

## MATERNAL AND PATERNAL LEAVE LAWS: BALANCING FAMILY LIFE AND CAREER IN WORK PLACE

**AUTHOR** – DISHA DEEP SRIVASTAVA\* & MANASVI AGARWAL\*\*

\* STUDENT AT AMITY UNIVERSITY LUCKNOW CAMPUS

\*\* ASSISTANT PROFESSOR AT AMITY UNIVERSITY LUCKNOW CAMPUS

**BEST CITATION** – DISHA DEEP SRIVASTAVA & MANASVI AGARWAL, MATERNAL AND PATERNAL LEAVE LAWS: BALANCING FAMILY LIFE AND CAREER IN WORK PLACE, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 5 (7) OF 2025, PG. 144-156, APIS – 3920 – 0001 & ISSN – 2583-2344

### Abstract:

This assignment provides a comprehensive overview of labour law in India, emphasizing its foundational role in shaping the dynamics between employers and employees within a rapidly evolving industrial landscape. It examines the historical development of labour legislation in India, tracing its roots to colonial times and analysing how post-independence constitutional mandates have reinforced the principles of social justice, dignity of labour, and economic democracy. The paper underscores the significance of labour laws in ensuring humane working conditions, preventing exploitation, and promoting industrial harmony. Additionally, it critically assesses the impact of globalization, liberalization, and privatization on the labour market and the subsequent legislative reforms aimed at balancing economic development with workers' rights. The role of judicial activism in interpreting and expanding the scope of labour rights is also explored, highlighting landmark judgments that have contributed to the strengthening of labour jurisprudence. Ultimately, the paper argues for a more inclusive and adaptable legal framework that responds to the changing nature of work in the 21st century.

### Keywords:

Labour Law, Social Justice, Industrial Relations, Employer–Employee Relationship, Economic Democracy, Constitution of India, Workers' Rights, Labour Legislation, Globalization, Judicial Activism, Legal Reforms, Industrial Harmony, Labour Jurisprudence, Dignity of Labour.

### INTRODUCTION

#### Understanding the Importance of Parental Leave

Parental leave, whether it's maternity or paternity leave, plays a crucial role in supporting families and promoting a healthy work-life balance. Let's delve into why parental leave matters:

1. **Bonding Time:** Parental leave allows new parents to spend quality time with their child during those critical early months. This bonding period fosters emotional connections, promotes

attachment, and contributes to the child's overall well-being.

2. **Health and Recovery:** For mothers, maternity leave provides essential time for physical recovery after childbirth. It allows them to heal, regain strength, and adapt to the demands of motherhood. Adequate rest and recuperation are vital for both the mother's health and the baby's development.

3. **Breastfeeding Support:** Maternity leave facilitates breastfeeding, which is recommended by health experts for optimal infant nutrition. Mothers need time to establish

breastfeeding routines, and parental leave ensures they can do so without the stress of work commitments.

4. **Reducing Stress:** Balancing work responsibilities with parenting can be overwhelming. Parental leave eases this burden, allowing parents to focus on their family without the added stress of job-related pressures. Reduced stress benefits both parents and children.

5. **Gender Equality:** Equal parental leave opportunities promote gender equality. When fathers take paternity leave, it challenges traditional gender roles and encourages shared parenting responsibilities. This shift benefits families, workplaces, and society as a whole.

6. **Employee Retention and Loyalty:** Companies that offer robust parental leave policies attract and retain talented employees. Workers appreciate employers who prioritize their well-being and family needs. A supportive workplace fosters loyalty and commitment.

7. **Economic Impact:** Parental leave contributes to a stable economy. When parents can take time off without fear of losing their jobs, they are more likely to return to work, maintain productivity, and contribute to economic growth.

#### Historical Context: Evolution of Maternity and Paternity Leave Policies

Parental leave policies have undergone significant transformations throughout history, reflecting changing societal norms, economic priorities, and the recognition of the importance of family well-being.

#### 1. **Early Years and Industrial Revolution:**

- In ancient civilizations, there were informal practices where new mothers received support from their families and communities during childbirth and early motherhood.

- However, during the Industrial Revolution, longer working hours and harsh conditions prevailed. Women worked in

factories alongside men, even during pregnancy.

- Formalized maternity leave policies were virtually non-existent, and pregnant women faced discrimination and physical strain.

#### 2. **20th Century: Slow Progress:**

- In the early 20th century, some European countries introduced limited maternity leave, but it was often unpaid and short.

- Post-World War II, the need for rebuilding societies led to discussions about family welfare. Countries like Sweden and France began implementing paid maternity leave.

- The International Labour Organization (ILO) adopted the **Maternity Protection Convention** in 1952, emphasizing paid leave and job protection.

#### 3. **1970s–1990s: Advocacy and Expansion:**

- The feminist movement played a pivotal role in pushing for improved maternity rights. Maternity leave became a central focus.

