

**PROVISION OF PAID PATERNITY LEAVE IN INDIA: DETANGLING
PATRIARCHAL NORMS**

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ABSTRACT

This paper discusses the importance of paid paternity leave in the country. The Government has turned a blind eye towards this provision. This disregard is the result of stereotypes and gender prejudices prevalent from centuries. It also discusses how patriarchy plays a vital role in segregating gender roles which in turn lays the child rearing responsibility only on mothers. There is a need for amendment in the Constitution of India and only a uniform legislation can help in establishing an egalitarian view of the society. The author further suggests some recommendations which can be adopted by the Government as well as the common people. This will not only bring gender equality in the nation but will also help women to excel in their careers to a greater extent.

INTRODUCTION

Paternity leave is a time period of paid leave or absence from work permitted to the male employee either immediately before or sometime after the birth of his child. With the changing times, men and women are no longer confined to their traditional roles of earning and housekeeping. In today's world we strive for gender equality still women continue to juggle alone with the work-life balance. Therefore, paternity leave is a step towards an egalitarian society. A child is an offspring of both the parents. When a child is born, he needs special attention and nurturing. It is natural for parents to take time break from work for taking care of the child. This break is known as parental leave. Parental leave is a

combination of maternity and paternity leave, it is an absence from work by mother and father. It is unfortunate that parental leave has become a synonym to maternity leave.¹

Paternity leave becomes all the more important in today's era where both the parents are working and live in nuclear families. It is pertinent for both the parents to contribute equally in the nurturing of the child. Laws and policies are necessary which motivate fathers to take leave so that mothers can resume work in a short period. Paternity leave is a prerequisite as it permits fathers to carry out their family responsibilities and mothers can get an equal opportunity to pursue their careers.

The availability of paid paternity leave would mean that men are able to share the pressure with their wives. Placing the task of childcare completely on the shoulders of women usually forces them to take long break from work. This creates a structure that disadvantages them at the workplace, at best, and compels them to quit altogether, at worst.

Introduction of paid paternity leave in the country will help in eliminating patriarchal norms to a great extent as it will remove the biased gender roles in the families.

STATUS QUO

In India there is no national policy or regulation on paternity leave, but there are provisions in some sectors where paternity leave is available to their employees; it is on the part of the employer to grant paternity leave, and the Private Companies have the freedom to make paternity leave policies for their employees if they wish to do so.

Rule 43-A of the Central Civil Services (Leave) Rules, 1972 provides for the grant of paternity leave to the male employee. However, these regulations are applicable only to Central Government employees. This Rule grants paternity leave for 15 days during the confinement of the wife for delivery of the child. Such leave can be taken up to 15 days

¹ Ayushi Agarwal, A Fatherhood More Fulfilling, The Indian Express (Jan.16, 2022,08:15 PM), <https://indianexpress.com/article/opinion/a-fatherhood-more-fulfilling-7013342/>

before the birth of the child or anytime during 6 months after childbirth. If the leave is not taken within this time period, it expires.²

There have been many instances where need for paternity leave reached the Courts but none of them got succeeded in getting a nationwide framing of such regulation.

In **Chander Mohan Jain v. N.K Bagrodia Public School**³, Chander Mohan Jain, a private school teacher, challenged N K Bagrodia Public School's rebuttal of his paternity leave application and deduction of his remuneration in the High Court of Delhi for availing leave to cater to the needs of his wife and newly born child. In defiance of lack of any regulation, the New Delhi High Court held that all male staff of unaided recognized private schools is entitled to paternity leave in this case. The court then ordered the school to return Petitioner the amount that had been deducted. As a result, private-sector teachers are at ease as they are under the control of Director of Education and therefore CCS (paid) leave would be applicable.

In the case of **Rakesh Malik v. State of Haryana**⁴, the petitioner was an employee of state government and prayed for paternity leave but was denied the same, so he later challenged this in the High Court and compelled the Court to formulate such policy under the ambit of article 226 but the Court refused.

In the case of **Vijendra Kumar V. Delhi Transport Corporation, government of NCD**⁵, The Court was once again called to intervene where a driver in the Delhi Transport Corporation filed an OA, but the Court dismissed the appeal stating that there were no provisions in the DTC regarding paternity leave and CCS Paternity leave rules were not followed by them.

Paternity Benefit Bill, 2017: A private member bill was proposed by the congress MP Rajeev Satav. This bill was an initiative to give paternity leave to all male workers employed in all sectors. The bill made 15 days fully paid leave available to fathers out of which up to 7 days can be availed before the expected date of pregnancy. The leave can be taken within 3

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

³ Chander Mohan Jain v. N.K. Bagrodia Public School (2009) SCC OnLine Del 2693.

⁴ Rakesh Malik v. State of Haryana (2013) SCC OnLine P&H 3546.

⁵ Vijendra Kumar v. Delhi Transport Corporation, government of NCD (2015) SCC OnLine CAT 3012.

months from the date of birth of the child. Adoptive parents can also avail similar advantages through this Bill.⁶

During presentation of the bill in Lok Sabha, a report citing researcher Erin Rehel of International Labor Organization quoted on role of the father, "By introducing fathers into the daily responsibilities of childcare, free of workplace constraints, extended break gives the space important for fathers to develop the parenting skills and sense of responsibility that then allows them to be active co-parents rather than helpers to their wives".⁷

This bill is much needed for making paternity leave available to fathers, but it never saw the light of the day and could not become an act. Unfortunately still there is no provision for Paternity Leave in the country. As a result, women are forced to give up their careers or take a long break. Women working in the government sector are entitled paid maternity leave and hence it becomes easier for them to create a balance after the birth of their child but this creates a societal norm that only mothers are the caregivers. As a result most of the fathers fail to establish a bond with their child as they cannot give them much time.

