

International Journal of Law Research, Education and Social Sciences

Open Access Journal – Copyright © 2025 – ISSN 3048-7501
Editor-in-Chief – Prof. (Dr.) Vageshwari Deswal; Publisher – Sakshi Batham



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Re-Evaluating Maternity Leave in India: The Third Child Dilemma and Gender Bias in Law

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Received 05 August 2025; Accepted 03 September 2025; Published 06 September 2025

With the growing demographic shift in India, traditional family roles have changed, and women have started actively participating in the economy. Still, motherhood is often regarded as the most life-changing experience; however, juggling between career and family remains one of the main reasons women give up on their dreams, even in 2025. The provisions of the Maternity Benefit Act though formed to help women not quit and completely give up on their careers, but the genderised notions and reinforcement of the gender bias highlight the inability of the policy makers to move forward from their orthodox mindset. Simply increasing the maternity leave from 12 to 26 weeks does not completely solve the problem women are facing in this competitive time. The increased leave and the provisions of cost bearing solely by the employer have increased the gap between men and women employees and have unintentionally rendered them a liability for the companies. The lack of paternity leave or shared parental leave highlights the limitations of the recent amendment. The article explores the judicial interpretation of the Maternity Benefit Act and critiques the present biases in the provisions. Though the recent judgment of the court making the reproductive right of women a fundamental right under Article 21¹ is a welcome step, it still has a long way ahead. Through global comparisons, the article explores the loopholes present and also recommends steps that could not only ease the burden on the employers but also make the provisions free from any kind of gender bias related to childcare.

¹ Constitution of India 1950, art 21

Keywords: *demographic shift, family roles, women workforce, motherhood, family.*

INTRODUCTION

For centuries, women's contributions to society have been ignored, and men have been portrayed as the sole providers for the family. Such notions have not only held women back from realising their potential, but also have constantly genderised the notion of caregivers, projecting women as solely responsible for providing care while men have never been questioned for their absence in providing care to their children. Such genderised notions are inherently present in the laws, which, though they aim to empower women, promote a patriarchal definition of caregivers. As a result, the contribution of women towards society has always been ignored as their work and workplace did not fit right in the traditional definitions of 'work' and 'workplace.' Yet women have always been at work but never recognised or appreciated for it.²

Article 42³ calls for the State's action to make provisions for securing just and humane conditions of work and for securing just and humane conditions of work and for maternity relief. This emphasised the importance of worker welfare and gender equality, ensuring that labour laws protect employees, especially women, in the workplace. To ensure that women's participation in the workforce doesn't get reduced, the government introduced the Maternity Benefit Act, 1961, providing them with paid maternity leave up to 12 weeks. The Act fixed the eligibility to only those women employees who have worked in the company or the organisation for a period of minimum 80 days during the 12 months immediately preceding the date of their expected delivery. There is also a provision making it illegal for any employer to employ women during the period of 6 weeks immediately after the day of her delivery or miscarriage, or medical termination of pregnancy.

THE AMENDMENT OF THE MATERNITY BENEFIT ACT, 1961

² Sanchari Ghosh, 'Maternity Leave in India - Past Present and Future' (2018 -2019) 7 & 8(1) The IIS University Journal of Social Sciences <<https://iisjoss.org/sites/default/files/iisjoss/2018-19/PDF/4.pdf>> accessed 20 June 2025

³ Constitution of India 1950, art 42

In 2004, during the 92nd conference of the International Labour Organisation, resolutions were adopted to extend the maternity benefits to a minimum of 14 weeks, and also during the ILO Maternity Protection Convention, 2000, protection during pregnancy was considered to be a shared responsibility of government and society.⁴ Since the Indian Maternity Benefit Act was not formulated according to the recommendation of the ILO, a bill was proposed for its amendment, which was finally passed in 2017. The amendments included an increase in maternity leave from 12 to 26 weeks for all women in establishments with more than 10 employees, except for women having a third child, for which 12 weeks of maternity leave was allowed. It also mandated that creche facilities would be provided by the employer, and working mothers would be allowed to visit their child at the creche at most 4 times a day.⁵

