

Paternity Leave Policies: The Sexist Gap in The Indian And Global Parental Policies

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Abstract

Babies require positive and meaningful interaction with both their parents so as to facilitate a healthy environment for growth and development in the later stages of their lives. It is hence of utmost importance for infants to have both their father and mother with them in the early stages of their physical and mental development. Though India is a world leader in providing maternity benefits, Rules 43-A and 43-AA of the Central Civil Services (Leave) Rules, 1972 are the only legal provisions with regard to paternity benefits currently in place in the country. Paternity leave is also not legally guaranteed in approximately 92 countries around the world even today. The lingering persistence of gender roles and the homemaker/breadwinner concept is one of the underlying reasons for this despite modernization and consequent development in society. However, paternity benefits are bound to benefit men, women as well as children in the long run. It is likely to break gender stereotypes and gender roles, level out the playing field with regard to recruitment, reduce the number of women who are forced to give up their careers post-pregnancy, create a lifelong bond between the father and child, etc. The Paternity Benefit Bill, 2017 was introduced in the Parliament four years ago keeping many such benefits in mind. However, the well-intentioned Bill has both pros and cons and hence cannot be enacted as is. Furthermore, nothing has changed in the realm of paternity benefits in India from then to 2021. Hence, in this paper, the need for the enactment of a legal provision with regard to paternity leave will be explained in detail. Additionally, the Paternity Benefit Bill, 2017 will be elaborately analysed and suggestions will thereafter be provided. The paternity leave policies of several countries across the globe will also be looked into throughout the course of the paper.

INTRODUCTION

The concept of paternity leave has remained an alien topic in India till 2015 and the main reason behind it is the social stigma that still prevails in the country. In Indian society, the man is considered to be the breadwinner, and the woman is expected to look after the children and take care of the household chores. This stigma was so significant that it made male employees reject offers of paternity leave even if the institutions they worked for provided it.¹ But after 2015 and close to 2017, there was a significant shift in this aspect of parenthood. The Paternity

¹ Ipsita Bhattacharya, "Is India Ready for Paternity Leave", *Times of India*, June 16, 2019.

Benefit Bill was introduced in the Parliament in 2017 and more private companies started providing paternity leave. But even in 2021, paternity leave is not guaranteed under any legislation in India, unlike maternity benefits. Currently, the Central Government provides for paternity leave for 15 days to all its employees after the birth of their child.²

The existence of the Maternity Benefits Act, 1961, and the absence of legislation on paternity leave in India create a disparity and also question the right to parenthood that is available to both parents and group of parents in the country. As of 2018, two-third of the children in the world below the age of one year live in a country where no legislation guarantees even a single day of paternity leave.³ This implies that approximately 90 million children across the globe may not enjoy the affection and care provided by their fathers.⁴ Even after so much development, modernization and renaissance, India does not have a legislation that guarantees every male parent the right to paid paternity leave after the birth of their child. It is also shocking to realize that around 92 countries do not have any national policy on paternity leave in place.⁵

It is important for children to have positive and meaningful interactions with their mother and father in order to facilitate a healthy environment for growth and development in their lives. It is evident that parent's bond with their children from the beginning of their life and considering this mental aspect, it is important for the baby to have both parents in the early stage of their physical and mental development. It is also equally important for both parents to spend time with their newborn without their work being a barrier.⁶ Too much focus on maternity benefits and the least amount of attention on paid paternity leave may be one of the reasons why women are pressurized to stake

their career or employment post childbirth. This in turn causes companies and organizations to favour fewer number of women in their workforce. This may further be substantiated with the data collected by the World Bank which emphasizes that the country's female Labour Force Participation (LFPR) has dropped to a historic low of 23.3% in the year 2017-18.⁷ Furthermore, India being a developing country, it is currently one of the eight countries with the lowest LFPR in the world.⁸

Globally, Japan has the most generous paternity policies in the whole world.⁹ The United States is far behind in this respect since the country does not have any parental laws for either the mother or the father.¹⁰ In Africa, 57% of countries have a statutory provision for paternity leave but on the other hand, only 36% of the countries in Eastern Europe and Central Asia have similar provisions.¹¹ 80% of Middle Eastern countries do not have any such provision with regard to paternity leave.¹² It is impossible to have a uniform solution to promote paternity leave globally since different countries have different provisions. But it is possible to enable national policies so that national legislations, governments, workers, employees, and societies as a whole publicly confirm that they care about both men and women because in this case, both genders are affected.

LITERATURE REVIEW

Talukdar Rasel Mahmud and Punam Chakrabarty in *"Assessing the Importance of Enacting Laws for Introducing Paternity Leave in Bangladesh"*¹³

2 Central Civil Services (Leave) Rules, 1972, Rule 43-A.

3 2 in 3 Infants Live in Countries Where Dads are not Entitled to a Single Day of Paid Paternity Leave: UNICEF, *available at*: <https://www.unicef.org/press-releases/2-3-infants-live-countries-where-dads-are-not-entitled-single-day-paid-paternity> (Last visited on Jun. 14, 2020).