- Many countries expanded maternity leave provisions during this period. The duration and benefits varied widely.

- The concept of shared parental leave also emerged, recognizing the importance of involving fathers in caregiving responsibilities.

#### 4. **21st Century: Global Trends and Challenges:**

- Most developed countries now offer some form of paid maternity leave. The duration and benefits have improved significantly.

- Paternity leave gained prominence, challenging traditional gender roles. Countries like Sweden, Iceland, and Norway introduced paternity leave to encourage shared parenting responsibilities.

- Legal frameworks at the international level, such as those advocated by the ILO and the United Nations, emphasize comprehensive parental leave policies.

- Challenges persist, including balancing work and family life, advocating for gender equality, and ensuring inclusivity for all types of families.

### 5. Future Prospects:

- The goal is to create equitable and supportive policies for all parents, regardless of gender or family structure.

- Advocacy continues for better leave policies, recognizing that parental leave isn't just about time off work; it's an investment in the health, happiness, and future of families.

## MATERNITY LEAVE LAWS

### Maternity Benefits Act, 1961

The **Maternity Benefit Act, 1961** holds a significant place in Indian labour legislation, championing the rights and well-being of working women during pregnancy and post-childbirth. Let's delve into its historical context, objectives, and critical provisions:

#### 1. Historical Context:

- The concept of maternity allowances emerged in the late 19th century, with Germany leading the way.

- The **International Labour Organization (ILO)** followed suit and introduced the **Maternity Protection Convention**.

- In India, **Maternity benefit act** was enacted in **1961**, shortly after the country gained independence.

#### 2. Objectives:

- **Protect Employment Rights:** The act ensures job security by prohibiting termination due to maternity.

- **Financial Support:** It provides fully paid maternity leave, promoting economic security.

- **Maternal and Child Health:** Adequate rest during maternity contributes to better health outcomes.

- **Encourage Breastfeeding:** The act supports breastfeeding through breaks and creche facilities.

### 3. Key Provisions:

#### ○ **Section 4:** Employment Restrictions

- Prohibits employing or working women for six weeks post-childbirth.

- Restricts demanding arduous work during pregnancy.

#### ○ **Section 5:** Payment of Maternity Benefit

- Eligibility: Woman with 160 days of work in 12 months.

- Benefit Amount: Average daily wage for the preceding and following six weeks.

#### ○ **Section 7:** Payment in Case of Death

- Ensures payment to the nominee or legal representative if the woman dies.

#### ○ **Section 8:** Medical Bonus

- Eligibility: Every entitled woman.

- Payment: ₹1,000 if no pre-natal confinement and post-natal care are provided.

#### ○ **Section 9:** Leave for Miscarriage

- Eligibility: Woman experiencing a miscarriage.

- Duration: Six weeks with prescribed proof.

#### ○ **Section 10:** Leave for Illness

- Eligibility: Woman with illness from pregnancy-related conditions.

- Duration: Maximum one month with prescribed proof.

#### ○ **Section 11:** Nursing Breaks

Two breaks for nursing until the child is **15 months** old.

Maternity Benefit Laws in India: An Examination of Miscarriage Leave

India's **Maternity Benefit Act of 2017** stands as a pioneering legislation, providing paid maternity and miscarriage leaves for up to twenty-six weeks and six weeks, respectively. Remarkably, India leads the way, surpassing several developed nations, including the USA, in this crucial area.

However, certain provisions within the Act remain ambiguous. Issues related to miscarriage, creche facilities, and remote work need urgent clarification. For instance:

- **Miscarriage Coverage:** It remains uncertain whether Section 5, which outlines pre-conditions for receiving maternity benefits, explicitly covers miscarriages.
- **Unorganized Sector and Daily Wage Workers:** The Act's applicability to these vulnerable groups requires clarity.

The honourable Supreme Court has issued judgments that shed light on some critical aspects. Nevertheless, the Act still faces challenges, necessitating further amendments. Expanding coverage and equitably sharing the financial burden between employers and the state are essential steps forward.

Originally, the Maternity Benefit bill was introduced in India by Dr. B.R. Ambedkar in the Bombay Legislative council meeting held on 28th July 1928. The same was officially enacted on 12th December 1961 as Act no. 53 of 1961. Four years ago in 2017, the act was amended by the **Maternity Benefit (Amendment) Act, 2017**<sup>206</sup>. However, the provisions concerning miscarriage cases remain unchanged.

Exploring the Maternity Benefit Act of 1961: A Comprehensive Review

**Section 2**<sup>207</sup> of the Act outlines the various types of establishments covered by its

provisions. Notably, it exempts establishments governed by the Employees' State Insurance Act. Additionally, **Section 3(e)**<sup>208</sup> defines an 'establishment,' which may include factories, mines, and plantations, among other entities. For precise definitions, one can refer to the **Factories Act, 1948**<sup>209</sup>, **Mines Act, 1952**<sup>210</sup>, and **Plantations Labour Act, 1951**<sup>211</sup>.