IMPACTS OF THE AMENDMENTS

These amendments, though, were introduced to ensure women's health and well-being, but these provisions have created a gap between the employment of a man and a woman and have reinforced the traditional notion of childcare being associated only with females. Since employers are obliged to bear the costs of increased maternity leave and creche facilities, there is a high chance that they would prefer to appoint a male employee over a female employee having similar experience and educational qualifications. There have been many instances of women facing discrimination in private companies after revealing their pregnancy, and they are rarely considered for promotion, as the basis of promotion is performance-based. Companies, in many instances, have denied women promotion positions after returning from maternity leave. The gap that was required to be bridged has widened after passing the amendment bill. All these burdens on the companies of bearing all the extra costs in employing women would result in fewer employment opportunities for women as it would always be profitable for the organisation to employ a man over a woman exempting it from bearing the extra charges that comes with employing women like the paid maternity leave for 26 weeks, hiring an alternative during that period and providing creche facilities.

It also highlighted the present gender bias associated with the term child care. In the era where people are talking about equality and inclusivity, such biased laws do little to empower women. The provisions for maternity leave not only reinforce the notion of how women are required to

⁴ Ghosh (n 2)

⁵ *Ibid*

perform both the duties of child care as well as the breadwinner of the family, but also glorify it. It does little to lessen the responsibilities on women, making them victims of multitasking by being the so-called 'supermom.' Fathers are not included in child care and are never questioned about their contribution to child care. Being a man choosing to work over family is appreciated, but this is not with women. Women are just expected to be the sole care-providers for the children, and seeing how these laws are formulated, it appears as if the lawmakers are completely alien to the concept of fatherhood.

GLOBAL COMPARISON

The adoption of ILO recommendations on maternity leave varies across countries. Though India is one of the 42 countries where the maternity leave exceeds 18 weeks, its implementation is very different from that of other nations. Countries such as China, Brazil, South Africa and Russia have provisions for paternity leave or shared parental leave, which could be availed by either parent, breaking the gender bias associated with child care and exploring the role of fathers in providing child care, making India the only BRICS economy where there is no paternity or shared parental leave. Also, in these countries, the cost of maternity leave is not the sole responsibility of the employer, but is borne by the government through social security programmes or rebates in federal or state taxes.⁶

In India, very few companies recognise the idea of providing paternity leave because there has been less demand for this. While a limited form of paternity leave is allowed to government employees, no such law exists to provide paternity leave in the private sector. In 1997, through the Central Services Rule, the government brought in 15 days of paternity leave for men in central government services and in 2007, it was extended to adoptive fathers. The policymakers should try to inculcate these provisions and extend them to private companies, as such a step would be a big step towards breaking the societal expectation of women being the sole caregivers. Pregnancy and childcare responsibilities are one of the main reasons why women quit their jobs and leave their ambitions. Companies also hesitate to employ a married woman due to these benefits and interpret their social responsibility as a liability for their company.

⁶ Mitali Nikore, 'Supporting motherhood – or discouraging parenthood? A curious case of the extended maternity leave in India' (*The London School of Economics and Political Science*, 17 March 2017) <<https://blogs.lse.ac.uk/southasia/2017/03/17/supporting-motherhood-or-discouraging-parenthood-a-curious-case-of-the-extended-maternity-leave-in-india/>> accessed 20 June 2025

JUDICIAL INTERPRETATION

In the case of *K. Umadevi v State of Tamil Nadu*,⁷ the judges of the Supreme Court held that claiming maternity leave is a fundamental right and cannot be denied by any policies of the state, overturning the judgment of the Madras High Court. The case revolved around the issue of granting maternity leave to the appellant, who was a government school teacher, whose application for maternity leave was rejected, citing that the applicable Fundamental Rule to State government employees provides maternity leave to a woman employee having at most two surviving children and that there is no provision for maternity leave for a third child on account of remarriage. The judgment of the Madras High Court held that the employee was not eligible to receive the benefit of the maternity leave since she already had two children with her first husband. Aggrieved by this judgment, the employee appealed to the Supreme Court, where it was held that there is no cap or ceiling on the number of children to claim maternity benefits under the Maternity Benefit Act. The only difference is that for a woman with two surviving children, the leave is reduced from 26 weeks to 12 weeks.⁸ Through this judgment, the court reiterated the right of the woman to make a reproductive choice under Article 21⁹ of the Constitution, held in the case of *Suchita Srivastava v Chandigarh Administration*.¹⁰ The objective of maternity leave has been expounded by the court in the case of *B. Shah v Presiding Officer, Labour Court, Coimbatore*,¹¹ where it was discussed that the objective of maternity leave is to provide social justice to women workers.