4 *Ibid.*

5 *Ibid.*

6 *Ibid.*

7 Labor Force Participation Rate, Female (% of Female Ages 15+) (Modeled ILO Estimate), *available at*: <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS> (Last visited on Jun. 13, 2020).

8 *Ibid.*

9 Christine Ro, "Parental Leave: How Rich Countries Compare", *BBC*, Jun. 15, 2019.

10 Maternity and Paternity at Work: Law and Practice Across the World, *available at*: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf. (Last visited on Jun. 13, 2020).

11 *Ibid.*

12 *Ibid.*

13 Talukdar Rasel Mahmud & Punam Chakrabarty,



explore the significance of paternity leave such as levelling out the economic playing field, providing a helping hand to nursing mothers, and creating early interactions of children with their father. The article also discusses the initiatives taken by the Bangladesh Government with regard to parental leave for men and provides an overview of paternity laws across the globe, highlighting the cases of Europe, Australia, North America, and Asia. Furthermore, it explains the prospects and challenges of enacting paternity laws in Bangladesh, thereby throwing light on the industrial, institutional, infrastructural, technological, and educational development that would result. However, the analysis of the global scenario of paternity leave in the article may be observed to be incomplete as it does not provide any information about regions such as Africa, South America, and Antarctica.

Krupali Dhawale and Nisarga Sabale in *"The Necessity of Paternity Leave: Underpinning the Role of Males in Child Development"*¹⁴ investigate the difficulties experienced by both mothers and fathers in the period immediately after the birth of their child such as chronic fatigue and sleep deprivation, increase in monetary requirements, decrease in work-life balance, etc. The article also examines the difficulties experienced by employers during this period such as an increase in absenteeism and a decrease in productivity. Furthermore, it explains that though several people may consider paternity leave to have the effect of demasculinizing men, it is in fact something that should be met with applause and not scepticism. The article also points out the advantages of paternity leave policies to those availing them, their wives, and children. However, despite having analyzed the issue of paternity leave comprehensively, the article has failed to provide suggestions in order to further improve parental policies in India.

Nayan Lodha in *"Paternity Leave: A Need for Better Parenting"*¹⁵ examines the meaning and concept of paternity leave and enumerates why parental leave should be granted to men upon the birth of their child. The article explains that parenting is the combined responsibility of both the father and mother and not just of the mother as believed by people's patriarchal mindset. It further draws attention to the fact that paternity leave policies would ultimately result in gender equality by changing the perception of society concerning the traditional roles assigned to men and women. Furthermore, it investigates the legal scenario pertaining to paternity leave in India and also discusses paternity laws prevalent in various other countries such as Germany, Sweden, Spain, Norway, and Iceland. However, the article has focused only on the statutory aspect of paternity leave in India, thereby failing to provide a jurisprudential analysis of the topic.

Miriam Rocha in *"Promoting Gender Equality Through Regulation: The Case of Parental Leave"*¹⁶ analyses the paternity leave policies in countries such as Germany, Poland, Portugal, Sweden, Israel, Japan, and the United States. She concludes that these laws are not gender-neutral and that the Government should adopt policies that will encourage paternity leave which can be very crucial in child well-being. These policies not only help in child-care but also build an equal and gender-neutral workspace. The paper also emphasizes how Japan is the country with the most generous paternity leave policies. Even though the paper captures the picture of the countries mentioned, it fails to analyze the situation in some of the other major countries such as India, Australia, and the United Kingdom. The paper also does not have a structured recommendation that could be adopted in order to tackle the problems mentioned.

Vahide Yigit Gencten and Emel Genc in *"Paternity Leave: A Systematic Review of Studies in Education*

"Assessing the Importance of Enacting Laws for Introducing Paternity Leave in Bangladesh", 3 *Bangladesh Institute of Legal Development Law Journal* 151, 151-160 (2018).

14 Krupali Dhawale & Nisarga Sabale, "The Necessity of Paternity Leave Underpinning the Role of Males in Child Development", 8 *International Journal of Advances in Computing and Management* 38, 38-42 (2019).

15 Nayan Lodha, "Paternity Leave: A Need for Better Parenting", 5 *International Journal of Law and Legal Jurisprudence Studies* 175, 175-189 (2018).

