Gamechanger or a Trojan Horse?
Some Reflections on the Maternity Benefit Act, 1961

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The Maternity Benefit Act, 1961, a key legislation in India that enables women to transcend the public–private dichotomy and stake their claim for productive participation in the labour force, saw major amendments in 2017. Four aspects of the amendments—increased maternity leave, maternity leave for adoption and surrogacy, provision of crèche, and paternity leave—are juxtaposed with feminist and constitutional principles as well as ground-level realities and practices. An increase in maternity benefits in law with a neglect of paternity leave and benefits is a lopsided approach that further reinforces gendered division of labour and care work as the domain of women. The social responsibility of employers is emphasised, and a deeper engagement of the state with the policy of parental benefits is advocated.

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The glorification of motherhood, the intrinsic linking of women's identity to their role as mothers in the patriarchal Indian society, and the gendered role assigned to women with respect to childcare have led to family, community, and societal pressures on women. The rise of capitalism has led to a separation between economic reproduction that is remunerative (in the factories and offices) and social reproduction (care work in the private domestic sphere, often non-remunerative). This has sharpened the gendered division of labour and the public–private dichotomy, with women being confined to the more unregulated domestic sphere, performing "care" activities out of love and sentiment. As Nancy Fraser (2013) opines, the gendered separation of social reproduction from economic reproduction constitutes the principal institutional basis for the subordination of women in capitalist societies, and is a central issue for feminism. Capitalism has brought in a crisis of care, where the capacity for social reproduction is depleted due to the financialised form of capitalism.

Prior to Fraser, in response to and dissatisfied with liberal feminism and its overemphasis on rights and autonomy, some feminists such as Gilligan (1982) and Noddings (1984) have foregrounded the ethics of care and the value of connectivity. Care-focused feminists provided plans and policies for reducing women's burden of care so that they may develop themselves as fuller persons (Tong 2009: 7). In this context, the support of care work through the state and corporate entities becomes crucial. Maternity benefits are an important component of the same in the current legal framework.

This article examines the provisions of the Maternity Benefit Act, 1961 in general and the 2017 amendments to it in particular. It juxtaposes the legal amendments with feminist and constitutional principles as well as ground-level practices, and analyses their ramifications on working women. This article lays down the constitutional, legal and policy framework of workers' rights, followed by an overview of the Maternity Benefit Act, 1961. It then goes on to analyse four aspects of the 2017 amendments to the act—increase in maternity leave, maternity leave for adoption and surrogacy, provision of crèche facilities, and paternity leave—and concludes with a discussion on a possible road map for the future.

Constitutional, Legal and Policy Framework

Classical legal thought, which lasted up to World War I, focused on a sharp distinction between public and private law, freedom of contract, individualism, and legal formalism

(Kennedy 2006: 25). Law was confined to the liberal commitment to non-intervention and the free market. The latter half of the 20th century onwards, principles of social justice and human rights came to be infused in almost all aspects of labour law. The capitalist system of production signified an unequal relationship between employers and employees, leading to subordination and exploitation of employees. The Marxist perspective amplified the urgent need to challenge and address the unequal distribution of power, wealth, and resources in order to achieve social justice for the workers. The modern idea of human rights, which emerged after World War II, led to labour movements' framing of their claims through a human rights discourse, in order to counter the economic arguments and special interest politics that were advanced by employers (Fudge 2007: 29, 35). The value of labour law lies in bringing in an equalising effect on the unequal power equations and increasing the range of workers' rights.