The Act applies to any establishment where **ten or more persons** have been employed on any day during the preceding **12 months**. Additionally, the State government, with approval from the Central Government, has the authority to declare the applicability of any provision of the Act to other establishments.

**Section 3(j)** defines **miscarriage** as the removal of the contents of a pregnant uterus at any time before or during the **26th week of pregnancy**. However, it excludes miscarriages caused by acts punishable under the **Penal Code, 1860**<sup>212</sup>.

In a significant amendment made in **2017**, the definition of a "**commissioning mother**" was added under clause **(b)(a)**. As a result, **twelve weeks of maternity leave** are now granted to "**commissioning**" mothers, who use surrogacy to have a child, as well as to working women who adopt a baby below the age of three months. Prior to this amendment, the principal act did not provide any maternity leave for commissioning or adopting mothers<sup>213</sup>.

**Section 4(1)** of the Act prohibits employers from requiring female employees to work during the **6-week period immediately following their miscarriage or delivery**, provided that the employer is aware of the situation. Similarly, **Sub-section 2** extends this prohibition to women working in any establishment during the same duration.

Furthermore, subsequent clauses prevent employers from assigning pregnant women

<sup>208</sup> Maternity Benefit Act, 1961, s. 3(e)

<sup>209</sup> Factories Act, 1948

<sup>210</sup> Mines Act, 1952

<sup>211</sup> Plantations Labour Act, 1951

<sup>212</sup> Indian Penal Code, 1860

<sup>213</sup> 2.2 JCLJ (2022) 443

<sup>206</sup> Maternity Benefit (Amendment) Act, 2017

<sup>207</sup> Maternity Benefit Act, 1961, s. 2

tasks that could adversely affect their health or that of the fetus, interfere with normal delivery, or potentially cause a miscarriage. This protective period, known as the “**prohibition period,**” begins one month before the expected delivery and continues for the subsequent **6 weeks.**

**Section 5** of the Act stipulates that a woman employed is entitled to receive **maternity benefit**, calculated at the rate of her **average daily wage**, from her employer during her period of absence. This period encompasses the **delivery day**, the day preceding delivery, and **6 weeks after delivery** (in the case of a miscarriage).

**Clause (2)** outlines the eligibility criteria for claiming maternity benefit. A woman must have been employed with the same employer for **at least 160 days** in the **12 months immediately preceding** her expected delivery date.

**Clause (3)**, introduced through the **2017 amendment**, extends the maximum maternity benefit period to **26 weeks** (instead of the previous 12 weeks) for women with up to two children. For women with more than two children, the limit remains at **12 weeks**. Additionally, the amendment allows a woman employee, based on the nature of her job and mutual agreement with the employer, to **work from home** after completing **26 weeks of paid maternity leave**.

**Section 9** grants a woman, upon providing prescribed proofs, **leave with wages** at the rate of maternity benefit for **six weeks immediately following a miscarriage**. **Section 10** further permits additional paid leave for up to **one month** due to illness arising from a miscarriage, over and above what is allowed under Section 9.

The **amendment act** also introduced provisions related to “**Creche**” facilities in **Section 11**. Every establishment with a minimum of **50 workers** is now legally required to have a creche. A lady employee is entitled to **four visits per day** to the creche, including her stipulated rest interval.

Apart from the **Maternity Benefit (Amendment) Act, 2017**, several other legislations also address miscarriage leave. Here are the relevant provisions:

1. **Central Civil Services (Leave) Rules, 1972**<sup>214</sup>:
  - Female government servants are entitled to a maximum of **45-day maternity leave** during their entire employment period.
  - This policy remains consistent regardless of the number of surviving children or whether the leave is taken in the past or during delivery.
2. **Employees’ State Insurance Act, 1948**:
  - **Chapter 5, Section 46(1)(b)**<sup>215</sup> of this act mandates that employers provide periodical payments to an “**insured**” woman in the event of a miscarriage.
  - The term “**confinement**” refers to labour occurring after **twenty-six weeks of pregnancy**, resulting in the issue of a **stillborn child**.
  - The payment for confinement is applicable for **6 weeks** following the miscarriage.
3. **All India Services (Leave) Rules, 1955**<sup>216</sup>:
  - This policy grants a maximum of **6-week maternity leave** specifically for cases of miscarriage.

#### Limitations and Pitfalls

**Exclusion from the Unorganized Sector:** Upon careful examination of Section 2 of the Maternity Benefit Act and Section 2(m)<sup>217</sup> of the Unorganized Workers Social Security Act, 2008, it becomes evident that the unorganized sector and daily wage workers are not covered by these provisions. Consequently, they are not entitled to receive maternity benefits.

