving a portion of salary providing more choice for parents by also minimising financial burden on employers.

4. Increasing Benefits for Single Parents and Paternity Leave

Reforms in paternity leave policies are required to align them with maternity leave for promoting more gender-neutral approach to caregiving responsibilities. This is particularly important for adoptive fathers and single fathers who in current legal system receives far less leave than adoptive mothers. Providing equal treatment for single parents and expanding leave benefits for fathers This would promote system that reflects modern family structures.

5. Post-Natal Care and Mental Health Support

Expanding maternity benefits for inclusion of postnatal care and mental health support would provide care for new mothers. Countries like France requires mental health screenings End counselling services for postpartum mothers. Similar reforms could be introduced in India to ensure comprehensive health care services before and after the maternity leave this would support both physical and mental wellbeing and help women transition back to the workforce smoothly.

CONCLUSION AND WAY FORWARD

India has made Significant Progress in maternity and parental leave regulations particularly by enacting Maternity Benefit (Amendment) Act in 2017. However Major gaps remain that prevent all working parents from Excess ii comprehensive maternity protections. The need for reform is important in key issues such as excluding informal sector workers from maternity

leave, Inadequate paternity leave policies and absence of gender-neutral laws. Since the majority of Indian working women are in unorganised sector and less qualification for maternity benefits, they are vulnerable during pregnancy and childbirth. Additionally, the availability of paternity leave is limited thus reflecting traditional caregiving model that imposes responsibility primarily on women, failing to recognise shared duties which are required in modern family structures. Moreover, postnatal care and mental health support both are important for mothers' overall wellbeing are not adequately addressed under India's current legislation.

To create more recruitable and inclusive maternity leave system the country should consider reforms in its laws, that extends maternity benefits to unpaid workers through government programmes of Social Security. Implementation of gender-neutral parental leave policies can encourage both parents to actively participate in childcare responsibilities this would promote gender equality and reduce the professional burden on women. Developing flexible leave options through a pay reduction model for extended leave can also provide parents with more choices while reducing the pressure on employers. Additionally expanding paternity leave and ensuring equal treatment for single parents would also contribute to more inclusive approach of parenting.

As India's labour laws continue to evolve learning from international best practises will be important. Countries that have progressive maternity and parental leave policies can offer valuable insights for strengthening India's laws to better support working parents. By addressing these gaps and implementing necessary reforms India can move towards a more family friendly work environment and these changes will ultimately contribute to the goals of social justice and gender equality in the country.

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