

A perspective of Maternity and Paternity Leave in India

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Abstract

The article primarily pertains to Maternity and Paternity Leave in India that is currently being availed by the employees working in government organizations. Leaves that are granted during Maternity period are formally passed by Government of India through legislation. These are namely: Maternity Benefit Act, 1961; Maternity Benefit Amendment Act, 2017; and other legislations in India pertaining to maternity benefits in one capacity or another. Article 42, 43 of the Constitution; The Employees State Insurance Act, 1948; The Factories Act, 1948; The Contract Labour (Regulation and Abolition) Act, 1970; All India Services Rules (Leave) Rules, 1955; and Central Civil Services (Leave) Rules, 1972 all cater to maternity benefits. Maternity benefit provisions have also been allowed and approved for adoptive and commissioning mothers. As observed in a notable judgement even the Supreme Court of India has levelled Leaves as Fundamental Rights afforded to female workers. The Government of India does not provide any Paternity Leaves to its male employees. All India Services Leave Rules, 1955, and Central Civil Services Leave Rules, 1972, Department of Personnel and Training, Government of India, are some of the relevant rules that provide Paternity leaves of maximum fifteen days to the male employees. Benefits of maternity leaves for women lead to social stability and economic growth.

Possible reforms with the increase in duration of the maternity and paid paternity leaves the government has to be mindful of inculcating shared parental responsibility amongst the employers and the society. On account of conscious of cultural shift in the workplaces willingness to grant paternity leave for private sector organizations is also suggested in the article. Benefits and possible reforms are suggested. Notable judgements in support of paid paternity leaves are mentioned.

Keywords: Maternity Leaves; Paternity Leaves; Shared Parental Leave; All India Services Leave Rules; Central Civil Services; Leave Rules; Periodic Labour Force Survey; Labour Force Participation Rate.

1. Introduction

The 21st Century has proven itself to be a period of immense and far-reaching social change. During these number of years, the Society, Government and Business organizations have seen concern for women's welfare; hence, even labour laws have taken these concerns in its enfolds. Work is no longer just a means of earning a living but a crucial, inalienable part of the human experience. In order to contribute to society, every able-bodied adult is expected to work irrespective of their race, sex, orientation, social status or gender expression. The right of a parent to be able to take care of their child unobstructed, the fundamental duty of the employer to provide means for the same and the right of a child to a proper upbringing are easy to overlook in the constant struggle to maximize workplace efficiency. The escalating production and salary cost is out rightly to be balanced with societal, economy and growth of a country.

According to Government of India, Ministry of Statistics & Programme Implementation, and their Periodic Labour Force Survey (PLFS) - Annual Report (July 2023-June 2024), India's Worker Population Ratio (WPR) for persons of age 15 years and above changed from 46.8% in 2017-2018 to 58.2% 2023-2024. The figures are well illustrated in Table 1. At around half of the country's total population, members of this demographic profile are also the most expected to have children, regardless of their gender. To deny them the proper opportunity to do so is to hamper the country's growth in the long run. The share of women in our work force is



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well illustrated by their presence observed in Worker population ratio. The Periodic Labour Force Survey (PLFS) Annual Report [July 2023-June 2024] released by the Government of India, Ministry of Statistics and Programme Implementation on 23rd September 2024 have also depicted that the Female Worker Population Ratio in India has improved by 22.0 per cent in 2018 to 40.3% in 2024. It is important to note that not all issues pertaining to one's work have received proper closure via appropriate legislation. Parental leaves in India still remain a hot topic of discussion. Studies carried out had revealed that Paid parental leaves benefits the employees, employers and society as it reduces employee turnover and better co-ordinates wage replacement benefits (Low and Sanchez-Marcos, 2015). De Souza et al. (2022) emphasized job protected paid leave for well-being of child and the society. Van et al. (2020), and Arneson (2021) stated that paid maternity leave is associated with beneficial effects.

Parenting leave refers to the leaves from work granted to parents in order to take care of their children, either newborn or adopted. These include maternity and paternity leaves. The Indian woman is expected to be the primary caregiver to her child, despite her marital, educational or occupational status. Around 47.6% of females aged 15 years and above in rural India are participating in labour force, contrary to their urban counterparts amounting to 28.0% of the workforce, a number expected to increase exponentially in the future. Therefore, it is only fair that women have their concerns properly addressed.