16 Miriam Rocha, "Promoting Gender Equality Through Regulation: The Case of Parental Leave", 9 *The Theory and Practice of Legislation* 35, 35-37 (2020).

and Psychology from 1990 – 2019”¹⁷ provides a rather psychological aspect of how paternity leave can affect child well-being. It has been analyzed how father-child bonding is necessary for the early stages of child growth. The paper emphasizes the relevance of this topic by analyzing the number of articles published on this particular topic and it has been concluded that the most number of articles have been published in the year 2020. The paper also reflects on the legislations governing paternity leave and concludes that they are inadequate and do not bridge the gap. However, the paper has failed to draw a parallel between the issues discussed in the articles and how it has evolved in the modern-day.

Sara Cools, Jon H. Fiva and Lars J. Kirkeboen in “Casual Effects of Paternity Leave on Children and Parents”¹⁸ also provide a psychological analysis of paternity leave and the impact of the same on children and parents. The paper puts forth evidence regarding how the school performance of children has improved in a household where the father possesses higher education and there was also no evidence to show that paternity leave decreased the performance of men at their workplace. The paper concludes that paternity leave can not only enhance child growth and child-wellbeing but also result in shared responsibility between the parents. Though the paper mainly deals with the lack of legislation in this regard, it has failed to emphasize how different countries have different regulations and how the evolution of the same is less than expected.

RELEVANCE

Article 18 of the Convention on the Rights of the Child stipulates that “States Parties should ensure recognition that both parents have responsibilities for the upbringing and development of the child. States Parties should render appropriate assistance

to parents and legal guardians in the performance of their child-rearing responsibilities and should ensure the development of institutions, facilities, and services for the care of children. States Parties should also take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.” Furthermore, Article 10(1) of the International Convention on Economic, Social and Cultural Rights stipulates that “The widest possible protection and assistance should be accorded to the family, particularly for its establishment and while it is responsible for the care and education of dependent children.”

Though India is a signatory to both these conventions, no legal provision concerning paternity leave or paternity benefits except Rules 43-A and 43-AA of the Central Civil Services (Leave) Rules, 1972 exists in the country. In furtherance to this, Rule 43-AA stipulates that “A male government servant with less than two surviving children may be granted paternity leave for a period of fifteen days, during the confinement of his wife for childbirth, i.e., up to fifteen days before or six months from the date of delivery of the child.” Furthermore, Rule 43-AA stipulates that “A male government servant with less than two surviving children, on valid adoption of a child below the age of one year, may be granted paternity leave for a period of fifteen days within six months from the date of valid adoption.” However, these provisions are applicable only in the case of government employees and there is hence no mandate in the country for private companies to offer paternity leave or other such benefits to their employees.

Despite the lack of legal provisions in this respect, several companies in India in the private sector offer paternal and maternal leave respectively, or a common parental leave to their male and female employees. In this regard, IKEA offers 6 months, Novartis, as well as Zomato, offer 26 weeks, Cummins offers 30 days, Schneider Electric, as well as Tesco PLC, offer 2 weeks and Tata Steel Ltd. offers 10 days of parental leave.¹⁹ Furthermore, Facebook

17 Vahide Yigit Gencten & Emel Genc in “Paternity Leave: A Systematic Review of Studies in Education and Psychology from 1990 – 2019”, 6 *International Journal of Social Sciences and Education Research* 531, 531-542 (2020).

18 Sara Cools, John H. Fiva & Lars J. Kirkeboen, “Casual Effects of Paternal Leave on Children and Parents”, 117 *The Scandinavian Journal of Economics* 801, 801-828 (2015).

19 Fathers, Paternity Benefits and Gender Norms, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3441024 (Last visited on Jun. 15,



offers 17 weeks, Deloitte offers 16 weeks, Microsoft Corporation, as well as Starbucks, offer 12 weeks, Tata Consultancy Services offers 15 days, and Infosys as well as Oracle Corporation offer 5 days of paternity leave.²⁰ There is a need, however, to understand that a majority of working men in the country are not beneficiaries of any such leave or benefits in connection to the birth of their child.

In the long run, paternity leave or paternity benefits is bound to benefit men, women as well as children. India is a country where men are considered to be the breadwinners of the family and hence expected to earn money, and women are considered to be the homemakers and hence expected to do household chores as well as raise children. Though times have changed and an equal number of women can now be found working inside as well as outside the home, mothers are still considered to be primary caregivers and child-rearing is hence, more or less, still considered to be a woman's duty. Conferring paternity leave or other such benefits on male employees will allow fathers to take care of their new-born child as well as help out their spouse, who is most likely still recovering from childbirth, with household chores; thereby breaking the gender stereotypes or gender roles that have been ingrained or embedded in the minds of people.²¹

Furthermore, even in the present times, employers often prefer male candidates over equally qualified female candidates. The most prominent reason for the same being the legal necessity for maternity leave and maternity benefits in the country. If providing paternity leave or paternity benefits to male employees also becomes mandatory in India, then that would level out the playing field for both male and female candidates and such gender discrimination during recruitment will consequently cease to exist. Another important point to be taken into consideration in this respect is that managing a new-born child is not at all an easy task. It is hence quite difficult for the mother to take care of the baby by herself, without any help or support from the father, especially when she is a working woman.