The Universal Declaration of Human Rights had already been adopted when the Indian Constitution was drafted. The Preamble to the Constitution refers to securing all citizens social, economic, and political justice, and equality of status and of opportunity. Recognising the enormous powers of the state, the chapter on Fundamental Rights provides individuals with rights against the state, enforceable through courts of law. These include equality before the law and equal protection under the law (Article 14), prohibition on discrimination by the state on a number of grounds, including of sex (Articles 15[1]), and equality of opportunity in matters of public employment without discrimination on grounds, including of sex (Article 16[1] and [2]). In addition, the state can make special provisions for women, presumably to counter the historic discrimination meted out to them (Article 15[3]). The Indian state is also duty-bound to protect the life and liberty of all persons, including women (Article 21). It is pertinent to note that fundamental rights are applicable only against the "state," defined broadly through constitutional jurisprudence, and not against private enterprises. On the other hand, the chapter on Directive Principles of State Policy expressly provides for equal pay for equal work (Article 39[d]); that the health and strength of workers—both men and women—are not abused (Article 39[e]); that provisions are made for ensuring just and humane conditions of work and maternity relief (Article 42); and improvement in employment opportunities and conditions of working women (Article 46). These are guiding principles that are fundamental for the state to incorporate in the laws and policies formulated by it. However, these are not justiciable through courts of law.

Labour legislations elaborate on these constitutional principles, and provide mechanisms for their implementation. Substantially, labour legislations specifically extend their application to private enterprises.

In relation to women's rights, labour legislations have focused on issues such as payment of minimum wages and timely, regular payment of wages;[1] equal pay to men and women for equal or similar work;[2] improving the safety, health, and welfare of women in factories and other places of work;[3] occupational health and safety including compensation for industrial accidents and occupational diseases leading to disability or death;[4] maternity benefits, including provision of crèche facilities;[5] provisions for adequate rest and leisure;[6] social security;[7] and prevention of discrimination and sexual harassment at the workplace.[8] Specific labour legislations also address aspects of layoffs, compensation for retrenchment, unfair labour practices, unionising, collective bargaining, and resolution of labour–management disputes through labour courts and tribunals.[9] Additionally, social legislations aim at protecting vulnerable workers, including child labour,[10] bonded labour,[11] contract labour,[12] construction workers,[13] and migrant workers[14] from exploitative practices. Some legislations provide for rules regarding pay, leave, hours of work, intervals of rest, overtime, and ban on work in hazardous conditions.[15] These legislations apply to women workers too, though not gender-specific in their contents.

In addition to the constitutional provisions and labour laws, India has ratified a number of international conventions of the United Nations that focus directly or have provisions on women's rights at the workplace.[16] The International Labour Organization (ILO) also works towards setting normative standards on workers' rights through conventions and protocols, which are similarly ratified by India in order that they become applicable to India. The Maternity Protection Convention 1919 (No 3) is the earliest global standard aimed at protecting women workers' rights prior to and subsequent to childbirth. This was followed by the Maternity Protection Convention (Revised) 1952 (No 103). These are still in force for some countries. The ILO Convention No 183, the Maternity Protection Convention, 2000, is the most recent and updated standard, providing for a minimum of 14 weeks of paid maternity leave, a cash benefit (equivalent to two-thirds of the woman's previous earnings) to ensure proper health of the mother and child, and prevents a pregnant woman or nursing mother from exposure to work that can be harmful to her health and that of the child.[17] The convention also provides for women to return to the same or equivalent position of work after maternity leave and to be paid at the same rate, and to be entitled to one or more breaks for breastfeeding the child. An important aspect of global standards on maternity protection is a legal guarantee of job protection to pregnant women and young mothers. The Indian government is yet to ratify any of the three conventions, though there is a continuing effort to incorporate these standards into domestic legislations. In fact, the 2017 amendments to Maternity Benefit Act that increased maternity leave from 12 weeks to 26 weeks is an improvement over the prescription of 14 weeks' maternity leave stipulated in ILO Convention No 183.

The need for childcare services has been emphasised in several national policies of India. These include the National Policy for Education, 1986, National Policy for Children, 1994, the National Policy for Empowerment of Women, 2001, and the National Plan of Action for Children, 2005. Provision of crèches was made compulsory under the National Rural Employment Guarantee Act, 2005. The Rajiv Gandhi National Crèche

Scheme for the Children of Working Mothers, formulated in 2006, made it mandatory for public and private organisations to provide young working mothers with crèche facilities and day care centres. The Indian government adopted the National Early Childhood Care and Education (ECCE) Policy, 2013, focusing on early education care, keeping in mind the overall well-being and development of the child. The 2017 crèche guidelines (discussed later in this article) derive heavily from this policy.

