

IS THE PROGRESSIVE MATERNITY ACT TRULY A GAME-CHANGER, OR IS THERE A **HIDDEN COST?**



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Is the Progressive Maternity Act Truly a Game-Changer, or is there a Hidden Cost?

Becoming a new mother can be a heady mix of excitement and exhaustion, especially for working mothers. Many describe it as the equivalent of working two to three full-time jobs, with the added challenge of recovering physically while dealing with the demands of a newborn.

The 2017 amendment to the Maternity Benefit Act was therefore seen as a lifeline by many women struggling to balance maternal duties with job security. The amendment introduced several welcome changes in maternity benefits, such as:

- Extending the maternity leave period to a mandatory 26 weeks from 12 weeks, more than the 14-week standard set by the International Labour Organization.
- Flexibility to split maternity leave before and after delivery, eliminating the unfortunate sight of women working until the last day of their pregnancies to maximise their paid leave.
- An option to work from home, subject to the nature of their work and employer approval.
- Allowing for lighter duties and limited hours during the final 10 weeks of pregnancy.
- Extending the 12-week maternity benefit to women who lawfully adopt a child below three months of age as

commissioning mothers.

- Mandating businesses with 50 or more employees ensure nearby childcare creche services.

The Double-Edged Sword of Maternity Leave

Although these changes positioned India among the more gender-progressive countries on paper, many of the intended benefits have not been realised in practice. The amendment has also had unforeseen effects, which have often been counterproductive to the original goal of gender equity.

Mixed Industry Response

Industry response to the law has been strong but mixed. Larger corporations have enthusiastically implemented the law, finding compliance feasible and seeing returns from attracting talent. However, the MSME (Micro, Small, and Medium Enterprises) sector, which employs around 40% of India's workforce, has not responded as favourably.

Experts note that MSMEs find it difficult to bear the costs associated with the loss of talent and backfilling an employee for six months, along with added reentry costs and potential lawsuits. This often leads them to avoid hiring women altogether.

Additionally, a study revealed that the extension of paid maternity leave from 12 to 26 weeks resulted in a decrease in

women's employment as salaried workers, pushing them towards informal employment.¹ Dr. Gayatri Vasudevan, CEO of LabourNet and thought leader, brings up a concerning trend: hiring managers may favour young, unmarried women based on the assumption that their productivity will be lower after marriage and childbirth. Alternatively, they might favour older women perceived as less likely to take maternity leave or engage in early childcare responsibilities. This age discrimination stifles female employment opportunities and creates an unequal playing field.

Widening Pay Gap

A less obvious but very real third-order effect of increased maternity benefits is the widening gender wage gap. On the surface, the amendments empower women by acknowledging the demands of early motherhood and work-life balance. But in reality, many women face a notable decrease in earnings after childbirth, stemming from missed appraisal cycles or fewer opportunities during leave periods. They are also saddled with more domestic responsibilities after returning to work, making it difficult to take on added work responsibilities or being seen as unable to, even if they can.

Over time, these disparities compound, affecting pay as well as gender representation in leadership roles. Longer maternity leaves also lead to fewer women in the workforce, perpetuating

biases, and leaving fewer voices in decision-making roles when policies impacting women, such as work-from-home or flexible-timing policies, are made.

Improved maternity leave benefits, although welcome, might not be enough to counter these longer-term penalties incurred by mothers. Motherhood does not end 26 weeks after childbirth, and our interventions to support mothers shouldn't either.

Insufficient Care Infrastructure

The 2017 amendment to the Maternity Benefits Act does make some long-term provisions, such as the guideline mandating creches near businesses with more than 50 employees.²

In theory, this provision aims to alleviate childcare responsibilities, but currently, only Karnataka and Tamil Nadu have formulated rules aligning with these guidelines. The recently unveiled National Minimum Standards for Crèches (NMSPC) 2024 seeks to establish a benchmark for state governments, potentially encouraging more states to develop their guidelines, but the absence of penalties for non-compliance with the creche mandate undermines its effectiveness.

Very few organisations have set up or arranged creches, and even when they do, the quality of care is what truly decides if it empowers women to pursue their careers. Mothers are rightly selective about who

they entrust their children with, and it might be more beneficial to let them choose childcare providers or nannies, and reimburse them for such expenses rather than forcing them to choose a nearby creche which might be poorly run.