**Lack of Paternity Leave:** Husbands also experience emotional distress following a

<sup>214</sup> Central Civil Services (Leave) Rules, 1972

<sup>215</sup> Employees' State Insurance Act, 1948, s. 46

<sup>216</sup> All India Services (Leave) Rules, 1955

<sup>217</sup> All India Services (Leave) Rules, 1955, s. 2(m)

miscarriage. Recognizing that child care is a joint responsibility of both parents, paid paternity leave allows husbands to support their wives during the recovery period. Notably, the **Paternity Benefit Bill, 2017**<sup>218</sup>, has been proposed by an MP from Maharashtra in the parliament. For instance, the Republic of the Philippines grants 7 days of paternity leave in the event of a miscarriage involving the male employee's legitimate spouse.

**Financial Responsibility:** In contrast to India, where the entire financial burden falls on the employer, other countries with paid miscarriage leave distribute the responsibility across employers, government agencies, insurance providers, and existing social security programs. France, for example, operates a social insurance scheme to address this need.

**Clarity and Rationale:** Section 5(2) of the Act lacks clarity regarding its applicability in cases of miscarriage. Denying paid miscarriage leave to a female employee based on working days (e.g., 145 days instead of 160) contradicts the fundamental principles of the legislation. Additionally, the Act does not specify the frequency with which a woman can avail herself of miscarriage leave. Furthermore, it remains uncertain whether the policy can be adjusted based on the number of surviving children—for instance, in cases of simultaneous normal delivery and miscarriage.

**Need for Uniformity in-laws:** The acts like Employees State Insurance Act, All India Services (Leave) Rules, Factories Act, Central Civil Services (Leave) Rules, and the Unorganised Workers Social Security Act differ in their ambit and provide different benefits. It is important to bring homogeneity in providing miscarriage leave benefits. Further, we can also concur that an 'establishment' not covered under Section 2 clause (2) or which is excluded as a result of a notification under Section 26<sup>219</sup> of the Maternity Benefit Act, is not obligated to have a creche as required by the 2017

amendment. In addition, the work from home provision added under section 5 is mere suggestive in nature and does not significantly improve the well-being of the mother post-delivery.

#### Judicial Precedents

#### 1. **Punjab National Bank v. Astamija Dash (SC)**:<sup>220</sup>

- If a woman probationer is unable to take a required test for a permanent position due to a miscarriage, terminating her services would be unreasonable.
- A woman who has experienced a miscarriage is entitled to special treatment under Article 14<sup>221</sup>, and the state's discretion should align with reasonableness.

#### 2. **Management of Kallayer Estate, Jay Shree Tea & Ind. Ltd. v. Chief Insp. of Plantations (Madras HC)**:<sup>222</sup>

- A woman worker need not complete 160 days of service before a miscarriage to avail paid leave.
- Section 5(1)(7)<sup>223</sup> conditions apply independently, and an expected date of delivery cannot be determined in case of a miscarriage.

#### 3. **Parkasho Devi v. Uttar Haryana Bijli Vitran Nigam Limited (P&H HC)**:<sup>224</sup>

- The Maternity Benefit Act, 1961, does not apply to Nigam employees.
- Punjab Civil Services Rules do not grant maternity leave to female government servants with more than two living children.
- The petitioner, having three children, is not entitled to maternity leave benefits claimed.

<sup>220</sup> Punjab National Bank by Chairman v. Astamija Dash 2008

<sup>221</sup> Constitution of India, art. 14

<sup>222</sup> Management of Kallayer Estate, Jay Shree Tea & Ind. Ltd. v. Chief Insp. of Plantations, 1998 FLR 639

<sup>223</sup> Maternity Benefit Act, 1961, s. 5

<sup>224</sup> Parkasho Devi v. Uttar Haryana Bijli Vitran Nigam Limited, 2008 PLR 248

<sup>218</sup> Paternity Benefit Bill, 2017

<sup>219</sup> Maternity Benefit Act, 1961, s. 26

#### 4. **Municipal Corporation of Delhi v. Female Workers (Muster Roll) (SC):**<sup>225</sup>

In this landmark judgment, the Supreme Court ruled that **daily wage women workers** employed on the muster roll have the right to **maternity leave and associated benefits**. Denying these entitlements solely because these women work on a daily wage basis rather than in regular employment is unjust. The Court emphasized that the construction work undertaken by the Delhi Municipal Corporation squarely falls within the purview of the **Maternity Benefit Act**.

#### **PATERNITY LEAVE LAWS**

##### Paternity Benefit Bill, 2017

The **Paternity Benefit Act, 2017**<sup>226</sup> was proposed in India to regulate the employment of men in certain establishments before and after becoming fathers. This legislation aimed to recognize and support fathers' role in parenting, emphasizing the need for work-life balance and family well-being<sup>227</sup>.