The Maternity Benefit Act, 1961 and its 2017 amendments as they stand today must be perceived in the context of the consolidation and re-codification of its labour laws 2019 onwards, referred to as the Labour Codes. One of the four labour codes, the Code on Social Security, if and when it is enacted, will replace nine social security laws, including the Maternity Benefit Act, 1961. This code has been critiqued by trade unions for undermining workers' rights, including maternity benefits (Mohanty 2019).

It is also pertinent to note that these provisions are, in reality, applicable to a very small portion of the female workforce in India. Approximately 70% of Indian women do not work outside the home, and among the remaining women, 84% work in the unorganised sector. Among the remaining 16% women who work in the organised sector, a substantial number are engaged in informal work where the law does not apply. Consequently, Rajagopalan and Tabarrok (2019) estimate that less than 1% of all women in the labour force in India benefit from the law. Lack of awareness among women workers on their right to maternity benefits causes a further obstacle to them asserting their rights under the law. In addition, a vast majority of women employed on a daily wage basis are engaged as independent contractors and not treated as employees on the rolls. The employer, thereby, successfully misleads them into believing that they are not entitled to any benefits under this legal regime.

Amendments to Maternity Benefit Act

The emergence of the system of wage labour and casual labour facilitated the practice of hire and fire in industrial undertakings. Women workers were particularly vulnerable to such arbitrary and sudden termination of their work on the grounds of pregnancy. The 1961 act was enacted in this context. The Supreme Court explained the underlying philosophy of the act in the following words:

> A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled ... the employer ... must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period (*Municipal Corporation of Delhi v Female Workers* 2000, para 42).

The law provides for maternity benefits and certain other benefits, and seeks to regulate the employment of women in certain establishments for specific periods prior to and after childbirth. The law primarily applies to factories, mines, plantations, shops, and establishments that employ 10 or more persons (Section 2). Through appropriate government notifications, the provisions of the law are made applicable to other establishments or classes of establishments: commercial, industrial, agriculture, or otherwise.

Those women who have worked for 80 days in the 12 months prior to the date of delivery, and those earning more than ₹21,000 a month (and hence not eligible to maternity benefit under the Employees State Insurance Act) are eligible to claim maternity benefits under the 1961 act (Section 5B). In *Municipal Corporation of Delhi v Female Workers* (2000), the Supreme Court extended the maternity benefits under the act to female workers who were not on regular rolls, but treated as temporary workers and employed on muster rolls, on par with regular workers.

Under the act, women employees are entitled to certain monetary benefits. As per the amendments of 2017, these include leave with full wages for 26 weeks for two surviving children, and up to 12 weeks in cases where the woman has more than two children, and leave of up to 12 weeks for women adopting a child below three months and for commissioning mothers.

Additionally, women employees are entitled to non-monetary benefits that include nursing breaks, a mandatory provision of crèche facilities at the place of work in every establishment with 50 or more employees, and a time-bound right to appeal to the authority prescribed by law if the employer refuses to provide the woman with maternity benefits. Contravention of the provisions of the act entails penal consequences for the employer.

Increase in maternity leave: The 2017 amendments increased the maternity leave from 12 weeks to 26 weeks. Table 1 provides an overview of maternity leave that women workers are entitled to in selected countries around the world, indicating that India currently has one of the longest durations of fully paid maternity leave.

Table 1: Overview of Maternity Leave in Selected Countries around the World

Country	Total Maternity Leave (in Weeks)	Effective Fully Paid Leave (Calculated in Weeks, based on Percentage of Their Former Salary)
Bulgaria	58.6	49.5
Greece	43	23.3
United Kingdom	39	12.1
India	26	26
Australia	18	7.5
Denmark	18	9.6
Canada	17	8.2
Japan	14	9.4
South Korea	12.9	10.2
United States	12	0
Portugal	6	6

Source: Warren (2018).

Many companies cite poor performance, attendance, loss of projects, overall downsizing, and inability to provide 26 weeks of paid leave as reasons to terminate employees who have declared their pregnancy. The act, however, is very clear that there can be no changes to her service conditions during her pregnancy and no dismissal for any cause, save for gross misconduct (Section 12).

