

# Maternity and Paternity rights: Comparing laws that are available in India to the practice across the world

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The time is past us, when men would go out and earn bread for the family and women would stay at home doing household chores. We are in the time where women are as independent as men, but we cannot ignore the biological fact that it is the women who give birth and for women being a mother it obliges her to be present for the child. The Government of India, understanding this, enacted an act called Maternity Benefit Act in 1961<sup>1</sup>, which extends to whole of India<sup>2</sup>.

The main objective of the act is to regulate the employment of women during various stages of pregnancy. The benefits provided to women are two folding that being leave and medical bonuses. The leave includes, maternity leave of 26 weeks<sup>3</sup>, which was amended in 2016, before the amendment the leave, was for 12 weeks. The leave was extended to 26 weeks by keeping in mind the future well-being of the child, as it is suggested by the World Health Organization that 6 months of breast feeding is good for the well being of the child. Also this period helps the women to recover herself before she returns to work also it gives sufficient time to bond with the child. India provides for third longest paid maternity leave, with only Canada and Norway being upfront. The breakup of these 26 weeks is that a women can take leave maximum eight weeks before the delivery date and the remaining is suppose to be taken post delivery. The 26-week leave is accessible by women for the birth of first two children. The 26-week leave period also extends to mothers who adopts kids younger than 3 months and commissioning mothers<sup>4</sup>. Women on maternity leave are entitled to average pay, which is calculated on wages of last three months. The act also provides for various secondary benefits such as nursing breaks and establishment of childcare centers if women are more than fifty percent in that particular establishment.

The first attracting feature of the act is that it attaches criminal liability to the employer if they are flouting the rules. The other striking feature of the act is that it offers an option to ‘work from home’ after the leave period has ended. Though the step of increasing the maternity leave from 12 weeks to 26 weeks seems to be good but it will only bias the employers against hiring women. A survey by National Commission for Women show the prevalent discrimination towards the pregnant women in the private sector as the burden is on the employers to provide for wages even when the employee is not contributing towards the productivity of the company. This increase in the maternity leave will lead to a drop in women’s laboursupply as the cost to them will increase.

The act is a good step forward but there is a major drawback of the act that it fails to address the issue of parenthood, it does not talk about paternity leave. The lack of paternity benefits clearly promotes the stereotype

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<sup>1</sup><http://www.ilo.org/dyn/travail/docs/678/maternitybenefitsact1961.pdf>

<sup>2</sup> Section 1, Maternity Benefit Act 1961

<sup>3</sup> Section 5, by amendment;

<https://labour.gov.in/sites/default/files/Maternity%20Benefit%20Amendment%20Act%2C2017%20.pdf>

<sup>4</sup> Section 3, The Maternity Benefit (Amendment) Act, 2017

that men are suppose to go and earn the bread whereas women are the ones who are responsible for child care and for doing household chores, which seems to be a step backward. There is no legislation in India, which talks about paternity benefits apart from Rule 43-AA of the Central civil services (leave) rules, 1972<sup>5</sup>, which is not giving a right but discretion to the companies. The rule provides the male central government employee with less than two surviving children to take leave of 15 days before or within 6 months from the date of delivery of child. If this leave is not used it will be treated as relinquished. Paternity leave is a right for government employees but there is no law that makes it compulsory for the private sector, hence companies can have their own rules on the same. This rule also applies to male's who adopt children. For the leave, the salary is paid equal to the pay, which was withdrawn instantly before the leave. Even though there is no legislation which talks about paternity leave, Delhi High Court in the case of Chandramohan Jain v. N K Bagrodia Public School in year 2009<sup>6</sup>, allowed for paternity leave in private schools.

In contrast, Sweden follows the parental model. The paternity leave in Sweden is one of the most progressive across the globe. It sets benchmarks worth emulating across nations. Not only does it make an impressive case for gender equality it also ensures that the father of the child gets to bond with the child and develop intimacy. It breaks the stereotype of a strict and distant father and helps in the development of emotional intelligence among fathers, as is reported in several surveys.