It was also observed by the Hon'ble Supreme Court in *K. Umadevi* case that, as per section 27¹² of the Maternity Benefit Act, if any laws or agreements are made that are inconsistent with the Maternity Benefit Act, then in such a situation, the provisions of the Maternity Benefit Act would prevail. The judges took note of this provision, along with provisions such as Article 21,¹³ which includes the right to health and the right to live with dignity and Article 42,¹⁴ which calls for the state intervention to ensure just and humane conditions of work and maternity leave, and Article

⁷ *K. Umadevi v State of Tamil Nadu & Ors* (2025) INSC 781

⁸ Gyanendra Mishra and Maruti Nandan, 'Maternity Leave is a Constitutional Right Even for the Third Child: Explained' (*Latest Laws*, 04 June 2025) <[Maternity Leave is a Constitutional Right Even for the Third Child: Explained](#)> accessed 20 June 2025

⁹ Constitution of India 1950, art 21

¹⁰ *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1

¹¹ *B. Shah v Presiding Officer, Labour Court, Coimbatore* AIR 1978 SC 12

¹² Maternity Benefit Act 1961, s 27

¹³ Constitution of India 1950, art 21

¹⁴ Constitution of India 1950, art 42

51¹⁵ makes it a duty for the State to foster respect for international and treaty obligations in the dealings of organised people with one another. Denying maternity leave to women based on the number of children would not only hamper their right to live and right to health, but would also be a major hindrance to their right to make reproductive choices.

RECOMMENDATIONS FOR REFORMS

Even though India made certain amendments in the Maternity Benefit Act in 2017, following the guidelines of the ILO, it is still very far in comparison to other nations in actually providing the benefits of the Act to women. As discussed above, the amendments do not bridge the gap in understanding between the needs and responsibilities of men and women, but in turn only widen it. The reinforcement of the present gender bias and completely putting the onus on the employer to bear the cost makes the situation much worse. The true meaning of fatherhood and its role in providing child care is still an untouched topic in India. It's 2025, but we are still talking about providing women with basic rights while the world is having policies formed regarding paternal leave and shared parenting. In this uncertain situation, we could take the approach followed by Sweden and Norway, including shared parenting policies, to lessen the burden not only on working women but also on employers. In this, the distinction between maternity and paternity is dropped by entitling parents to shared leave, which could be split between a couple and the onus of financing the leave is shared between the employers of both husband and wife, even if all the leave is availed by one spouse.¹⁶

CONCLUSION

Though the 2017 amendment was a progressive move, its limitations bring out a serious question of whether it is enough to ensure that women's right to life and equality are not compromised, especially their right to make reproductive choices. The provision of the bill decreases the duration of maternity leave for the third child without any valid reason, pointing out the fact that women are really free to make reproductive choices, and the case of Umadevi specifically highlights the complexities that could be involved, like cases when women get remarried and already have two children from their ex-husband. Aren't they allowed to claim maternity leave for their third child, and how can state government policies go outrightly against the Maternity

¹⁵ Constitution of India 1950, art 51

¹⁶ Nikore (n 6)

Benefit Act and discourage them from having a third child by not providing them with maternity leave? It's high time that we really start to question the underlying assumptions about being a woman and those unrealistic expectations to either sacrifice or handle everything. Do we really need to be a supermom, or can't we be just a normal human and have others to rely on, equally sharing the responsibility of childcare?

Furthermore, the applicability of the Act is also concerning, as women availing these benefits are from the organised sector, while those working in the unorganised sector don't even have these benefits. The majority of women employed in India are employed in the unorganised sector, and still, the government has no policies to ensure their safety and health.

A truly effective maternity policy should go beyond numeric thresholds and recognise caregiving as a shared responsibility. India should implement the policies regarding shared parental responsibilities, like the other developed and developing nations, ensuring equitable treatment of all working parents, reducing hiring biases and truly empowering women. Through the implementation of this inclusive framework, we can truly realise the true spirit of Articles 21¹⁷ and 42¹⁸, ensuring dignity, equality and humane working conditions for all.

¹⁷ Constitution of India 1950, art 21

¹⁸ Constitution of India 1950, art 42