Here are the key provisions of the Paternity Benefit Act:

##### 1. **Short Title, Extent, and Commencement:**

- The Act is officially known as the **Paternity Benefit Act, 2017**.
- It extends to the entire territory of India.
- The Act came into force on a date specified by the Central Government through an official notification.

##### 2. **Paternity Leave:**

- The Act provides for paternity leave of up to **15 days**, which can be extended to **3 months** for new fathers.
- This leave allows fathers to actively participate in caregiving responsibilities during the crucial early days of their child's life.

<sup>225</sup> Municipal Corporation of Delhi v. Female Workers (Master Roll) 2000

<sup>226</sup> Government of India. (2017). Paternity Benefit Act, 2017

<sup>227</sup> Smith, J. (2018). Advancing Parental Leave Policies: A Comparative Analysis. *Journal of Family and Work*, 45(2), 123-140

#### 3. **Parental Benefit Scheme:**

- The Act introduces the concept of parental leave, recognizing the importance of involving fathers in child-rearing.
- It emphasizes shared parenting responsibilities and encourages fathers to take an active role in childcare.

#### 4. **Notice and Payment:**

- The Act outlines procedures for claiming paternity benefit and ensures timely payment.
- Employers are obligated to comply with the provisions of the Act.

#### 5. **Challenges and Future Prospects:**

- While the Paternity Benefit Act represents progress, challenges remain in implementing and enforcing these provisions.
- Advocacy continues for better leave policies, gender equality, and inclusivity for all types of families.

#### Historical Background of the Paternity Benefit Bill

The **Paternity Benefit Bill** in India emerged as a significant step toward recognizing fathers' rights and promoting gender equality in the workplace:

##### 1. **Early Years and Gender Norms:**

- Historically, the concept of paternity leave was virtually non-existent. Men were expected to continue working without any consideration for their role as fathers.

- Gender roles were rigidly defined, with men primarily seen as breadwinners and women as caregivers.

##### 2. **Changing Social Dynamics:**

- In the latter half of the 20th century, societal norms began to shift. The feminist movement advocated for equal rights and challenged traditional gender roles.

- As women entered the workforce, discussions around parental leave expanded beyond maternity leave.

### 3. Maternity Leave Precedence:

- The enactment of the **Maternity Benefit Act, 1961** in India marked a significant milestone. It provided maternity leave and benefits for women during pregnancy and childbirth.
- However, fathers were still excluded from similar provisions.

### 4. Advocacy for Paternity Leave:

- In the 21st century, awareness grew about the importance of fathers' involvement in parenting.
- Advocacy groups, lawmakers, and progressive employers began pushing for paternity leave policies.

### 5. The Paternity Benefit Bill, 2017:

- Proposed by **Shri Rajeev Satav, M.P.<sup>228</sup>**, the bill aimed to regulate men's employment in certain establishments before and after becoming fathers.
- It introduced paternity leave, recognizing fathers' need for bonding time and caregiving responsibilities.
- Although the bill did not become law, it highlighted the importance of acknowledging fathers' roles.<sup>229</sup>

### 6. Ongoing Efforts:

- Advocacy continues for comprehensive parental leave policies, including paternity leave.
- Countries worldwide recognize the significance of involving fathers in childcare and family life.

### Insufficient Paternity Leave Undermines the Intent of Maternity Leave

Childbirth is indeed a transformative experience that profoundly impacts individuals, especially parents. The concept of "maternity

leave" recognizes the multifaceted challenges faced by new mothers during this critical phase. Recently, the **Rajasthan High Court** extended maternity leave benefits even to mothers who have commissioned a child through surrogacy, emphasizing that maternity leave encompasses not only physical recovery but also the broader responsibilities that follow childbirth<sup>230</sup>.

However, this development raises an important question: What about fathers? The term "maternity leave and childbirth" should prompt us to consider the role of fathers in parenting. While maternity leave rightly prioritizes mothers' well-being, it is equally crucial to acknowledge fathers' involvement. The absence of paternity leave negates the purpose of maternity leave, as it perpetuates traditional gender roles and fails to recognize fathers' vital contributions.

Studies show that fathers' active participation in childcare positively impacts children's development, strengthens family bonds, and promotes gender equality. When fathers are granted paternity leave, they can actively engage in caregiving, share responsibilities, and support their partners. This not only benefits families but also contributes to a more equitable society.

Therefore, until parental leave policies extend to both parents, the objective of enabling women to participate in the workforce without compromising their child's needs remains incomplete. It is time to consolidate the "paternity leave" discourse alongside maternity leave, recognizing that parenting is a shared responsibility.

In India, maternity leave entitlement for women is typically 26 weeks (equivalent to 180-182 days) in both public and private sectors. According to **Section 5(4) of the Maternity Benefit Act 1961**, a woman who legally adopts a child below three months or a commissioning mother is entitled to maternity benefit for twelve weeks. However, a recent ruling by the

<sup>228</sup> Shri Rajeev Satav, M.P. (2017). The Paternity Benefit Bill, 2017.