By improving their working capital and competitiveness (Deb and Baruah, 2022),

Table-1:
Labour Force Participation Rate (LFPR in per cent) and Worker Population Ratio in usual status for Persons of age 15 years and above

Survey Period	Male	Female	Person
2017-2018	75.8 (71.2)	23.3(22.0)	49.8 (46.8)
2018-2019	75.5(71.0)	24.5(23.3)	50.2 (47.3)
2019-2020	76.8(73.0)	30.0(28.7)	53.5 (50.9)
2020-2021	77.0(73.5)	32.5(31.4)	54.9 (52.6)
2021-2022	77.2(73.8)	32.8(31.7)	55.2 (52.9)
2022-2023	78.5(76.0)	37.0(35.9)	57.9 (56.0)
2023-2024	78.8(76.3) (R80.2/75.6U)	41.7(40.3) (R47.6/U28.0)	60.1 (58.2) (R76.6/U)

Note: (ps+ss) determined considering both principal activity status and economic activity status 2023-24 refers to period July 2023-June 2024 and likewise for 2022-2023, 2021-2022, 2020-2021, 2019-2020, 2018-2019, and 2017-2018. Worker Population Ratio depicted within brackets. U-Urban & R-Rural.

Maternal leaves or Maternity leaves refer to the period of time a woman can take off work before, after or during childbirth. The exact nature and duration of said leaves may vary across different countries, fields and company policies.

In India, there are several provisions and Acts guaranteeing maternal leaves for women, including Article 42, 43 of the Constitution and Maternity Benefit (Amendment) Act, 2017, which entitles women working in both public and private sectors to 26 weeks of maternity leave.

Paternal leave, while notably less deliberated upon by the public and legislators alike, should be equally as available to the Indian worker. The Labour Force Survey Report 2023-24 released by the Ministry of Statistics and Programme Implementation states that around

relevant rules that provide Paternity leaves of maximum fifteen days to the male employees. Benefits of maternity leaves for women lead to social stability and economic growth. Possible reforms with increase in duration of the leaves and willingness to grant leave for private sector organizations is suggested.

I. Maternity Benefit Act, 1961

With the Maternity Benefit Act of 1961 and its subsequent amendments, the Indian government aims to provide female workers with several benefits pertaining to pregnancy and child care during the course of their employment. Some important aspects of the Act have been elucidated upon hence forth: -

1. Application of the Act in India
According to Section 2 of the Maternity Benefit Act, 1961 gives rights and privileges to women employed across various establishments.
 - i) The Act applies to Establishments that have been listed below:
 - Establishments in the form of a factory, mine or plantation, also including ones owned by the government.
 - Establishments where the employees are involved in display of equestrian, acrobatic or other performances.
 - ii) This Act applies to any shop or establishment defined by any existing state law regarding the same, where ten or more individuals are presently employed or were employed on any day in the preceding 12-month period.
2. Nature of work to be assigned to women during a certain period
Section 4 of the Act provides conditions for a pregnant woman to be employed either immediately before or after her date of delivery.
 - i) Employers are directly prohibited from employing a woman for a period of six weeks following a delivery, miscarriage or medical termination of pregnancy.
 - ii) The Act also prohibits pregnant women from performing work that could be considered potentially detrimental to the overall health of the pregnancy or cause a miscarriage during one month before the due date. This may include work consisting of long hours of uninterrupted standing.
3. Payment of Maternity benefit
Maternity benefit refers to the financial support provided to a woman during the course of her leave.
 - i) Right to payment of Maternity benefit (Section 5)
 - The female employee seeking leave is entitled to receive the payment of maternity benefit which is at the rate of her average daily wage for 3 months immediately preceding her period of absence.
 - The maternity benefits were initially stipulated to be provided for 6 weeks both before and after the expected delivery date, amounting to 12 weeks in total.
 - This was later amended in 2017. The limit has now increased to a total of 26 weeks with 8 weeks pre-delivery and 18 weeks post-delivery.
 - ii) Claim and payment of Maternity benefit (Section 6)
 - The Act stipulates that a female employee seeking maternity leave is to deliver a notice in writing to her employer, in which she is to specify the date from which she is to be absent and the date of her return to work.
 - The maternity benefit is to be paid in advance by the employer for the period before the delivery date. The remaining amount is payable after delivery.
 - iii) Payment of benefit in case of death (Section 7)
 - In case the woman entitled to receive the Maternity benefit under this Act were to perish before receiving the same, the entire amount is to be paid to her nominee or in case of absence of the same, to her legal representative.

