Adaptation of Parental Benefit in Bangladesh: A Legal Perspective

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Abstract

In Bangladesh, more women become part of the job market every year and they frequently feel disadvantaged due to a lack of proper maternity leave regulations, which forces them to deal with the majority of parenting obligations, particularly when fathers cannot remain at home, as well as a lack of waged parental or paternal leave. Social inclusion of men in terms of paternity benefit, let alone parental benefit has not been seen in both sociological and legal context in Bangladesh as the idea of splitting up child care responsibilities equally between father and mother is not supported by our patriarchal society. However, fathers who actively participate in parenting, can make a persistent, beneficial impact on their children's life. Thus, Bangladesh should adopt the paternity leave law, just like other nations have, for the sake of the mother and the child. Hence, this paper by employing qualitative method of study will explore the legal framework for possible adaptation of parental benefit. For that purpose, this paper will bring to light a different dynamic of parental benefit exploring the conceptual framework in both inclusive of male and female. Lastly, this paper will particularly assess a comparative study of legal accepts of different South Asian countries to find out the best practice which can be a recommendation for the policy makers.

Keywords: Paternal benefit, Maternity leave, Child care, Fatherhood

1. Introduction

Around the globe, the percentage of women that are entering job market has risen significantly during the past 50 years, and Bangladesh is no exception (Islam, 2015). Based on the World Bank's database of development indicators, which is centered on reliable sources, the percentage of Bangladesh's workforce that is female was 32.43 percent in 2023 (Trading Economics, n.d.). The same source indicates that the female compared to male proportion of the workforce in Bangladesh was recorded at 46.17 percent in 2023 (Trading Economics, n.d.). In the RMG industry, the significance of women is paramount, as 85 percent of garment workers are female. In such circumstances, maternity benefits are vital for supporting mothers, promoting child health and fostering gender equality (Akter, 2021). The Bangladesh Labor Act, 2006 offered maternity benefits for 8 weeks pre and 8 weeks post-delivery if a female employee has worked with that establishment

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for at least 6 months in a permanent capacity and at that time she has less than two surviving children. In this period of 16 weeks, the worker will get the average pay of all salaries received during the three months previous to taking leave (Meem, 2022). During a period while a woman might not be able to work, maternity benefits offer monetary assistance to aid with costs of living and dealing with stress. Improved health conditions for mother as well as baby are promoted by such benefits, which enable women to take leisure recuperate both mentally and physically following childbirth (Bond & Wise, 2003). Significant emotional ties that are essential to the upbringing of the youngster are fostered by maternity leave, which allows new parents to dedicate precious time with their babies. According to research, the growth of a child could be greatly influenced by the affection and focus provided by the parents as well as by reliable caregivers, a supportive atmosphere, and beneficial role models such as caregivers who exhibit ethical conduct, standards, and ability to solve issues (Timilsina, Sawangdee, Hunchangsith, & Rittirong, 2019). However, in Bangladesh the father does not get any leave or any sort of benefit after having a child as the Bangladesh Labor Act, 2006 is completely silent on this issue. However, the practice of paternity benefit has started in our society as different organizations and universities has started this trend and giving benefit to their male employees (AIUB, n.d.). In this situation, this social trend needs legal recognition and justification so that this benefit can be given in equitable basis. Thus, this research intends to bring out how both maternity and paternity benefit can be recognized under one legal framework, maintaining uniformity and terming this as 'parental benefit'. Hence, this paper by employing mixed method of qualitative and quantitative study will explore the socio-legal framework for possible adaptation of parental benefit. For that purpose, this paper will bring to light a different dynamic of parental benefit exploring the conceptual framework in both inclusive of male and female. Lastly, this paper will particularly assess a comparative study of socio-legal accepts of different South Asian countries to find out the best practice which can be a recommendation for the policy makers.