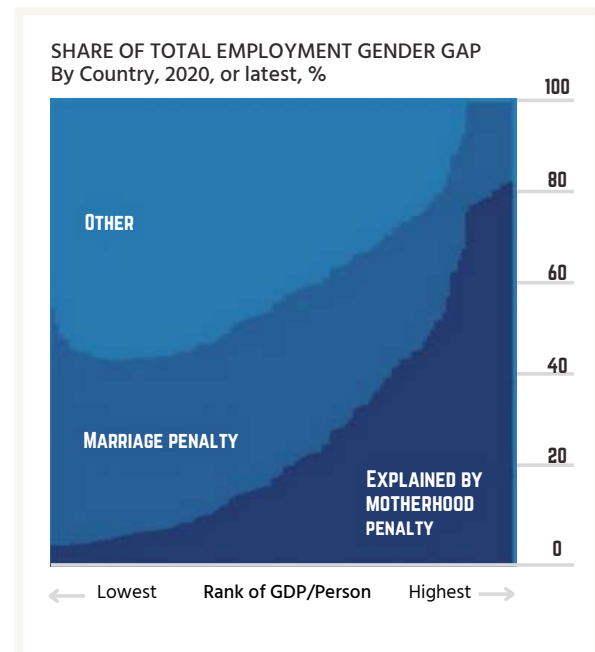
Finally, there is little attention to women employees who take a break from work due to maternity. Not every woman can return to the same job after paid maternal leave, and there are few government-aided return-to-work programs or skilling initiatives aimed at assisting women in reintegrating into the workforce.

Beyond Maternity Leave: Building a Supportive Ecosystem for Parenting

While we need to address deficiencies in maternity benefits provided to women in India, the various unintended but negative consequences indicate that we might need to look beyond maternity leave to empower women.

The 'motherhood penalty' is a global problem, as shown by a study done in 134 countries, home to 95% of the global population, conducted by a group of academics from the London School of Economics (LSE) and Princeton University, building on Nobel Prize winner Claudia Goldin's research into gender inequality in the labour market. The study found that only 52% of women aged between 25 and 54 are in the labour force, compared to

95% for men. In the rich world, 80% of this gap was explained by women dropping out after the birth of their first child, but in poorer countries, this dynamic played out even earlier as a marriage penalty as women leave the workforce soon after.



Source: *How motherhood hurts careers* - [Economist](#)

A problem at this scale should definitely be tackled with policies that counter these 'penalties', but we should also consider if we need more fundamental solutions that go to the root of the problem, which lies in the unequal distribution of parental responsibilities between genders.

Women bear an unavoidable burden in the first 9 months, and for a period after childbirth, but thoughtfully designed policies and interventions can change this trajectory at later stages, so that short-term measures such as maternity leave and benefits can be more effective.

To do this, we need policies that

encourage fathers to take up a higher share of parental responsibilities, and an increasing role to be played by governments in providing care infrastructure, recognising the economic benefits that can be unlocked for the country as a whole.

Paternity Leave Policies

The concept of paternity leave is an obvious intervention that fits the bill and has been gaining momentum globally. According to the International Labour Organization (ILO), in 2015, 94 out of 170 countries provided paternity leave for fathers—a significant increase from 1994.³

In India, government employees are eligible for 15 days of paternity leave under the Central Civil Services (Leave) Rules, 1972,⁴ but there is no such policy for the private sector. Unlike maternity leave, the onus is completely on the employer to provide this benefit, and most of the workforce is left out.

While some employers do provide paternity leave, the average time frame of seven days pales in comparison to the 106 days offered mothers.⁵ Even when provided, utilisation rates depend heavily on financial incentives. Countries like Iceland and Sweden, with mandatory "use-it-or-lose-it" leave policies for fathers, boast significantly higher uptake rates (around 90%) compared to Denmark (24%) and Slovenia (6%) where the paternity

leaves are optional.⁶ Sikkim's recent move to offer a month of paternity leave is a step in the right direction,⁷ but a national policy with a more substantial duration spanning across public and private sector organisations is needed.

While paternity leave policies offer clear advantages, there are other challenges that reduce adoption. According to a leading gender expert, fathers have a pervasive fear of losing opportunities and being marginalised if they choose to take leave. This concern is not limited to men alone; women also share this apprehension. Cultural pressures drive fathers, in particular, to face social stigma within their families and workplaces for taking leave, often rooted in traditional gender roles.