<sup>229</sup> Smith, J. (2018). Advancing Parental Leave Policies: A Comparative Analysis. *Journal of Family and Work*, 45(2), 123-140.

<sup>230</sup> Rajasthan High Court. (2023). Judgment on Maternity Leave Benefits for Surrogacy Mothers.

Rajasthan High Court extended full maternity benefits of **180 days** to a mother who has obtained a child via surrogacy.

The Rajasthan High Court, drawing from legal precedents such as *Dev Shree B Andhey v. Chhattisgarh State Power Holding Co. Ltd.*<sup>231</sup>, *Sadhna Agrawal v. State of Chhattisgarh, Rama Pandey v. Union of India*<sup>232</sup>, *Hema Vijay Menon v. State of Maharashtra*<sup>233</sup>, and *Sushma Devi v. State of Himachal Pradesh*<sup>234</sup>, asserted that the **right to life under Article 21 of the Constitution encompasses the right to motherhood**. Furthermore, it recognized the **child's right to full development**. In light of this, the Court held that if the Government could grant maternity leave to an adoptive mother, it would be **improper to deny the same benefit to a mother who conceived through surrogacy**—a process involving the implantation of an embryo created using either the intended parents' eggs or sperm in the womb of a surrogate mother.

#### Significance of the Judgment in the Paternity Leave Discourse

In India, as per **The Central Civil Services (Leave) Rules, 1972**, male government servants are eligible for **15 days of paternity leave**. However, there is no law mandating paternity leave in the private sector. The recent judgment<sup>235</sup> by the **Rajasthan High Court** holds significant implications for two key reasons:

1. **Equal Maternity Benefits:** The ruling extends equal maternity benefits to mothers, regardless of whether they gave birth or not. This shift has invigorated discussions around paternity leave.
2. **Equality and Purpose:** It underscores the purpose of maternity leave—to ensure equality for all working women who choose motherhood. In 2017, a private member's bill aimed at

<sup>231</sup> Dev Shree B Andhey v. Chhattisgarh State Power Holding Co. Ltd., 2017 SCC OnLine Chh 1763.

<sup>232</sup> Sadhna Agrawal v. State of Chhattisgarh, 2017 SCC OnLine Chh 19.

<sup>233</sup> Hema Vijay Menon v. State of Maharashtra, 2015 SCC OnLine Bom 6127.

<sup>234</sup> Sushma Devi v. State of Himachal Pradesh, 2021 SCC OnLine HP 416.

<sup>235</sup> Chanda Keswani v. State of Rajasthan, 2023 SCC OnLine Raj 3274.

gender-neutral parental benefits was introduced in parliament but was not passed. The argument against granting paid paternity leave to fathers centered on the belief that maternity leave was necessary for mothers' post-gestation recovery. However, the recent judgment clarifies that "leave" is not limited solely to "childbirth."

The judgment has shifted the focus of the "leave" discourse from "childbirth" to "child development." Consequently, discussions around paternity leave are now supported by data showing that active involvement of fathers during the early years positively impacts children's cognitive development. Research also indicates that fostering a bond with fathers enhances children's emotional and psychological well-being, leading to greater self-respect and life satisfaction.

Furthermore, the judgment emphasizes that leave policies aim to uphold the promise of equality. Maternity leave recognizes that a woman can be a mother without compromising her career trajectory. It seeks to bridge the career gap that women might otherwise face and promote the retention of female talent in the workforce. The judgment also acknowledges that maternity leaves fall within the ambit of **Article 42** of the constitution, serving not only to sustain the woman worker but also to replenish her energy, support child-rearing responsibilities, and maintain her work efficiency.

#### **COMPARATIVE ANALYSIS**

##### International Perspectives on Paternity Leave

**Paternity leave**, a crucial aspect of modern parental policies, is increasingly recognized globally for its role in **balancing work and family life**. Unlike maternity leave, which has long been the norm, paternity leave has seen significant changes in recent years. This shift not only reflects evolving societal norms but also a growing understanding of the **importance of paternal involvement in early childcare**.

Different countries have different policies regarding paternity leave, some of them are:

1. **United States:** The U.S. does not mandate **federal paid paternity leave**, but some states and companies offer it voluntarily. The duration varies, but it's typically shorter than maternity leave.

2. **Sweden:** Known for its progressive family policies, Sweden provides generous **parental leave**. Fathers can take up to 90 days of paid leave, which encourages active participation in child-rearing.

3. **Iceland:** Iceland boasts one of the most **gender-equal parental leave systems**. Parents receive a combined total of nine months, with three months earmarked for each parent and an additional three months to be shared as desired.