2. Methodology and Parental Benefit: Maternity and Paternity Benefit

The study is both practical and theoretical in nature. Thus, the authors have to apply mixed method of qualitative and quantitative research. An empirical study was conducted on 70 people aged between 21 to 40 for Fathers and between 18 to 35 for Mothers. Among them 30 interviewees were academicians, 10 of them were NGO workers and rest of them were RMG workers. The survey was conducted after explaining them the benefit of the parental benefit. All the academicians and NGO worker agreed with the idea that parental benefit should be incorporated and if that is not possible paternity benefit should be introduced. However, dissenting opinion

came from the RMG worker. It was quite difficult to understand them the idea of parental benefit. However, they could understand the idea of paternity benefit. Among 30 interviewees 20 of them agreed with the notion that paternity benefit should be there and 10 of them disagreed with that.

	Academicians			NGO Worker			RMG Worker		
	Intervi ewees	Agreed	Disagr eed	intervie wees	Agreed	Disagre ed	intervie wees	Agreed	Disagre ed
Father	20	20	0	5	5	0	25	18	7
Mother	10	10	0	5	5	0	5	2	3
Total	30	30	0	10	10	0	30	20	10

Table 1: Data collected from the interviewees of different age and profession

Being a parent is a wonderful experience. It is truly remarkable to give birth, raise, and care for a life once it has entered the world. However, this duty falls on mothers under the patriarchal system that is in place. The fathers are only considered as a way to provide social security. However, in order to guarantee a successful outcome, it is the duty of both parents to care for their offspring (Jahan, 2021). The idea that moms are the sole individuals who can care for children is out of date. The proportion of fathers in parenthood is rising in the modern era. Fathers occasionally have to care for the older family members in addition to the mother and newborn. It is becoming more and harder to persuade additional family members to help with the care of a newborn, particularly if the family lives in a busy city like Dhaka. Therefore, a working father need at least one month of paid paternity leave with full benefits to care for a mother and newborn (Hossain, 2023). Families endure a lot of adjustments when a kid is born. In Bangladesh, maternity leave is in place to provide parents chance to adjust to these challenges. The Bangladesh Labour Act 2006, Section 46, guarantees a female employee with 16 weeks of maternity leave. Female government employees are entitled to six months of leave under Rule 197 (1) of the Bangladesh Service Rules 1970, and they are also guaranteed at least 14 weeks of maternity leave under Article 4 (1) of the Maternity Protection Convention, 2000. However, what about male workers whose spouses are expecting or have recently given birth? Despite the fact that paternity leave is a widely accepted practice in many other nations, the majority of Bangladeshi employers do not provide it to their male employees (Sraboni, 2023). However, several non-governmental organizations (NGOs), including BRAC, have been offering their male workers a month of paid paternity leave. And this is unquestionably admirable. Around 78 additional nations have adopted paternity leave policies in the past ten years, and 115 of the 185 nations evaluated by the ILO in 2021 were found to provide the right. (ILO, n.d.). Given that four out of ten potential fathers live in nations that provide paternity leave, this suggests that men's involvement in child care is becoming more widely accepted. But over two-thirds of prospective fathers—roughly 1.26 billion men—do not have access to paternity leave, which means they are losing out on the opportunity to develop strong bonds with their newborns (Jahan, 2021). In Bangladesh, paternity leave can facilitate women's employment. But as we enter the contemporary day, paternity leave is becoming more and more common in our society. This led to an increase in the number of women working. When it comes to parental leave, the terms 'maternity leave' and 'paternity leave' should be used independently. When a child is born or adopted, new parents might take a long period of time off from work, which is known as parental leave. It permits both parents to take paid or unpaid time off work to care for and spend quality time with their newborn or recently adopted child (Nitsotech, 2016).

In spite of this, a woman is nonetheless in charge of providing complete child care regardless of her level of achievement. Father and mother should not share child care responsibilities equally in our patriarchal society. On the other hand, men who actively participate in parenting can positively and permanently impact their children's lives. Paternity leave is therefore also crucial (Network, 2009). Paternity leave is intended to allow new fathers to spend time with their infant while helping the child's mother, who is typically still healing from the earliest stages of childbirth. Additionally, by encouraging men to participate more actively in parenting and household duties, paternity leave can support gender equality both at work and at home (Sagor, 2023).