Financial anxieties also play a role, as some men fear losing income, bonuses, or other work-related incentives tied to physical presence. This is exemplified by Japan's low uptake of its generous year-long paternity leave policy, with only 3% utilisation.⁸ Moreover, men who do take leave often face penalties such as lower pay or demotions.⁹

This is not to say that paternity leave is a doomed endeavour. We just have a long way to go before it is widely accepted and implemented. Maternity leave benefits were granted after a similar journey, and we need a faster rate of change regarding paternity leave to hold on to those gains.

Increased availability and utilisation of paternity leave can significantly reduce biases that counteract the benefits of maternity leave as women employees become relatively expensive and unavailable to employers.

Shared Parental Leave Policies

Shared parental leave policies, where both parents can take time off after childbirth, offer a more holistic approach and alternative. In Norway, for instance, it is the shared parental leave that is offered instead of paternal leave, with a combined total of 48 weeks of leave to be shared between the parents. Recent legislation in South Africa has granted parents the flexibility to divide a total of four months of parental leave between them, representing a departure from traditional arrangements where mothers were entitled to four months of leave, while fathers were granted a maximum of 10 days.¹⁰ Apart from being more inclusive, gender-neutral parental leave works towards viewing childcare as the responsibility of the family, instead of the woman alone. Shared parental leave policies can also be particularly beneficial for adoptive parents and same-sex couples, allowing them to distribute childcare responsibilities more equitably from the outset and fostering a strong parental bond with the child.

While there is a growing consensus on the benefits of shared parental leave policies, it's essential to ensure that such policies

do not come at the expense of mothers' maternity leave. It is crucial to strike a balance that supports fathers' increased involvement in caregiving while also safeguarding mothers' rights and well-being during the postpartum period.

Shared parental leave is of course harder to implement in a country like India, unlike smaller countries such as Norway. Implementation will require centralised information management systems that coordinate leave availability between spouses working for different employers and account for cost-sharing. Therefore, it might be a more long-term goal to pursue after we create and improve paternity leave policies and address design and implementation issues in maternity leave policies.

Social Security to Bridge the Gap

A stumbling block for almost all of these policies and interventions is the financial burden and who will bear it. The 2017 amendment to the Maternity Benefits Act shifted the burden to employers, leading to a backlash from smaller employers. Paternity leave policies can lead to additional burden, and shared parental leave policies can lead to a conflict between employers about cost distribution.

While some of these issues can be solved with better incentive management and

digital infrastructure India is already famed for, there is an inevitable gap between policy and reality where someone has to pay the bills.

The government is the only stakeholder with the size, scale, and reach to play this role, at least till the benefits of gender-neutral policies start paying off for the private sector. Luckily, we have some existing schemes that can help if strengthened, and best practices to follow from other countries.

Expanding ESI Scheme Benefits

The Employees State Insurance Corporation (ESIC) plays a crucial role in providing maternity benefits to working mothers in the low and middle-income categories, offering a financial safety net to women earning up to Rs. 21,000.

In the fiscal year 2021-22 alone, ESIC provided maternity benefits to 18.69 lakh women beneficiaries, totalling Rs. 37.37 crore in financial aid.¹¹ However, there are awareness and access constraints. In some cases, employers might not be registered with ESIC or may not maintain proper employee contribution records, which can hinder women's ability to claim benefits. Incomplete or missing documents can delay the processing of claims and may result in long waiting periods leading to financial strain for women on leave. Streamlining the process could ensure that women in the formal sector receive fair and comprehensive financial support

during their maternity leave period.

However, a large portion of those belonging to the informal sector (93%) are still left out, since the maternity act caters to only those women employed in registered establishments with 10 or more employees. Options like voluntary micro-insurance contributions within the ESI Scheme or direct government funding need to be explored for greater coverage of these women.

Learning from Global Best Practices

Many countries have already found success in addressing the cost burden of parental benefits, through government-led social security programs that alleviate the pressure on employers, particularly smaller businesses. These policies incentivize employers to offer leave and create a more supportive work environment for families.