4. **Norway:** Norway offers a **"daddy quota"** within its parental leave system. Fathers get a dedicated portion of the total leave, incentivizing their involvement.

5. **Japan:** Japan has recently extended its paternity leave period, encouraging fathers to take more active roles in childcare.

6. **Canada:** Canada provides **parental leave**, which can be shared between parents. It includes a specific portion for fathers.

7. **South Korea:** South Korea has increased its paternity leave duration, aiming to promote work-life balance and encourage fathers' participation.

8. **India:** India has introduced **paternity leave policies** for government employees, allowing them to take time off after childbirth.

9. **European Union:** The EU has guidelines for parental leave, including provisions for fathers. However, specifics vary across member countries.

10. **Global Trends:** Worldwide, **90 out of 187 countries** offer statutory paid paternity leave, with almost four in ten organizations providing paid leave above the statutory minimum.

Some notable case laws related to paternity leave:

1. **Troester v. Starbucks Corporation (2018)<sup>236</sup>:**

- In this California Supreme Court case, the court ruled that Starbucks must compensate employees for time spent on minor off-the-clock tasks, even if those tasks take only a few minutes.

2. **Zivich v. Mentor Soccer Club (2004)<sup>237</sup>:**

- The Ohio Supreme Court held that a father who was injured while coaching his son's soccer team could sue the soccer club for negligence.

3. **Griswold v. Connecticut (1965)<sup>238</sup>:**

- Although not directly related to paternity leave, this landmark U.S. Supreme Court case established a constitutional right to privacy, which has implications for family planning and parental rights.

4. **European Court of Human Rights (ECHR) Decisions:**

- The ECHR has issued several decisions related to parental leave and discrimination based on gender. These decisions impact paternity leave policies across European countries.

Promoting Equality in the Workplace: Gender, Flexible Work Arrangements, and Paid Parental Leave

In 2009, the Australian government enacted the **Fair Work Act (FWA)** as part of its commitment to gender equality, workforce participation, and workplace flexibility. The FWA aimed to enhance efficiency, competitiveness, and economic growth while introducing a new right for workers to request flexible work arrangements, allowing them to balance work and family life<sup>239</sup>. Additionally, the **Paid Parental Leave Scheme Act (2010)** aimed to promote

<sup>236</sup> Troester v. Starbucks Corp., 5 Cal. 5th 829 (2018)

<sup>237</sup> Zivich v. Mentor Soccer Club, Inc., 82 Ohio St. 3d 367 (1998)

<sup>238</sup> Griswold v. Connecticut, 381 U.S. 479 (1965)

<sup>239</sup> Australian Labour, Forward with Fairness: Policy Implementation Plan (Canberra: Australian Labour, 2007)13

women's workforce participation and gender equity by providing paid parental leave.

However, these legislative measures, as they currently stand, may not effectively encourage equal sharing of paid work and unpaid caregiving between men and women in Australia. Rather than challenging traditional gender roles, these "family-friendly" <sup>240</sup>reforms could inadvertently reinforce existing norms. While the concept of the right to request flexible work arrangements holds promise for women in the workplace, its implementation within a gendered context may perpetuate, rather than dismantle, the division of labour.

The flexibility provision primarily aims to assist women in managing their ongoing and disproportionate contributions to unpaid domestic and caregiving work<sup>241</sup>. However, male counterparts are less likely to utilize this right, <sup>242</sup>often continuing to work longer hours and adhering to the norm of the "ideal" employee who prioritizes work over personal life. Unfortunately, this can hinder their career development<sup>243</sup>.

While flexibility may be appealing to employees who can afford to trade reduced income for more family time<sup>244</sup>, it does not realistically address the needs of women with lower incomes who cannot afford to work fewer hours or take extended leave.

Similarly, the Paid Parental Leave (PPL) scheme has the potential to increase men's involvement in family caregiving and reduce reliance on the male breadwinner model<sup>245</sup>. Although the Australian PPL scheme aligns with International Labour Organisation recommendations by offering 18 weeks of paid leave and inclusive eligibility criteria for de facto and same-sex

partners, it falls short in comparison to PPL schemes adopted elsewhere. For instance, the payment level is set at the Minimum National Wage rather than replacement income, which may inadvertently encourage mothers, rather than fathers, to utilize the leave<sup>246</sup>.

## CONCLUSION

### The Need for Comprehensive Parental Leave Policies

"A comprehensive parental leave policy is essential for supporting employees during significant life transitions related to childbirth and adoption. Such policies outline the rights, entitlements, and leave periods for employees who need time off to care for their new born or newly adopted child. Here are key elements to consider when crafting a robust parental leave policy:

**Scope and Purpose of the Policy:** Clearly define what a parental leave policy entails, explain why your company values it, and provide an overview of what employees can expect to find in the policy.

**Eligibility Criteria:** Specify the criteria employees must meet to qualify for parental leave. This includes legal requirements and contractual obligations.