3. Legal Framework for Maternity and Paternity Benefit:

A combination of national frameworks, treaties, and guidelines—mostly from the International Labour Organization (ILO) and the United Nations (UN)—make up the worldwide legal foundation regarding parental benefits. Each of these instruments seeks to advance equality of genders, safeguard laborers' family advantages and enhance parental well-being across the world (Faroque, Islam, Rahman, & Islam, 2013). With regard to maternity leave, paternity leave and family leave in particular, the ILO is a key stakeholder in establishing global norms for parental benefits. Ensuring proper safeguards for mothers, encompassing maternity pay, medical services, and anti-discrimination safeguards, were the main objective of the Maternity Protection Convention, 2000 (No. 183) (Anam, 2008). In accordance with article 4, an equivalent of fourteen weeks of mother's leave must be utilized, including no fewer than six weeks of leave following childbirth. Additionally, the employee is entitled to a financial incentive during pregnancy leave, ideally one that equals at least two-thirds of their pay. Furthermore, maternal leave along with safeguards against termination while expecting are provided

under Article 8 (Fraser, 2021). Established in 1981, ILO Paternity Leave Recommendation No. 165 encourages the implementation of parental leave to enable males to partake in parenting duties, hence promoting equality of genders. With the goal to facilitate attachment with the infant and provide the mother with sufficient assistance, the instrument recommends that males be given some sort of either paid or unpaid time off after the delivery of the baby (Anam, 2008). In order to safeguard the interests of laborers who have household duties, especially ones pertaining to raising children, the ILO Workers with Family duties Convention, 1981 (No. 156) was enacted in 1981. It advocates for policies that allow employees-men and women alike-to balance their professional and personal lives, such as flexible work schedules and family leave. The Convention emphasizes that both men and women deserve the opportunity for family leave and advocates for equitable treatment for workers who have family obligations (Fraser, 2021). Although it usually functions within a comprehensive picture of basic rights, the UN also deals with matters pertaining to family rights. According to Article 25(2) of the Universal Declaration of Human Rights, children and mothers have recourse to extra support and attention. This notion has caused the necessity of safeguarding mothers to be recognized globally, impacting both national and ILO regulations (Nguyen, 2022). According to Article 11 of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), maternity leave and benefits are crucial to preventing discrimination against women in the workplace due to specific reproductive functions. In addition to providing sufficient medical facilities for expectant mothers and newly mothers, it mandates that the governmental institutions offer maternity leave with wage. In order foster equal treatment for men and women in caregiving duties, CEDAW's concentration on equality at work also encourages the creation of parental benefits programs that can be extended to husbands (Infanger & Lima, 2019). The Bangladeshi century-old labor legal framework was established in 1881, when the Indian subcontinent was ruled by the British. Nearly all of the pre-partition legislation remained in effect following the 1947 division of the Indian subcontinent, with certain adjustments and revisions made by the Pakistani government in the manner of regulatory standards. Following liberation in 1971, the authorities of Bangladesh maintained the prior legislation by means of the Bangladesh Laws Order (President's Order No. 48) (Islam, 2015). Three separate laws were in place at that moment to regulate maternity benefits for women throughout specific prenatal and postpartum stages and to provide their maternity benefits. These included the Mines Maternity Benefit Act of 1941, the Maternity Benefits (Tea Estate) Act of 1950 and the Maternity Benefits Act of 1939, that were extensively utilized in producing goods, assistance and other companies. In 2006, all the 26 labor laws were repealed and codified into one Labour Act, 2006 where chapter IV was solely designated for the 'Maternity Benefit'. Bangladesh did not ignore maternity benefit by not being a party to the