The cost of the extended 14 weeks of paid maternity leave is currently being borne by the employer too. Reports state that, in reality, this provision has backfired and employers have begun employing discriminatory hiring practices that adversely affect women (Sharma 2019). A survey conducted with 350 start-ups and small and medium enterprises (SMEs) observed the following:

> Twentysix percent of all respondents expressly admitted to prefer hiring male candidates as employees, while approximately 40% of the rest of the respondents claimed that they will consider the additional cost of the paid maternity leave while hiring female employees. This means that 66%, that is, two-thirds of all respondents disclose that the maternity benefit law adversely impacts their hiring against female candidates in some way. Only 22% of the respondents declared that the new maternity leave provisions won't impact their hiring decisions at all. Additionally, a whopping 35% of all respondents also revealed that they see the impact of the Act as negative on both costs and profitability. (Bhalla 2018)

It is important to note that the sample size of the survey is small, and the findings can, at best, be indicative of a trend, warranting further empirical research. However, an analysis of the findings of the survey indicates that a clear anti-women bias has crept into the actual hiring practices post 2017. The argument being made here is not that increased maternity leave has made women less employable, but that gender-discriminatory practices at the workplace that previously existed, due to the entrenched patriarchal mindset of employers, are perhaps further exacerbated in the current context.

There is reportedly a government proposal in the pipeline to reimburse the employers with costs for 14 weeks, up from the current seven weeks, costing an additional ₹400 crore to the government (Sharma 2019). While this may work to partially set off employers' increased liability towards maternity benefits, it still offers no guarantee that gender-discriminatory hiring practices against women due to the entrenched patriarchal mindset among employers would end. Thus, the government initiative addresses merely the manifestations of discrimination, without effectively addressing its root cause.

In our opinion, three possible courses of remedial action are possible, all of which involve state engagement. First, the provisions related to maternity benefits could be made mandatory responsibilities of employers (with punitive provisions for non-compliance) in the public and private, organised, and unorganised sectors. Second, enacting and implementing an anti-discrimination law is of utmost importance to prevent discriminatory practices against women at the workplace, based on and related to pregnancy and maternity, and to provide means of redress for the same. Third, incentives could be provided for employers who maintain gender diversity at the workplace. These could include tax rebates, reduction or waiver of licence fees, or other such incentives that are both monetary and non-monetary in nature.

Maternity leave to adoptive and commissioning mothers: Traditionally, the emphasis in labour legislations in India has been on childbirth through a natural (biological) process. However, in keeping with changing social needs, the judiciary extended maternity benefits, through a beneficial interpretation of the legal provision, to adoptive mothers and commissioning mothers who obtain a child through a surrogate arrangement (*K Kalaiselvi v Chennai Port Trust* 2013). For the first time, the 2017 amendments incorporated this into the Maternity Benefit Act, and stated that a woman worker is entitled to maternity leave of up to 12 weeks when adopting a child below three months, as are commissioning mothers (in surrogate arrangements).[18]

There is no known rationale for entitling a woman with adoption leave only when a child of less than three months of age is adopted, except to bring about an artificial sense of parity with care of infants by biological mothers. This provision ignores the fact that all adopted children, irrespective of the age at which they are adopted, require a bonding period for physical and emotional security; adoptive mothers too warrant maternity leave irrespective of the age of the adopted child. It potentially contradicts the public policy of encouraging adoption of children of varied age groups. An urgent and insightful response to address this issue is warranted from the lawmakers through recalibration of the law.

On the issue of maternity leave for commissioning mothers, an interesting legal question arises. Is it required to provide maternity leave for the same child, to two different women—one being the biological mother and the other being the surrogate mother—when both work for the same company? The answer is in the affirmative since the act focuses predominantly on the protection of the mother's interests; the biological mother is entitled to 26 weeks as per the provisions of the act; the commissioning mother who receives the child through surrogacy is entitled to 12 weeks as per the provisions of the act, irrespective of whether they work in the same company.