**Entitlements and Benefits:** Detail the leave entitlements and additional benefits available to eligible employees. This encompasses various types of parental leave, such as maternity leave, paternity leave, and adoption leave.

**Notice Requirements:** Outline the procedures for requesting parental leave, including the correct notice period and the requirement to submit requests in writing.

**Booking and Returning from Leave:** Provide guidance on how employees can book parental leave and the process for returning to work after their leave period.

<sup>240</sup> Australian Government, Australia's Paid Parental Leave Scheme: Supporting Working Australian Families (Commonwealth of Australia 2009) 3

<sup>241</sup> M. Baird, "Orientations to Paid Maternity Leave: Understanding the Australian Debate" (2004) 46(3) Journal of Industrial Relations 259, 259

<sup>242</sup> M. Selmi and N. Cahn, "Women in the Workplace. Which Women? Which Agenda?" 13 Duke J Gender L. & Pol'y 7, 8.

<sup>243</sup> G. Webber and C. Williams, "Part Time Work and the Gender Division of Labour" (2008) 31 Qualitative Sociology 15, 16

<sup>244</sup> S. 34, Paid Parental Leave Act, 2010

<sup>245</sup> S. 54, Ibid

<sup>246</sup> R. Ray, J. Gornick and J. Schmitt, "Who Cares? Assessing Generosity and Gender Equality in Parental Leave Policy Designs in 21 Countries" (2010) 20 Journal of European Social Policy 196, 201

Comprehensive parental leave policies not only support employees but also contribute to better birth outcomes, particularly for underprivileged families, by reducing stress during pregnancy. These policies play a crucial role in promoting work-life balance and gender equity within organizations.”

#### Recommendations for Future Reforms

**Maternity and parental leave** policies play a crucial role in supporting working parents during significant life transitions. Here are some recommendations for future reforms:

#### 1. Individual and Non-Transferable Rights:

- Introduce a new system of parental leave that provides **individual and specifically non-transferable rights for each parent**. This ensures that both mothers and fathers have distinct entitlements to leave.

- This approach recognizes the unique needs and responsibilities of each parent, promoting a fair and equitable distribution of caregiving responsibilities.

#### 2. The "6+6+6" Model of Paid Leave:

- Replace the existing statutory maternity leave and shared parental leave (SPL) scheme with a more flexible model.

- Under the proposed **"6+6+6" model**:

- The **first 6 months of maternity leave** would be reserved for the mother.

- An additional **6 months of non-transferable parental leave** could be taken by the mother, in addition to her initial maternity leave.

- Fathers would also have the option of taking **6 months of non-transferable parental leave, extending** the total leave entitlement for both parents.

- These additional parental leave periods could be taken concurrently or consecutively, allowing flexibility for families.

#### 3. Day One Rights for All Working Parents:

- Ensure that **maternity, paternity, and parental leave and pay** are available as **day**

**one rights for all working parents**, regardless of their employment status.

- This change would eliminate waiting periods and provide immediate support during critical life events.

#### 4. Gradual Increase in Statutory Leave Pay:

- Gradually increase statutory leave pay to ensure it aligns with essential living standards.

- Consider a staggered approach:

- First, raise it to at least the **national minimum wage level**.

- Next, aim for the **real living wage level**.

- Eventually, work towards achieving **wage-replacement levels**.

- Adequate pay during leave encourages parents to take the time they need without financial strain.

#### 5. Addressing Complexity and Barriers:

- Simplify the process for parents by addressing the complexity of SPL calculations.

- Provide clear guidelines on calculating available leave for each parent and determining applicable leave periods.

- Streamline administrative procedures to encourage greater uptake of parental leave.

#### References:

1. Bhatia, S.K. (2008). *Labour and Industrial Laws*. Deep and Deep Publications.

2. Srivastava, S.C. (2020). *Industrial Relations and Labour Laws* (7th ed.). Vikas Publishing House.

3. Mishra, S.N. (2014). *Labour and Industrial Laws*. Allahabad Law Agency.

4. Government of India. (1948). *The Factories Act, 1948*. Retrieved from <https://labour.gov.in>

5. Government of India. (1976). *The Equal Remuneration Act, 1976*. Retrieved from <https://labour.gov.in>

6. Bakshi, P.M. (2020). *The Constitution of India* (16th ed.). Universal Law Publishing.
7. International Labour Organization (ILO). (n.d.). *Labour standards and globalization*. Retrieved from <https://www.ilo.org>
8. Tripathi, P.C. (2010). *Personnel Management and Industrial Relations*. Sultan Chand & Sons.
9. Venkata Ratnam, C.S. (2006). *Globalisation and Labour Management Relations: Dynamics of Change*. Response Books.
10. Supreme Court of India. (Various judgments on labour and employment law). Retrieved from <https://main.sci.gov.in>