2020).

²⁰ *Ibid*.

²¹ *Supra* note 14.

This is the main reason why women in India often give up their jobs post-pregnancy.²²

Paternity leave or other such benefits and the consequent split in child-rearing responsibility between the parents will allow the mother to resume her career soon after childbirth; thereby reducing instances of women sacrificing their career so as to take care of their children. Apart from all these benefits, paternity leave or paternity benefits also have the advantage of strengthening the bond between the father and the child. By virtue of paternity leave or other such benefits, the father will be able to play a significant role in the child's life right from the time of birth. This is beneficial to both the father and the child in the long run. The introduction of a legal provision concerning paternity leave or paternity benefits is hence the need of the hour and should therefore be seriously taken into consideration by the law-making authorities in the country.²³

PATERNITY BENEFIT BILL, 2017

The concept of paternity leave was discussed for the very first time in the Parliament of India when MP Rajeev Satav introduced the Paternity Benefit Bill, 2017 in the Lok Sabha. The proposed legislation like every other law in the country, proposed or otherwise, has both pros and cons; and hence has people advocating both for and against its enactment. Regardless of this, the most prominent features and provisions of the proposed statute are as follows:

- **Objective:** The Paternity Benefit Bill, 2017 aims at conferring paternity leave and other such benefits associated with the birth of a child on male employees in India both in the public and private sector. Furthermore, creating a legal necessity in this regard as well as stipulating conditions for the same is also an objective of the Bill.
- **Applicability:** Section 2 of the Bill stipulates that the Bill applies to men working in factories, mines, or plantations; enterprises where people are employed for equestrian, acrobatic, and other

²² *Supra* note 13.

²³ *Supra* note 15.

such performances as well as enterprises where 10 or more people are employed. Furthermore, the Bill also applies to men who are self-employed; or who work in the unorganized sector or in enterprises where less than 10 people are employed.

- **Payment:** Section 4(1) of the Bill stipulates that every male employee should be paid “average of the man’s wages payable to him for the days on which he has worked during the past 3 months or the minimum rate of wage fixed under the Minimum Wages Act, 1948 or ten rupees, whichever is higher” as paternity benefit by his employer.
- **Working Duration:** Section 4(2) of the Bill stipulates that no male employee should be paid paternity benefit by the employer until and unless he has worked in the said enterprise for a minimum of 80 days in the past 12 months.
- **Duration of Leave:** Section 4(3) of the Bill stipulates that a male employee can avail paternity benefit for a maximum of 15 days in which more than 7 days should not be before the date of delivery of the child.
- **Parental Benefit Scheme:** Section 5(1) and (5) of the Bill stipulates that the Central Government should devise a Parental Benefit Scheme so as to confer paternity benefit on each and every male employee in India. The Central Government should also issue detailed guidelines for the implementation of the said scheme.
- **Parental Scheme Benefit Fund:** Section 5(2) and (3) of the Bill stipulates that the Central Government should establish a Parental Benefit Scheme Fund for the fulfilment of the objectives and aims of the Act. Furthermore, employees, employers as well as the Central Government should make contributions to the said to the Fund.
- **Advance Payment of Salary:** Section 6(5) of the Bill stipulates that the paternity benefit for the time period before delivery of the child should be paid to the male employee by the employer in advance on submission of sufficient proof. Furthermore, the paternity benefit for the time period after the delivery of the child should be paid to the male employee by the employer

within 48 hours on submission of sufficient proof.

- **No Dismissal:** Section 11(1) of the Bill stipulates that an employer should not dismiss from service his or her male employee who took leave from work in furtherance to the paternity leave provisions in the Act.
- **Inspecting Officer:** Section 12 of the Bill stipulates that the Government may employ Inspectors to ensure the fulfilment of the objectives and aims of the Act.
- **Non-Fulfilment of Benefit:** Section 19(1) of the Bill stipulates that if at all an employer does not pay paternity benefit to any of their male employees or dismisses any of their male employees who took leave from work in furtherance to the paternity leave provisions in the Act, then he or she may be punished with imprisonment ranging from 3 months to 1 year as well as fines ranging from Rs. 20, 000 to Rs. 50,000.
- **Miscarriage:** Section 8 of the Bill stipulates that a male employee should be paid paternity benefit by his employer, even in cases of miscarriage, for 7 days after the occurrence of such incident.
- **Adoption:** Section 4(4) of the Bill stipulates that any male employee who adopts a child, less than 3 months of age, should be paid paternity benefit for 15 days from the date of adoption.