It is pertinent to note that the provision on adoption leave, as in the case of the provision on increased maternity leave, is embedded within a law that focuses only on women and maternity. It ignores the father's right and need to bond with the child and vice versa, as well as the father's responsibility towards the child's care, thereby reinforcing gendered roles and that care work is the exclusive domain of women. Within this women-centric legal framework, it is impossible to question women employees' disproportionate burden of care work pertaining to the child, whether biological, adoptive, or commissioned. This highlights the limitations of a liberal framework of feminism and the contradictions within it.

Provision of crèche facilities: One of the significant aspects of the 2017 amendments to the Maternity Benefit Act, 1961 is the provision of a crèche facility in any establishment with 50 or more employees (Section 11A). It is to be noted that the provision does not specify 50 or more '"female employees." Thus, even if the establishment consists of only or predominantly male employees, a crèche would need to be provided in order to enable fathers to take care of their children in the crèche. Under the Factories Act, 1948, any factory with more than 30 female workers is required to have a crèche (Section 48). Thus,

in a factory setting, if it has less than 50 workers but more than 30 female workers, it is mandatory for the factory to have a crèche.

The 2017 amendments failed to provide clarity on what the minimum standard of crèche facilities to be provided are, and who bears the cost for providing the same. This led to considerable confusion and ambiguity, which subsequently came to be addressed through the guidelines for establishment of the crèche, issued through a circular by the Ministry of Labour and Employment in November 2017.[19] The circular called upon state governments to frame and notify rules and prescribe amenities and facilities that the crèche should provide. State governments were slow to rise to the challenge and issue guidelines in this regard. Till such time that states notify the same, they are guided by provisions related to crèches in various existing laws.[20] Such laws provide for (i) adequate accommodation; (ii) adequate light and ventilation; (iii) clean and sanitary conditions; (iv) management of the crèche by women trained in care of children and infants; and (v) provision of crèche facilities to the employees free of cost.

Recognising the need for setting normative standards for the minimum quality of crèches across the country, the Indian government issued the "National Minimum Guidelines for Setting Up and Running Crèches under Maternity Benefit Act, 2017" in November 2018.[21] These guidelines are all-encompassing, detailed, and prescribe requirements that may be excessively difficult for small companies with a small workforce to comply with, although they have a social and legal commitment to fulfil in this regard. While most of the requirements appear to be designed keeping an urban setting and populace in mind, the rural small manufacturer or service provider will find these guidelines difficult to implement. As on date, Karnataka is the only state to have notified rules for the provision of crèches. These rules came into force on 22 August 2019. Haryana, Maharashtra and Kerala have published draft rules soliciting comments.

One issue that has arisen in recent times is the legality of the imposition of a "user fee" on the concerned employee for use of crèche facilities, and the engagement of third party service providers. The "user fee" appears to be a manner in which the employer transfers the financial burden of establishing and maintaining a crèche on to the employees. The government responded to an inquiry filed under the Right to Information Act as to which party shall bear the cost of establishing and running a crèche, by stating that the employer shall bear the cost (Khetarpal 2017). Larger companies are keen to outsource crèche facilities to third party service providers who would manage the crèche onsite or in a site close to the company's offices, and charge the employees who avail of the facility with a user fee, which may be nominal or substantial. The issue remains, as to whether or not this dilutes and compromises on the primary responsibility of employers to provide free crèche facilities, as mandated by law. In addition, larger questions loom when crèches provide a plethora of services including education, sports, and overall developmental programmes in addition to basic crèche facilities. The legislation, rules, and policies are silent on who should pay for such services. The consensus is that any service that is additional to the legal requirements can be billed back to the employee, if the employee wishes to avail of these services.

In comparison with maternity leave, the provision on crèche facilities is gender-neutral and thereby extends institutional support for working fathers to discharge care work towards their children. This aligns more with the feminist vision of equal sharing of childcare responsibilities between the parents.