II. Maternity Benefit (Amendment) Act, 2017

There were several new welcome changes to the Maternity Benefit Act, 1961 introduced

in the Maternity Benefit (Amendment) Act, 2017. This was for workplaces to be more open and considerate of their female employees. Some amendments have been listed below:	A perspective of Maternity and Paternity Leave in India 5
1. Increased Leave Period - Originally, Section 5(3) of the Maternity Benefit Act of 1961 offered a total of 12 weeks of leave to female employees. Out of these 12 weeks the initial 6 were to precede the expected date of delivery of the child and the other half were to immediately follow the same. - The Maternity Benefit (Amendment) Act of 2017 later increased this period of paid maternity leave to 26 weeks in total. Out of these, 8 were to be taken before the delivery and the other 18 were to follow it.	
2. Provisions for Adoptive and Commissioning mothers The Maternity Benefit (Amendment) Act of 2017 also added a previously absent provision for adoptive and commissioning mothers in Section 5(4) which reads as follows: “A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.”	
3. Work from Home opportunity for female employees - The newly added Section 5(5) of the Maternity Benefit (Amendment) Act of 2017 provides women with an option to work from home following the Maternity Leave period. - Given that the nature of work done allows it to be done remotely and on conditions mutually agreed upon by the employer and the female employee.	
4. Availability of Crèche Facilities According to the Ministry for Women and Child Development, a crèche facility is a facility which enables parents to leave their children while they are at work and where children are provided stimulating environment for their holistic development. - Section 11 A(1) of the Maternity Benefit (Amendment) Act, 2017 provides that every establishment consisting of 50 or more employees must provide a crèche facility within a prescribed distance. - The employer is also bound to allow up to 4 visits a day by the female employee to the crèche, which also includes the interval for rest afforded to her.	
5. Informing female employees at the time of appointment Section 11 A(2) of the new Act also makes it compulsory for the employer to intimate the female employee, either in writing or electronically, of the benefits provided under this act at the time of appointment.	
III. Other Laws Pertaining to Maternity benefits for women in India Other than the Maternity Benefit Act of 1961 as well as Maternity Benefit (Amendment) Act, 2017, there exist several other pieces of legislation in India pertaining to maternity benefits in one capacity or another. Some are touched upon as follows:	
1. The Employees' State Insurance Act, 1948: - This Act provides maternity benefits to female employees, including medical benefits. - Women ensured under ESI get 26 weeks of maternity benefits up to 2 surviving children payable at the rate of their daily average wage as per latest updates by Employee's State Insurance Corporation. - Any employers found to have dismissed or deprived their female employees during this period are punishable under this act. - In case of pregnancy related issues or illness, an additional leave of 30 days along with monetary benefits can be provided.	

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	2.	The Factories Act, 1948: • Section 66(1)(b) of this act prohibits the employment of women between 7 p.m. and 6 a.m. This can be relaxed via government approval. • Section 48(1) mandates the setting up of creches in factories with more than 30 female employees for children less than 6 years of age.
	3.	All India Services (Leave) Rules, 1955: • According to Section 18, a female member of the Service with less than two surviving children is eligible for maternity leave. • Under this act, the leave can be taken for 180 days on full payment. • Maternity Leave under this act can be combined with any other type of leave up to a maximum of 2 years in continuation after the same.
	4.	Central Civil Service (Leave) Rules, 1972: Section 43(1) of this act reads as follows: “A female Government servant (including an apprentice) with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of (180 days) from the date of its commencement.”
	IV.	Notable Judgments There are some landmark cases pertaining to maternity leaves for women in India, some of them have been listed below: 1. Neera Mathur vs. Life Insurance Corporation of India (1992) • This case shed light on the privacy of female employees in the workplace. • It was in this case that the Supreme Court of India ruled against asking women private questions concerning things like their menstrual cycles or pregnancies during time of hiring. • This decision promoted nondiscrimination against women in workplaces. 2. Municipal Corporation of Delhi vs. Female Workers (2000) • In this case, 11 female daily wage employees under the Municipal Corporation of Delhi were denied maternity leaves because they had been classified as temporary workers. • Here, the Supreme Court extended the benefits of the Maternity Benefit Act, 1961, to female daily wage workers and said that the application of the same should not depend on employment status of women. 3. Sushma Devi & Ors vs. State of Himachal Pradesh (2021) • Here, the issue before the court was whether a contractually employed female worker under the government could avail maternity leave in cases where the child in question is the result of a surrogacy arrangement. • It was held by the court that no discrimination can be made between women in the granting of maternity benefits on grounds of the baby being a surrogate.
	V.	Benefits of Maternity Leaves for Women and the Economy at large As ruled by the Supreme Court of India, Maternity leaves are a fundamental right afforded to female workers in India. To be mindful of these rights is a duty of both the employer and the employee and following of the same is only beneficial for the economy in the long run. Some of the potential benefits have been discussed below: 1. Health of women • Maternity leaves allow women time to recover from any pregnancy related complications. • With pregnant women being temporarily emotionally vulnerable both before and after delivery, maternity leaves help in reducing stress causing factors and reduce the risk of postpartum depression and anxiety. 2. Child Development