INTERNATIONAL PERSPECTIVE

There are no uniform laws governing paternity leave in the world. Different countries opt for different national policies and many countries do not even have a statutory provision dealing with paid paternity leave. This adoption of provision is not based on the economic position of the country. The United States is one country that does not have any parental law providing for either maternity or paternity leave. Japan provides for the greatest number of paid paternity leave, i.e., 12 months. However, very few actually take it.²⁴ Japan is followed by South Korea in this respect, but it is surprising that men only make 17% of the parents who took paternity

²⁴ Kyodo, “Japan Offers Most Paid Leave for Fathers Worldwide but Few Take it, UNICEF Report Finds”, *The Japan Times*, Jun. 13, 2019.



leave in the year 2018 even after the existence of a national campaign that encourages them to do so.²⁵ Similarly, British fathers are rarely seen making use of paid paternity leave.²⁶ But on a positive note, the discussion and acceptance of family-friendly policies are growing across the globe and India has set an example through the introduction of the Paternity Benefit Bill, 2017 in the Parliament.²⁷ However, there needs to be a complete shift in the policies adopted because eight countries in the world including the United States do not have any law for either paid paternity or maternity leave. The following analysis of paternity leave in each continent provides for a better understanding of paternity policies adopted across the globe.

Asia

In Asia, not many countries provide for paid paternity leave but Japan and South Korea have the highest number of allotted paid paternity leave in the world. Both countries provide for more than 14 weeks of paid paternity leave.²⁸ India, Pakistan, Bangladesh, China, Iran, Iraq, Syria, Malaysia, Thailand, Kazakhstan, and few other Asian countries do not have a national policy or statute which guarantees paid paternity leave.²⁹ On the other hand, countries such as Cambodia, Myanmar, Saudi Arabia, Afghanistan, and Indonesia provide for less than 3 weeks of paid paternity leave.³⁰ But apart from Japan and South Korea, Russia also provides for more than 14 weeks of paid paternity leave.³¹ Even though paternity leave is acknowledged and provided by private organizations, most of the countries in Asia do not have a national policy governing the same. However, it may be observed that according to the policies of countries like Japan and South Korea, the overall paternity leave rate is not very bad in

the Asian region. But the sad truth is that most of these countries provide for maternity benefits and countries like India and Afghanistan provide for at least 90 days of paid maternity leave. These countries, however, do not provide for any sort of paid paternity leave. This disparity and inconsistency promotes the macho culture where men are destined to work and earn while women are forced to resign their fate to look after children and take care of household chores, thereby reducing them to much lesser than their potential. It encourages gender roles and female unemployment at higher rates. The same social stigma is the reason why even if countries like Japan and South Korea provide for paternity leave and promote the same, only a few men are ready to make use of it.³²

Australia and New Zealand

The Australian Government provides for up to 18 weeks of paid parental leave at the national minimum wage for eligible employees who are the primary carers of their children.³³ The employees who get paid parental leave are also entitled to unpaid parental leave.³⁴ But only 1 in 20 fathers take up the paid parental leave that is being provided by the country.³⁵ This usage of parental leave by fathers is very low when compared to the overall global standards. As stated above, only primary carers in Australia are allowed to take up to 18 weeks of paid parental leave and in 95% of cases, primary care parental leaves are taken up by mothers.³⁶ Similarly, according to the Human Rights Commission survey, 85% of the fathers took up less than four weeks of parental leave.³⁷ The main reason why this trend is

³² *Supra* note 18.

³³ Paid Parental Leave, *available at*: <https://www.fairwork.gov.au/leave/maternity-and-parental-leave/paid-parental-leave> (Last visited on Jun. 13, 2020).

³⁴ *Ibid*.

³⁵ 1 in 20 Dads Take Primary Parental, *available at*: [https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4125.0~Sep%202017~Media%20Release~One%20in%2020%20dads%20take%20primary%20parental%20leave%20\(Media%20Release\)~11](https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4125.0~Sep%202017~Media%20Release~One%20in%2020%20dads%20take%20primary%20parental%20leave%20(Media%20Release)~11) Leave (Last visited on Jun. 12, 2020).

³⁶ *Ibid*.

³⁷ Supporting Working Parents: Pregnancy and Return to Work National Review: Community Guide,

²⁵ *Supra* note 9.

²⁶ Sophie Hardach, "The Secret of Being a Good Father", *BBC*, Jun. 12, 2019.

²⁷ *Supra* note 3.

²⁸ Is Paid Leave Available for Fathers of Infants?, *available at*: <https://worldpolicycenter.org/policies/is-paid-leave-available-for-fathers-of-infants> (Last visited on Jun. 15, 2020).

²⁹ *Ibid*.

³⁰ *Ibid*.