[Dr. Vinita Sethi, SVP & Chief Public Affairs Officer at Apollo Hospitals, underscores that incentivizing MSMEs to offer maternity protection through investments in women's skilling can offset perceived costs and enhance retention. Government support for proactive paternity management, such as dedicated leave quotas for fathers, is also a crucial component of reform.](#)

Norway exemplifies a successful model. Fathers in Norway receive generous parental leave benefits - up to 19 weeks at 80% pay funded through social security.¹²

This not only encourages active father involvement but also eases the financial strain of taking leave. France offers another model, with a 16-week maternity leave and 4-week paternity leave partially funded by social security.¹³ This ensures fathers can take time off while minimising disruption for employers.

In another model observed in the US, employers are incentivized to offer paid family and medical leave through a tax credit system. Under this scheme, employers receive credits for a portion of wages paid to eligible employees on leave, up to a maximum of 12 weeks annually. The value of the credit scales according to the percentage of wages provided during the leave period, ranging from 12.5% for 50% wage coverage to 25% for full wage coverage.¹⁴

Conclusion: Economic Benefits and a Path Forward

The economic benefits of maternity leave are substantial and multifaceted. Introducing universal maternity benefits (UMB), funded by the state, could play a pivotal role in reducing poverty in India. A study by UNESCAP demonstrates a positive correlation between UMB expenditure and poverty reduction. Even a modest investment of 0.4% of GDP in UMB could potentially lead to a 20% reduction in poverty against the international line and a 70% reduction against the national line.

UMB provides financial security during pregnancy and childbirth, a period marked by high medical expenses and loss of income. This financial buffer allows families to meet basic needs, preventing them from sinking deeper into poverty. Additionally, UMB empowers women by providing financial independence, which can enhance their bargaining power within households and lead to better healthcare decisions. Moreover, it incentivizes women to remain in the workforce by allowing them to take maternity leave without severe financial repercussions, thereby improving their long-term economic standing. By offering financial security, empowering women, and being cost-effective, UMB represents a promising policy option. An expenditure of less than half a percent of GDP can yield significant poverty reduction, presenting a compelling return on investment for the government.

However, for India to unlock the full potential of parental leave policies, a comprehensive approach is needed. [Pallavi Pareek, CEO of Ungender, highlights that the motherhood versus career dichotomy is a false choice imposed by society. Companies must shift their mindset and implement supportive policies like mandatory paternity leave or embedding such practices in their organisational charter to empower women to balance both effectively. This approach not only advances gender equality but also fosters inclusivity in the workforce.](#)

The 2017 amendment was a necessary step, but it is just the beginning. India needs a holistic parental leave system that dismantles outdated gender norms and paves the way for a future where work and family responsibilities are shared equally. Implementing such policies will not only support mothers but also encourage fathers to take an active role in caregiving, promoting a more balanced division of childcare responsibilities and creating a more inclusive and supportive work environment for all.

In conclusion, achieving gender equality in the workforce requires a fundamental shift in how we approach parental responsibilities. By embracing comprehensive and inclusive policies, India can pave the way for a more equitable and prosperous future for all its citizens.

Footnotes

1. Bose & Chatterjee. 'Mandated Increases in Maternity Leaves and the Motherhood Penalty: New Evidence from India'.
2. Press Information Bureau, Ministry of Labour and Employment. 2023. 'Press Release'.
3. International Labour Organisation. 2014. 'Maternity and paternity at work: Law and practice across the world'.
4. Jawanda & Singh. 2022. 'Socio-Legal Framework of Paternity Leave in India: A Critical Analysis'
5. Elson. 2017. 'Recognize, Reduce, Redistribute Unpaid Care Work: How to Close the Gender Gap'
6. Pwc. 2024. 'Unmasking inequalities: Delving deeper into the gender pay gap'
7. Jain, The Mint. 2023. 'This Indian state announces year-long maternity leave, one month of paternity leave for govt employees'
8. World Economic Forum. 2020. 'The 'future' prime minister of this country just made history by challenging gender stereotypes'
9. Miller. 2014. 'Being a Father Is Good for Your Career, but Don't Get Carried Away'
10. Johnson, The Guardian. 2023. 'South Africa to introduce shared parental leave after landmark Judgement'
11. Press Information Bureau, Ministry of Labour and Employment. 2022. 'Press Release'.
12. Safeguard Global, 2023, '10 countries with the best paternity leave policies'
13. Ibid.
14. Official Website of the Internal Revenue Service, United States of America