• Longer periods of maternity leaves allow mothers to properly bond with their newborn children, fostering healthy development and relations in both the child and the mother. • Longer maternity leaves allow mothers to breastfeed the child at home without worries, which is beneficial for the child's physical development.	A perspective of Maternity and Paternity Leave in India
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3.	Job Security • Maternity Leaves allow women to avail leaves to care for their newborn children without the fear of potentially losing their jobs, increasing job security. • This allows women to remain in the workforce at large.
4.	Increased Productivity • Maternity leaves allow women to focus more on their health as well as that of their children. • Thus, their productivity increases when they rejoin work due to strong health and morale.
5.	Worker Retention The turnover cost of recruiting and training newer employees for companies is greatly mitigated by maternity leaves as there is even less reason for older, more experienced and productive female staff to leave their jobs.
6.	Economic Growth Worker retention and increased participation rates ensured by the granting of maternity leaves to female employees greatly contributes to economic development due to higher productivity.
7.	Social Stability • Granting of maternity leaves ensures social stability. • The leave reduces stressors related to things like job loss during an otherwise critical time.
VI.	Reasons why female employees do not avail maternity leaves
	Still, there are several potential reasons that may dissuade a female employee from attempting to avail a maternity leave. Some of these reasons have been discussed below:
1.	Social Stigma • Indian society at large is believed to be a conservative one which places high expectations on its members. • While thinking of availing the maternity leave, women may be put off by the thought of being perceived as less committed or devoted to their field of work than their male colleagues and as making up an excuse. • An atmosphere of negative feedbacks may make women feel that they should not avail such leaves in order to prove themselves willing and capable.
2.	Gender Norms • In India it is normalized for the people to expect a mother to solely take care of her child along with taking care of her job, which in many circumstances, results in less-than-ideal outcomes in both fields. • The expectation to somehow "do it all" only works to further this belief, discouraging women from taking leaves. • Taking leaves, according to Indian society, would be tantamount to admitting defeat when faced with obstacles.
3.	Impact on Career • Women taking maternity leaves may be seen as weak and unwilling to properly do their jobs by their superiors and peers. • There is a fear that availing maternity leave would negatively affect one's

performance evaluation.

- There is also a chance of potentially missing out on key projects or networking and career expanding opportunities at their workplace.

4. Pressure in the Workplace
- In a high-pressure work environment, there is a very real possibility of women being struck with the guilt of leaving their colleagues to cover up for them in their absence.
 - According to them, their absence may even negatively impact their team projects.
5. Lack of Awareness
- Even though legally mandated, some establishments may fail or deliberately not inform their female workers of the availability of maternity leaves.
 - This can go unnoticed in rural areas where women are generally expected to be less aware of their rights and where there is a lack of government oversight.

VII. Paternity Leave

Paternity leave refers to the period of time away from work afforded to a male employee during and after the birth or adoption of a child. This is done to give the employee ample time to bond with the child and to support both the wife and child in that impressionable period.

Paternity leaves are generally much shorter than maternity leaves and there is active discussion about the need to potentially increase the same to meet society's needs and demands.

While there are no laws mandating paternity leaves in the private sector, the government of India does provide paternity leaves to its male employees. The relevant laws have been discussed below:

1. All India Services (Leave) Rules, 1955
- The All India Services (Leave) Rules, 1955 apply to members of the All India Services. This includes the Indian Administrative Service (IAS), Indian Police Service (IPS), and Indian Forest Service (IFS).
- i) Paternity leave
- Section 18(B) states the following:
- "A male member of the Service (including a probationer) with less than two surviving children, may be granted paternity leave by an authority competent to grant leave for a period of 15 days, during the confinement of his wife for childbirth, i.e. up to 15 days before, or up to six months from the date of delivery of the child."
- During the leave of 15 days, the employee will be given the salary equal to his pay since before he went on leave.
 - This leave may be combined with any other leave.
- ii) Paternity Leave for Child Adoption
- According to Section 18(C), on the adoption of a child below 1 year of age by a male employee (or probationer) with less than two surviving children, the employee may be granted a paternity leave of 15 days.
 - This leave can be availed within a period of six months from the said adoption.
2. Central Civil Service (Leave) Rules, 1972
- The Central Civil Service (Leave) Rules from 1972 govern the leaves afforded to government servant to the central administration.
- i) Paternity Leave
- According to Section 43 A, a male government servant (including an apprentice) with less than two surviving children may be granted 15 days of paternity leave.