³¹ *Ibid*.

prevalent in Australia is that the country does not have a nationally legislated 'shared parental leave' approach and in most cases, the fathers are often titled as 'secondary carers'.³⁸ And, the second and obvious reason being gender roles and social stigma.

Paternity leave in New Zealand is governed by the "Parental Leave and Employment Protection Act, 1987. According to the Act, the partner or the father is entitled to an unpaid leave of up to 2 weeks after having a baby or after the adoption of a child. The leave can be after the birth or adoption or around the time of birth or adoption.³⁹ The spouse is also eligible for extended paternity leave if he has been working for the employer at least 12 weeks before the expected delivery or adoption of the child. The extension can be claimed for a maximum period of 52 weeks.

Europe

The European Union offers various types of leaves to parents following the child's birth. But in any case, the vast majority of this leave is taken up by women.⁴⁰ There exist considerable amounts of variation among European countries that offer paternity leave. Many countries in Europe provide for maternity leave, paternity leave, and parental leave. Parental leave is a job-protected leave for both the employed parents and it is often considered supplementary to maternal and paternal leaves.⁴¹ Germany offers 14 months of paternity leave with a 67% salary. Norway offers 46 weeks of 100% paid

paternity leave.⁴² Sweden has committed to offering 12 months of parental leave which are to be shared between both the parents on the condition that at least two months of parental leave is received by both the parents.⁴³ In 2010, the European Parliament tried in bringing up a legislation that would make 15 days of paternity leave compulsory, but the same was rejected by the European Council.⁴⁴ Italy offers two days of compulsory paternal leave for the baby's birth and two days optional leave that is paid at full salary. The same is enjoyed by countries like Malta and Holland.⁴⁵ Spain has paternity leave for four weeks while the United Kingdom offers paternity leave for 14 days.⁴⁶

Africa

Many countries in the continent of Africa have realized the importance of paternity leave and the same is granted with or without full payment. But no matter what, majority of the countries do not provide paternity leave for more than 2 weeks. Burundi is the only country in Africa that provides for more than two weeks of paternity leave with 50% salary. Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Gabon, Kenya, Madagascar, Mauritania, South Africa, and Togo provide for 2 weeks of paternity leave with 100% pay. But on the other hand, countries like Uganda, Tunisia, Tanzania, Seychelles, Ruanda, Mozambique, Morocco, Mauritius, Mali, Libya, Ethiopia, Djibouti, and Algeria provide for one week or less than one week of maternity leave. All other countries like Egypt etc. do not have any provision that provides for paternity leave in the continent.⁴⁷ But the interesting fact is that all the countries in the continent have at least eight to 17 weeks of maternity leave and in most cases, this is fully paid. But considering the global scenario, most of the African countries have better legislation on paternity leave even though it is mostly limited to two weeks period.

available at: https://humanrights.gov.au/sites/default/files/SWP_Community%20Guide_2014.pdf?_ga=2.81019415.1624949608.1592213641-409736921.1591427578 (Last visited on Jun. 13, 2020).

38 Fathers and Parental Leave, available at: https://aifs.gov.au/sites/default/files/7_fathers_and_parental_leave_1905.pdf (Last visited on Jun. 14, 2020).

39 Paternity Leave in New Zealand, available at: <https://www.findlaw.co.nz/articles/4283/paternity-leave-in-new-zealand.aspx> (Last visited on Jun. 15, 2020).

40 Single Parents and Employment in Europe, available at: https://www.rand.org/content/dam/rand/pubs/research_reports/RR300/RR362/RAND_RR362.pdf (Last visited on Jun. 12, 2020).

41 Janna Van Belle, *Paternity and Parental Leave Policies Across European Union* 3-20 (RAND Corporation, Santa Monica, 2016).

42 Emma Beswick, "Which Countries in Europe Offer the Most Paternity Leave", *Euro News*, Nov. 1, 2017.

43 *Ibid.*

44 *Ibid.*

45 *Ibid.*

46 *Ibid.*

47 *Supra* note 10.



North America and South America

Considering the statistics, North America and South America combined can have the least number of paternity leaves available. Quebec, Canada provides the most amount of paternity leave that is 5 weeks with 70% pay followed by Ecuador and Venezuela with two weeks of fully paid paternity leave. Countries like Argentina, Bahamas, Brazil, Chile, El Salvador, Mexico, Peru, Paraguay, and Puerto Rico provide one week or less than one week of paternity leave. United States, Cuba, Panama, Nicaragua, Jamaica, Haiti, Guyana, Grenada, Dominica, Costa Rica, Bolivia, etc. do not have a single day of paternity leave provided to the male employees.⁴⁸ But similar to the condition in Africa, most of the countries in North and South America have provisions for 100% paid maternity leave except the United States of America which do not have a national policy on parental leave for both male and female.