Maternity Protection Convention, 2000 rather provided more than the convention suggested. In 2018, section 47 of the Labour Act, 2006 was amended and the maternity benefit was raised from 12 weeks to 16 weeks. A detailed procedure, eligibility, amount of maternity benefit and safeguarding against forced work in this period has been laid down for maternity benefit in this chapter. Section 2(34) of the Bangladesh Labour Act, 2006 describes that maternity benefit must be paid as a sum of money to the female worker and Section 45(1) and (2) concurrently prohibits the working of women immediately after 8 weeks of delivery (Anam, 2008). However, there are no regulations that specifically apply to women who work in managerial positions. Section 47 deals with the procedure regarding the payment of maternity benefit and states that during any time during female pregnancy, the worker who is eligible taking maternity leave within this law may notify employer verbally or perhaps in written indicating she expects to be pregnant within eight weeks of the date of notification, and may also designate a beneficiary to receive her maternity leave benefits in the event of her death. Any female who has given birth without giving notification must do so within seven days. Employers must allow women to take leave from work following the date of notice or from the day of delivery until eight weeks after delivery. Moreover, Section 48 and 49 of the Bangladesh Labour Act, 2006 states about the amount to be paid and payment in case of women's death. The sum of the wages received over the three months before taking leave, divided by the number of days officially worked. Whenever a woman qualified to maternal allowance under this Act at the time of her delivery, dies or within eight months, the employer must pay the benefit to the person caring for the newborn, or if the child dies, towards the person chosen by her even when a woman dies before delivering birth, her employer is liable to pay only until her death. According to section 50 of the code states an employee is not deemed to be rejected the certain maternity benefit with which she might have been obligated under such a section if the employer provides her notification or an order of discharge, removal, rejection or termination of employment within six months prior to and 8 weeks after the delivery, provided that this order is given for no legitimate reason. This detailed provision only described about maternity benefit and ignored paternity benefit let alone parental benefit. However, recent practices have shown that different institution and organizations is trying to cope up with the new phenomenon of paternity benefit in Bangladesh. The American International University Bangladesh guarantees the male workers are able to give their spouses or newborns immediate attention. Permanent male staff members of AIUB are eligible for paid parental leave as part of the paternal benefits (AIUB, n.d.). Furthermore, BRAC provides paid paternity benefit for one month (BRAC, n.d.). This has also been followed by the Aarong as the primary concern is for the male employees as they receive a month of paid leave, while female employees receive six months for experiencing the absolute delight of raising and caring for the infants (Aarong, n.d.).

4. Comparative Study with Neighboring South Asian Countries:

Policies regarding paternity leave vary greatly throughout Asia. While some nations have little or no statutory paternity leave, others offer comparatively considerable leave. Economic and cultural variables are also significant. The amount of paternity leave is influenced by both economic limitations and traditional gender roles. Care-giving is primarily viewed as a woman's role in many Asian cultures, which influences the adoption and formulation of paternity leave laws (Henna Kim, 2024). In addition, legal frameworks vary by area. The length of paternity leave varies from a few days to several weeks in nations where it is a legal requirement. Paternity leave is offered under more comprehensive family leave laws in certain nations, but it is either nonexistent or very limited in others (Henna Kim, 2024).

India provides new parents with maternity, paternity, and adoption leave, among other forms of job-protected leave (Nitso, n.d.) India provides new parents with three primary forms of leave.

- Maternity leave: Biological moms are entitled to up to 26 weeks of paid leave. Up to eight weeks prior to the anticipated delivery date, this can be completed.
- Paternity leave: The majority of businesses provide biological fathers with one to two weeks of paid paternity leave. This is normally done shortly after the delivery of the infant.
- Adoption leave: Most firms give the father 1-2 weeks of adoption leave in addition to the mother's 12-week maternity leave for adoptive parents.