- This leave can be taken up to 15 days before or up to six months after the childbirth of his wife.
 - During this period, he will receive leave salary equal to his pay before the leave.
 - Paternity leave can be combined with other types of leave.
- ii) Paternity Leave for Child Adoption
- According to Section 43 AA, a male government servant (including an apprentice) with less than two surviving children may be granted 15 days of paternity leave within six months of accepting a child in pre-adoption foster care or valid adoption of a child below one year.
 - If foster care does not lead to an adoption, the paternity leave taken will be deducted from other available leaves of the male employee.
 - During this leave, the male employee will receive his regular pay.
 - It can be combined with other types of leave.
 - Paternity leave will lapse if not used within the specified period.

VIII. Notable Judgments

- There are some landmark cases pertaining to paternity leaves for men in India, some of them have been listed below:
1. Chander Mohan Jain vs N.K. Bagrodia Public School & Ors. (2009)
 - In this case, the petitioner, a post graduate teacher, moved court when his appeal for paternity leave was denied by the respondent No.1-School as the school had not adopted any facility to paternity leave.
 - The petitioner was asked to take leave under the existing rules. This implied that no paternity benefits expected by the petitioner would be provided.
 - In view of the stand taken by the responding parties, the court dismissed the petition and paternity leave was granted.
 2. B. Saravanan vs Deputy Inspector General of Police (2023)
 - In this case, a police inspector's paternity leave was revoked due to law-and-order concerns, leading to a desertion order when he couldn't report back.
 - The cancellation was challenged by him in court, arguing his wife's high-risk IVF pregnancy required his presence.
 - The court ruled denying paternity leave violated Article 21, quashed the desertion order, and directed his reinstatement.

IX. Possible Reforms in Indian Paternity leave Laws

- As has already been discussed, paternity leaves in India are dramatically shorter than maternity leaves, if available at all. As time progresses, society has come to the realization that the role of a father is just as important as that of the mother in child rearing as well as supporting their family. Therefore, it is unfair for paternity leave provisions to be as lacking as they currently are in India. Some possible and welcome reforms to paternity leave policies have been discussed below:
1. Expanding its reach
 - The first and arguably the most important step would be to expand the reach of paternity leave provisions in India.
 - So far, only the Central Civil Services and All India Civil Services, both under the government, offer paternity leaves to their male employees.
 - To expand the reach of paternity leave provisions would be to make it compulsory for private establishments across all sectors to provide paternity leaves to their male employees.
 - So far, the onus of providing paternity leaves in the private sector lies solely on the willingness of respective private establishments.
 2. Increased Leave Duration
 - Company of a father is just as important to the development of a child and the

stability of the family as the presence of a mother.

- To begin with, the paid leave duration for male employees should be increased to at least 1 month, both in the public and private sectors.
- This period of leave should be up for possible amendment and increase in the future.
- The period of leave for single fathers should be the similar to if not more compared to what is provided to mothers under the Maternity Benefit (Amendment) Act of 2017, i.e., 26 weeks.

3. Making Paternity Leave provisions more inclusive and accessible
- While adoptive fathers are included in the present legal provisions for paternity leaves, there is still a need to expand the eligibility criteria for paternity leave to better reflect the ground reality in the present day.
 - The definition should be expanded to also include same-sex couples and out of marriage relations.
4. Acceptance in workplaces
- There needs to be a culture of acceptance in the workplace.
 - Both in India and across the world, fathers are still not seen as being equally as responsible for taking care of the family as mothers, preventing them from possibly availing leaves for the same due to toxic workplace attitudes.
 - General awareness that caring for one's family is a natural instinct for any parent. It should be accepted, rather than looked down upon or even punished.

2. Conclusion

The topic of both maternity and paternity leaves is a widely debated one. As society progresses, it aims to reform itself into a more accommodating and welcoming one. Over time, the government of India has come forward with various laws and regulations pertaining to maternity and paternity leaves in a bid to make parenting healthier and easier for both the parents and their children.

With these laws, the government aims to make parenting simpler and not a burden in today's economy. With the cost of living rising and wages struggling to keep up across the world, child rearing has become harder, with birthrates crashing worldwide. By providing adequate maternity and paternity benefits, the government can not only ensure stable birthrates, but also increased and more productive participation in the workforce. While there is still room for improvement and inclusivity in the realms of gender equality and what the law defines as a "family" while providing leaves to mothers and fathers, it cannot be denied that there is a push for it nonetheless.

When new parents have the ability to properly nurture their children and experience familial bonds, only then can they prove themselves to be at their best in the workplace. When children allowed company of their caregivers during the initial developmental stages of their lives, only then can they grow up to become productive members of society.

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