Paternity leave: As of now, paternity leave does not fall within the ambit of the 1961 act. The central government introduced a provision for the same in 1999.[22] Due to this, employees in the government sector are entitled to paid paternity leave for a period of 15 days, and this leave can be availed either 15 days prior to or within six months of the birth of the child. There is no corresponding law that mandates the private sector to provide for paternity leave, thereby leaving it open to each company to formulate a policy on the same. Some bigger companies provide for paternity leave in India of their own volition, such as Facebook (17 weeks), Deloitte (16 weeks), Microsoft (12 weeks), Starbucks (12 weeks), Tata Consultancy Services (15 days), Infosys (5 days), and Oracle (5 days) (Vasquez 2020).

A glance at the trend in paternity leave around the world indicates that India fares low on the list of countries providing for paternity leave, such as Norway (112 days), Iceland (90 days), United States (84 days), Sweden (70 days), Finland (54 days), Spain (15 days), Australia (14 days), New Zealand (14 days), and Denmark (14 days) (ILO 2014).

The absence of any mention of paternity leave in the 2017 amendments leads to a wide discretion in this regard in the private sector. Coupled with a disproportionate and token 15 days' paternity leave for employees of the central government, this reinforces, through law, the patriarchal viewpoint that child care is primarily a woman's responsibility. The status quo of a "male 'breadwinner" and a "female homemaker" are maintained through a culture of toxic masculinity and derision in doing non-remunerative care work that is considered solely to be the women's domain. The wide disparity between maternity benefits and paternity leave in the Indian law and policy framework cannot be justified with the argument of only women workers having the biological need for healing and rest in the post-partum phase.

Feminists have long discussed the importance of paternity leave (Karr 2017: 233). The notion of paid parental leave to both parents is not a radical concept, and has been tried and tested successfully in some countries. For example, in 2000, Iceland implemented a policy that provides three months paid parental leave to each parent, and a further three months that can be divided between them at their discretion. Six years later, it had started reducing the gender wealth gap, and, at present, it is the top-ranking country for gender pay parity (World Economic Forum 2018). Norway and Sweden too have a "father's quota" of parental leave, that cannot be transferred to the mother if the father does not avail of it.

Such parental leave policy and their contribution to equal parenting have been analysed through a feminist perspective by authors such as Karr (2017), Mohdin (2015) and Baker (1997). Such policies can go a long way in arresting discrimination against women of child-bearing age at the workplace, and normalisation of paternity leave, which will eventually change the perception among employers that women workers are a financial liability.

Subsequent to the Maternity Benefit (Amendment) Act of 2017, a private member's bill titled Paternity Benefit Bill, 2017 was introduced.[23] This bill sought to provide benefits to natural, adoptive parents as well as persons acting *in loco parentis* (an adult responsible for children in the place of parents) in all sectors: public and private and organised and unorganised. These benefits included paternity leave that extended from 15 days to three months. On the one hand, the bill aims at providing the mother with much-needed support and assistance from her spouse prior to, during, and subsequent to childbirth. At the same time, it sought to emphasise equal parental benefits for mothers and fathers, based on the philosophy that childcare is the joint responsibility of both parents.

Possible Road Map for the Future

As discussed in this article, the 2017 amendments to the Maternity Benefit Act, 1961, despite their apparent benevolence, are applicable to an extremely small portion of women workers. Further, the act and the amendment to it are likely to be superseded by a new Labour Code on social security, and need to be viewed in this context.

In their implementation, the Maternity Benefit Act, 1961 and the 2017 amendments to the same entail financial implications for the employer. In the public sector, the existence of fundamental rights that can be enforced by women workers acts as a safeguard against discrimination that the employer may practise against them. However, in private enterprises, where the fundamental rights provisions are not directly applicable, the scope exists for employers to discriminate against women workers, due to a perception that appointing women workers is burdensome. At present, no law exists to prevent pregnancy-based discrimination in private enterprises, except a provision in the 1961 act that a woman cannot be terminated due to pregnancy. In the context of a decreasing participation of the female workforce, and a patriarchal mindset surrounding women's professional work in general, such discriminatory hiring and firing practices exacerbate the detrimental impact on women workers and must be arrested. This article has suggested various remedial measures that are warranted to arrest this trend.