The Maternity Benefit Act of 1961 is the main regulation that governs maternity leave in India. It encourages gender equality in the workplace and seeks to assist women in juggling their obligations to their families and their jobs. These are the main points of the act, modified by the 2017 modifications. This Act covers both the public and commercial sectors and is applicable to any organization with ten or more employees. Women are entitled to 26 weeks of paid maternity leave under the 2017 amendments to the Maternity Benefit Act of 1961. Up to two children may take advantage of this, and the third child's absence lasts for 12 weeks. For a kid under three months old, adoptive moms are entitled to 12 weeks of leave. Additionally, surrogate moms are eligible for a 12-week maternity leave. Within six months of the birth or adoption of a child, male employees who have less than two surviving children are entitled to 15 days of paternity leave under the Central Civil Services (Leave) Rules, 1972. This leave may be taken up to six months after the delivery or prior to it. States have different paternity leave policies for their employees. While some states may not have any special laws, others, like Tamil Nadu, provide paternity leave in a manner comparable to that of the federal

government. To find out the precise policy of your state, you should contact the relevant government department.

The Constitution of Pakistan under Article 37 directs the State to ensure "maternity benefits for women in employment" (Pakistan) There is legislation in place to carry out this crucial mandate. In accordance with the Civil Servants Rules, for up to three months, a female government servant on full pay is eligible for maternity leave that is not covered by the leave account. During a civil servant's career, such leave may not be granted more than three times. However, a female civil official working in a vacation department is exempt from this requirement. Once more, maternity leave may be given in addition to or in lieu of any other leave that a federal servant is entitled to (Rule 13 of the Revised Leave Rules 1980) . Similar to this, the West Pakistan Maternity Benefit Ordinance 1958, which is applicable throughout Pakistan, stipulates that women working in commercial, industrial, or other types of establishments must get their salaries for 12 weeks of maternity leave, which includes 6 weeks prior to and 6 weeks following birth. Breaking the law is penalized by a fine. Guidelines have been developed to implement the objectives of this ordinance (Rules T. W., 1961) The Mines Maternity Act 1941 also provides for 12 weeks paid maternity leave (Rules S. 3., 1961). Additionally, the Act forbids pregnant women from working in mines for a set amount of time prior to and after giving birth (Rules S. 3., 1961). In accordance with the Paternity and Maternity Leave Bill 2023, female employees of federally administered public and private departments will be eligible to take three periods of paid maternity leave: 180 days for the first time, 120 days for the second, and 90 days for the third. Similarly, male employees will only be able to take 30 days of paternity leave three times. If a violation occurs, a fine of up to 100,000 rupees, six months in jail, or both may be applied. In accordance with Article 75 of the Constitution, the President gave the bill his approval.

No matter how long they have worked, all pregnant women in Nepal who have a job are eligible to maternity leave. Their first two pregnancies are covered by this. In Nepal, female workers are entitled to 14 weeks (98 days) of maternity leave. Maternity leave must start at least two weeks before to the anticipated delivery date and last for at least six weeks following the day of delivery. For sixty days during this time, people are eligible to compensation; the remaining time is unpaid. Employers are required to provide up to one month of extended leave without pay if a medical practitioner advises further rest for the mother's or the baby's health after delivery. If a woman's first two children tragically die, there is a specific clause that permits extra maternity leave (Section 87, 2017). In Nepal, male employees are eligible for 15 days of paid paternity leave. A new father's employer is required to provide him with paid leave to care for their newborn child if he tragically loses his

wife within 60 days of giving birth. The remaining sixty days are covered by this leave. At the moment, Nepal has no laws pertaining to parental leave. (Labor Regulations 2075, 2018).