The law states that the parents, and not just mothers are entitled to a leave of sixteen months. Out of these sixteen months, two months have to compulsorily be taken by fathers or the parents as a team would lose them. This makes certain that fathers participate and share the burden of raising a kid. However, more importantly it ensures that women are not discriminated against by potential employers and not seen as unwanted baggage who would eat into company's resources because of the provision of maternity leave. This is a considerable triumph for women in the work place.

However, it would be unfair to claim that the law in Sweden has reached a utopian ideal when it comes to paternity leave and gender rights. It remains a fact that men are paid more than women in Sweden, so apart from the compulsory two months that have to be taken by the fathers, the rest of the fourteen months are generally availed by the mothers so that the family income does not take a nose dive. Another aspect of the law is that during the period of leave, which can be taken till the child is eight years old, the spouse availing the leave can claim only eighty percent of the salary and there are further caps on the maximum value that can be claimed during the period of leave.

Even with its loopholes, the Swedish law is a step forward in ensuring equal rights for the parents of a child and balancing the workload distribution equally among the two parents. It also facilitates the working women as it shares her burden and makes her more competitive and lucrative to potential employers.

The difference between the Indian and Sweden law is that India lacks paternity leaves. India too should learn from Sweden and adopt paternity reliefs, as it will help India to have a more gender-balanced approach. Also the practice of equivalently shared parenting rights would allow the fathers to be as engrossed as mothers in childcare which in return would benefit the women in balancing their reproductive role and seek fulfillment in their careers and would also help fathers to have a deeper bond with the children.

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<sup>5</sup><http://dopt.gov.in/sites/default/files/Leave-25032013.pdf>

<sup>6</sup> <http://www.ceodelhi.nic.in/WriteReadData/AssemblyConstituency/AC13/AC0130101.pdf>

Also, having law just for mothers creates opportunities for private organizations to discriminate against women in hiring procedure. It also promotes private entities to question women about their marital status, which will increase resentment towards women. A 2014 ILO report on “Maternity And Paternity At Work—Law And Practice Across The World”, stated that employers are statutorily obliged to pay the wages during the maternity leaves which creates a liability on the employers which creates encumbrances in hiring women. Hence if paternity leave is also provided it will not lead to discrimination and women will be placed at an equal pedestal as men. Which will completely cut out the problem of discrimination in both public and private sector on grounds of sex, pregnancy etc.

Another thing, which can be done to eliminate discrimination, is to not let the employer alone suffer the cost of paid maternity leave, just like Sweden’s government, India’s government should also share the burden of paid maternity leaves along with the employer. The outcome of this will be positive, as hiring women will no more cause hindrance to the employers, as they are not the sole burden bearers.

There are lots of advantages of paternity leave as it caters to numerous economic and social benefits like women can return to work faster as they will not have to be burdened about childcare. It also helps break the stereotype that only women has a role to play in childbearing and promotes that both the parents play equal role in raising the child and also lets men be a part of the family and take responsibilities at home. If paternity leaves are made mandatory, like in Sweden, men in India will have no option but to take part in the childbearing which will lessen the burden of the women and bring gender equality in its true sense. There are endless benefits of having paternity leave like adopting father-child connection, various studies show a that children who have a early bond with their fathers are likely to have better self-esteem, are likely to be more open to parents and in school as compared to children who do not have involvement of both the parents in their child bearing. There are two ways to ways to implement fathers right to leave during the various stages of pregnancy they are parental leave model like Sweden where the rights of both the parents are recognized without going into the gender of the parent and second being the paternity leave model which recognizes the right of the father, it is followed in countries like Iceland, U.K etc.

By not providing fathers with the paternity leaves we are as an outcome discriminating against women, which leads to not fulfilling the objective of the maternity Benefit Act, 1961. Having a mandatory paternity leave will get us rid of he thinking that women are a liability. There are various positive things, which come along with paternity rights like support to the wife during labor, sharing parenting responsibilities, and majorly it helps in building a family. It is high time that the civil society consciously debates on putting paternity rights on footage equal to maternity rights.