ANALYSIS

Paternity leave, being widely discussed today across the world, still lacks legal recognition in India. The main reason for the same can be concluded as the age-old belief systems, gender roles, and social stigma which results in drawing the least attention to the need for paternity leave in the country. But the fact that a child born is the responsibility of both the mother and father and it requires the presence of both the parents for healthy development and growth cannot be covered by the tools which we use to measure the social standards.⁴⁹ It has been rightly acknowledged by the UNICEF that a child not only needs protection but also needs the presence and availability of their parents at the beginning of their life. Considering this aspect, UNICEF has provisions for paid paternity leave for its employees.⁵⁰ Though not legally recognized in India, various private companies functional in the country provides for paid paternity leave. The Central government also

grants 15 days of leave to its male employees after the delivery of their child. India is a country that provides paid maternity leave up to 26 weeks under the Maternity Benefits (Amendment) Act, 2017.

It is true and an accepted fact that the child needs the mother for a while after being born and the requirement is biological and indispensable in most cases. Similarly, the mother and child require the father to be a part of the process of upbringing since it is understood that the mother alone cannot look after the child in the first few weeks after delivery owing to physical pain that was caused due to the same. The difference in the number of days that are granted as part of maternity leave and paternity leave can be understood to some extent but it is unfair to not at all have any statute enacted for paternity leave in the country. Every parent has the right to parenthood and it is the mere denial of this human right through not establishing policies that determine and guarantee the same. India is ranked first in the list of countries by the number of births with an estimate of 12.6 Crores of children being born between the years 2015-2020.⁵¹ It is shocking to realize that the least care is provided to new-born children in India by not protecting and guaranteeing paternity leave.

In 2009, in the case of *Chander Mohan Jain v. N.K Bagrodia Public School*⁵², a private school teacher approached the Delhi High Court challenging the rejection of his paternity application and deduction of his salary by the school he was working in. Even though there is no legislation guaranteeing paternity leave in the country, the Delhi High Court held that the male employees of unaided recognized private schools were entitled to paternity leave. The court then went on to direct the school management to refund the deducted amount. In the case of *Life Insurance Corporation of India v. Consumer Education Research Center*⁵³, the Hon'ble Supreme Court opined that under Article 41 and 47 of the constitution of India it is important to secure the social fabric of the nation by imposing a

48 *Ibid*.

49 *Supra* note 3.

50 Paternity Leave: A Time to Cherish and Nourish New Bonds, available at: <https://www.unicef.org/pakistan/stories/paternity-leave-time-cherish-and-nourish-new-bonds> (Last visited on Jun. 14, 2020).

51 World Population Prospects Report for the Period 2015-2020, https://population.un.org/wpp/publications/files/key_findings_wpp_2015.pdf (Last visited on Jun. 12, 2020).

52 W. P. (C) No. 8104 of 2009.

53 AIR 1995 SC 1811.

duty upon the state to frame and regulate policies that would help in raising the standards of living and quality of life and help in improving the public health. Paternity leave can be one aspect that can be governed by this.

Above 92 countries in the world do not have any national policy framework governing paternity leave. This includes the United States, China, and India⁵⁴ and the reason for the same is very unclear. Economic developments do not play an important role in setting up these guidelines and the proof that the United States and China do not have any can be proof. Similarly, unlike most of the developed and developing countries, many of the African countries that are comparatively less developed provides for at least one week of paid paternity leave. Even though Japan and South Korea have the best paternity leave policies and provide for the greatest number of paid paternity leave, most of the men opt-out from utilizing these provisions even after the constant effort of the government to promote the paternity leave policies through campaigns.⁵⁵ This has been the case in Australia and the European countries where men do not utilize the leave granted to them. The most obvious reason for the same can be social stigma and also the gender pay gaps.

According to the data collected by the World Bank Group, globally, the female work ratio has been declining in the past years⁵⁶. One reason for the same can be that women tend to stop working after the birth of their child and in most cases are involved in upbringing the child. Gender pay gaps have been a very huge problem in the past few years and in most cases, an institution or company prefers male employees compared to female employees due to this aspect of maternity leave. And after the long pause, women are unable to join or continue working and thus ending their careers. The declining female workforce can be a loss to the economy and also impacts the women empowerment that the global nations and organizations are striving hard to achieve.

Even though India does not have a legislation governing paternity leave, the Paternity Benefits

Bill was introduced in the Parliament in 2017. Even though it is not an enacted law, the bill itself lacks certain aspects and is comparatively too rigid. The bill provides for only 15 days of paternity leave and that is comparatively too little to support a new mother and a new-born child. It also creates a lot of disparity and inequality when the Maternity Benefits (Amendment) Act, 2017 provides for 26 weeks of maternity leave. Similarly, it is only applicable for the birth of the first two children and not the third one. This can be not justified since the equal opportunity of participation is denied. The world is in real need of a reformation especially with regards to paternity leave since most of the countries do not even acknowledge the same. Even though things are changing across the globe with CEOs and officials publicly announcing paternity leave, changes are most needed beginning from setting up national policies governing this aspect.