The patriarchal underpinnings of the public–private dichotomy and the gendered division of labour, with a disproportionate burden of care work on the woman, remain prevalent in sociocultural practices and legal norms. Child and family policies related to parental leave and benefits are imperatives for gender equality. The demand for special treatment of

pregnant women and new mothers within a liberal framework, while benefiting a small proportion of women workers, has run the risk of reinforcing gender stereotypes and overburdening all women with the responsibility of social reproduction. Making maternity leave and benefits as the only parental benefit option fortifies notions of female domesticity and deepens the public–private divide that feminism has countered in a concerted manner for centuries. Further, these provisions discourage fathers from playing an active role as a caregiver, and deprive them of institutional support. While liberal feminism advocated for entry of women into the traditionally masculine public sphere, it failed to focus on men entering the traditionally feminine private sphere (Williams 2009: 89–90). Radical feminism, by insisting that the differences between men and women ought to be celebrated, also did not take on board the existing gender discrimination at the workplace based on perceived differences between men and women. The 1961 act and its amendments are indicative of the failings of both the approaches.

At a time of labour law reform, it is important that law keeps pace with the evolution in parenting and the transformation of a traditional, patriarchal family structure to one that is more egalitarian in nature. The gender disparity in caregiving roles urgently warrants deconstruction, so that men's and women's work, as well as family responsibilities in general and childcare in particular, are socially and legally accepted as interchangeable. Law and policy have the potential to challenge entrenched gender stereotypes and discriminatory practices, and facilitate social reform. While acknowledging that gender inequality at the workplace is multifaceted, a provision mandating employers to grant equal leave and benefits to both the parents is an important first step towards closing the gender wage gap as well as the gender wealth gap. Feminist engagements with parental benefits can form the foundation for state interventions that counter capitalist market forces. These are an imperative for achieving gender justice in the workplace.

NOTES

1 Payment of Wages Act 1936; Minimum Wages Act, 1948.
2 Equal Remuneration Act, 1976.
3 Factories Act, 1948; Mines Act, 1952.
4 Employees Compensation Act, 1923; Personal Injuries (Compensation Insurance) Act, 1963.
5 Maternity Benefit Act, 1961; Factories Act, 1948.
6 Factories Act, 1948; Mines Act, 1952.
7 Payment of Gratuity Act, 1972; Employees Provident Funds and Miscellaneous Provisions Act, 1952; Payment of Bonus Act, 1955; Employees State Insurance Act, 1948.
8 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
9 Industrial Disputes Act, 1947; Trade Union Act, 1926; Employment (Standing Order) Act, 1946.
10 Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.
11 Bonded Labour System (Abolition) Act, 1976.
12 Contract Labour (Prohibition and Regulation) Act, 1970.
13 Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
14 Interstate Migrant Workmen (Regulation of Employment) Conditions of Service Act, 1979.
15 Some such legislations are the Beedi and Cigar Workers' (Conditions of Employment) Act, 1966; Employees Provident Funds and Miscellaneous Provisions Act, 1952; Employees' State Insurance Act, 1948; Factories Act, 1948; and Shops and Establishment Acts (state laws).
16 These include the UN Convention on the Political Rights of Women, 1953 (ratified on 1 November 1961); UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (ratified on 9 June 1993); International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) (acceded to 10 April 1979); and International Covenant on Civil and Political Rights, 1966 (ICCPR) (acceded to 10 April 1979).
17 ILO Convention No 183 (not yet ratified by the Government of India). Earlier relevant conventions in this regard include the Maternity Protection Convention 1919 (No 3) and the Maternity Protection Convention (Revised) 1952 (No 103) and are still in force for certain countries.
18 Section 5(4) of the amended act reads as follows: "(4) 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."
19 Circular dated 17 November 2017 issued by the Social Security Division, Ministry of Labour and Employment, Government of India.
20 The Factories Act, 1948, the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 and the Contract Labour (Regulation and Abolition) Act, 1970 provide for some guidelines with regard to establishment of crèches.
21 The Ministry of Women and Child Development, Government of India, issued these guidelines vide its office memorandum dated 2 November 2018.
22 The provision was included in the Central Civil Services (Leave) Rule 551(A) in 1999.
23 The bill was introduced by Rajeev Satav, Member of Parliament.

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