A crucial component of labor legislation everywhere, including in Sri Lanka, is maternity leave. It guarantees that expectant workers are given a safe and encouraging atmosphere both before and after giving birth. The legal foundation governing maternity leave in Sri Lanka is the Maternity Benefits Ordinance. A female employee is entitled to a minimum of 12 weeks (84 calendar days) of maternity leave under this regulation. For any live birth, female employees covered by the Shops and Office Employees (Regulation of Employment and Remuneration) Act are entitled to 84 working days of maternity leave. This is available as early as 14 days before the confinement and as late as 70 days following the confinement. The female employee is entitled to 42 days of maternity leave if the kid is born still. This can be acquired as early as 14 days before the birth and as late as 28 days after the birth. Under these laws and ordinances, there are additional safeguards for the mother and infant, such as two daily feeding intervals (Department of Labour, 2024). Sri Lankan leave regulations do not contain any statutory provisions pertaining to paternity leave in the private sector. During the first three months following childbirth, dads in the public sector are entitled to three days of paid maternity leave. Similar to paternity leave, parental leave is not covered by any provisions in Sri Lanka's leave regulations. Additionally, the law makes no mention of adoption leave (Vacation Tracker, 2024).

Country	Maternity	Paternity	Parental	Paid	Category		
	Leave	Leave	Leave		Maternity	Paternity	
India	Yes	Yes	No	Yes	26 weeks	15 days	
Pakistan	Yes	Yes	No	Yes	1st child: 180 days 2nd child: 120 days 3rd child: 90 days	30 days for 3 children	
Nepal	Yes (unpaid)	Yes (paid)	No	Mixed Appro ach	14 weeks 60 days compensation + Extension for 60 days	15 days	
Sri Lanka	Yes	Yes	No	Yes	12 weeks	3 days withing 3 months of the birth	

Comparison v						
Bangladesh	Yes	No	No	Yes	16 Weeks	Not Recognized

Table 2: Comparison of Paternity and Maternity benefit laws in different South Asian countries.

5. Conclusion and Recommendations:

Maternity, paternity, and parental benefits assist parents during the initial phases of their child's life, guaranteeing financial security while forming a connection with their infant. These advantages differ by country but generally provide paid time off for moms, dads, and caregivers. They advocate for work-life balance, improve child development, and encourage gender equality in caregiving responsibilities. This paper indicated how gender-biased terminologies is still in existence as maternity benefit has been incorporated in the legal framework in Bangladesh excluding the paternity benefit. Moreover, Bangladesh is way behind in accepting paternity benefit as a whole incorporating both the, maternity and paternity benefit in a single framework. In contrast, the study also showed a glimpse of hope in this regard as different institution and organization has also incorporated paternity benefit to some extent. However, paternal benefit as a whole is yet to be established in Bangladesh. To understand paternal benefit, this paper also analyzed the practice of different neighboring South Asian nations and picturized a comparative analysis which demonstrated that almost all the countries has incorporated both maternity and paternity benefit with different procedural mechanism. This scenario has also brought out the fact that Bangladesh is lagging behind in policy development compared to other neighboring countries in terms of maternity and paternity benefit. The interesting aspect is no South Asian countries have adopted parental benefit in their legal framework comprising both maternity and paternity benefit. By following the recommendations given below, Bangladesh can adopt this to create a new legal jurisprudence for South Asian legal system.

i. Gender-biased Terminologies Should be Removed from Legal Framework

There's no precise concept of 'parental benefit' in the current legal system. There is just "maternity benefit," which is a gender-biased word. A neutral term ought to be included; in this instance, "parental benefit" refers to the way in which both the mother and the father may uphold their rights.

ii. Parental Benefit Should be Introduced under the Existing Laws and Policies with Strict Liabilities for the Employer

Currently, only maternity leave is covered by the Labour Act of 2006. The government ought to change the legislation to substitute parental leave for maternity leave. In order to prevent the mother and father from feeling deprived. Given that moms experience both physical and mental stress, leave days may be differentiated. Otherwise, a new law addressing exclusively parental benefits can be adopted by the government. The provision should incorporate strict accountability to prevent both the employer and the employee from abusing the legal system.

iii. For the Purpose of Legislative Transparency, Lawmakers should Welcome Public Consultations and Focused Advocacy Groups

Since the public is the main focus of policymaking, people should be encouraged to participate. The government may work with community organizations, non-governmental organizations, or other women's organizations to achieve this goal.

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