CRITICISM AND SUGGESTIONS

- As per the provisions of the Paternity Benefit Bill, 2017, paternity leave is conferred on male employees of the organization merely for 15 days. Taking into consideration the amount of maternity leave conferred on female employees as well as the fact that 15 days are not sufficient for a man to take care of his child, who is newly born, and wife, who is recovering from childbirth; an amendment to Section 4(3) of the said Bill that increases the paternity leave period mentioned above is highly advisable.
- As per the provisions of the Bill, paternity benefits will be provided to male employees of the enterprise only as long as the man has less than 2 surviving children at the time. This provision is quite unfair taking into consideration the fact that, on average, most Indian households have more than 2 kids. Amending Section 4(3) of the said Bill and thereby enhancing the number of children mentioned above is hence proposed.
- As per the Bill, paternity benefits may be availed by a male employee in cases of adoption only as long as the child is below the age of 3 months. This provision seems to be highly unnecessary as paternity leave is equally needed in cases

⁵⁴ *Supra* note 3.

⁵⁵ *Supra* note 18.

⁵⁶ *Supra* note 7.



where the adopted child is more than 3 months old as in cases where the age of the said child is less than that. Furthermore, the fact that as per Rule 43-AA of the Central Civil Services (Leave) Rules, 1972, the age limit of the adopted child on order to avail paternity benefit is 1 year may also be taken into consideration. In furtherance to this, amending Section 4(4) of the said Bill and thereby increasing the age limit mentioned above is highly advisable.

- As per the Paternity Benefit Bill, 2017, both male and female employees have to make contributions to the Parental Benefit Scheme Fund which will be used exclusively to confer paternity benefits on male employees. This is tantamount to giving female employees a raw deal as, though no part of this fund will be used in any manner for their benefit, they are still required to contribute. Amending Section 5(3) of the Bill is hence proposed. In this respect, the fund may be used to confer both maternity and paternity benefits, thus justifying the contribution required to be made by each and every employee. Alternatively, the requirement to make contributions to the fund may be restricted to male employees alone.
- A provision concerning a split of parental leave between both the spouses as per their requirement is also proposed. This is because the needs of each family differ and a flexible parental leave option will hence be more helpful to them than maternal or paternal benefits. However, the same will be possible only if the Government, partially or fully, funds such schemes. Furthermore, the employers of both spouses will have to bear the burden of such leave or benefits jointly in order to make this a reality.
- Setting aside laws and legislations, another major problem in India concerning paternity benefits is the social stigma attached. Due to the attitude of the people and perception of the society, several male employees in the country do not avail paternity benefits today despite having been given the option to do so by the firms for which they work. It hence follows that even if legal provisions in this regard are enacted, several men would still shy away from the same. Spread

of awareness regarding the fact that child-rearing is the joint responsibility of both the parents and not just the mother as well as the need for fathers to spend time with their new-born child is hence highly advised.

- Several international covenants and treaties such as UDHR, ICESCR, CEDAW, CRC, etc. contain provisions concerning maternity leave and other such benefits for female employees. However, very few international conventions contain provisions concerning paternity leave or paternity benefits for male employees. In furtherance to this, more laws at the international level concerning paternity leave and other such benefits for male employees are proposed. Furthermore, organizations such as the ILO may also take initiative in this respect and enact guidelines to be followed by countries while promulgating laws and regulations in this regard.

CONCLUSION

Paternity leave is not legally guaranteed in India and the same is the case in almost 90 countries across the globe. 2017 has been a year of change to this practice after the introduction of the Paternity Benefits Bill in the parliament but nothing has changed from then to 2020. The status of paternity leave is the same in the country creating huge disparity and inequality when the Maternity Benefits Act, 1961 is considered. Even though countries like Japan and South Korea provide for paternity leave even up to a period of one year, very few opt for that option. The main reason behind this choice is the macho culture prevailing in almost every country. Gender roles have been a huge cause and the homemaker/breadwinner concept is still in existence today.

Science and researches have shown that the presence of both parents impacts the life of a child and stimulates healthy development and the same has again been reiterated by UNICEF. Even after the modernization and perspective shift that happened, it remains a question as to why the concept of a national policy on paternal leave is not taken into consideration. Change is very much necessary even with regards to the Paternity Benefits Bill, 2017.

Women and new-born children need the support of their spouses and it is upon the governments of different countries to ensure that this is followed up. Ultimately, social well-being, preservation of the social fabric, and a better standard of living is the goal that every nation and international organization strives to achieve.

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