It is high time that we make fathers equally responsible for the rearing of the child and prove the world that fathers can be caregivers and mothers can be breadwinners too.

PATRIARCHAL FRAME OF MIND

In the Indian society, children are groomed according to their genders. A very sheer example of this case is that when a girl is born her first toy is a doll or a kitchen set when she grows a little younger. On the contrary when a boy is born his toy becomes a bat-ball or a car. This is a clear depiction of how gender oriented our culture and norms are. These gender biased phenomenon are instilled in the minds of children from a very young age and hence they grow up carrying the burden of these stereotypes and prejudices.

⁶ The Paternity Bill, 2017

⁷ Sources: ILO Database of Conditions of Work and Employment Laws on Maternity Protection (2009) and ILO NATLEX.

Gender based roles are decided from a very tender age and children are expected to perform them accordingly. While both boys and girls are equally provided with quality education by their parents: girls are expected to help their mothers in the household chores whereas boys are assumed to be breadwinners of the family and are kept at bay from the routine tasks of the house. Hence, this enables male members of the family to develop a sense of thinking that household chores are the sole responsibility of the female members even if they are working outside. This attitude generally grows up with the so called 'man of the family' and leads them to label household work as "women's work". This is the reason why most women end up giving their jobs after the birth of their child because they have to juggle between looking after the child and the office work, thus increasing the workload and pressure. The Indian legislation on paternity leave is quite narrow and based on the assumption that child rearing is primarily the mother's responsibility. In October, 2020, then Union Minister Jitendra Singh announced that male government employees who are single parents may take paid childcare leave of up to two years to take care of a minor child. This reform seemingly promotes gender justice. By limiting the leave to single male parents, the latest government announcement reinforces the assumption. It marks the role of the father in child-rearing as a last resort, rather than as a matter of common gender relations at home. In effect, it entrenches the same prejudices about gender relations that the law must destabilize.

Provision of paid Paternity Leave in India would surely pave a path for gender justice.

NEED FOR CONSTITUTIONAL AMENDMENT

The Government of India has formulated a good number of policies to protect the interests of women and create a gender neutral society where women have equal privileges as men and stereotypes and other kind of prejudices which can be eliminated from the society.

One of the most affirmative steps was taken in 1961 when Maternity Benefit Act was introduced to ensure women participation at workplace and to give her job protection during

her maternity period. Under this act, pregnant women are can avail paid leave up to 26 weeks (amended in 2017) with job security. This act is in accordance with Article 42 of the Indian Constitution which states that: *“The State shall make provision for securing fare and humane conditions of work and for maternity relief.”*⁸

Courts reiterated that Maternity Benefit Act is in accordance with Article 42 of the Indian constitution though not enforceable by any court but is fundamental in governance and binds the state as an obligation to provide for maternity relief and to secure fare and humane conditions.⁹ Maternity Relief Act provides measures for women participation in workplace even during her pregnancy and protects her job but also sets an idea that child rearing is the sole responsibility of women and fails in establishing a gender neutral society. That’s why even after 75 odd years of independence, the patriarchal gender roles persist. A mother gives birth to a child but various studies and research have shown that roles of both mother and father are equally important in the overall development of child. Thus Article 42 is sketchy in the sense that it does not eliminate the stigma of patriarchal gender role from our society. Introducing paternity leave provision in this article will have an educative value which will send a strong message for promoting an egalitarian society. Furthermore, it has been shown that also institutional environments or policies can influence attitudes because then it will also bind the state to come up with paternity leave policy as it will help courts to interpret this provision as a basic right. India being the largest and oldest democracy of the world with a provision of paternity and maternity leave in the constitution will set a strong example to the world of its vision of gender neutral world.¹⁰

SUGGESTIONS

There are some measures which can be adopted by the Indian Government and the common people which will promote gender justice in the society and establish an egalitarian view. These measures are as follow:

⁸ Indian Consti, art.42.

⁹ *Shah vs. Presiding Officer, Labour Court, Coimbatore and others* (1977) 4 SCC 384.

¹⁰ Rishi Saraf, Paternity Leave-Amending Article 42, International Journal of Law, Management and Humanities (Jan.19, 2022,02:30 PM) <https://www.ijlmh.com/paper/paternity-leave-amending-article-42/>

- 1. Independent Union Legislation:** There is an urgent need of formulating an independent union legislation for paternity leave through a constitutional amendment. The proposed policy should extend to all the sectors, especially in private sectors where there is no job security and the employee fear of being sacked from work for taking extra leaves. In a research it was also found that fathers are ready to take leave to take the responsibility of their child but they believe that they can take leaves only when their colleagues and employer support their decisions. As they have a genuine fear of being lagged behind in their careers if it is not the rule at the workplace. The legislation should be made applicable in all cases including surrogacy and adoption.
- 2. Paternity Leave in par with Maternity Leave:** the current leave rules for government employees allow 15 days of paid leave only in case of less than two surviving children and maternity leave is also reduced from 26 weeks to 12 weeks in case of a woman having two or more children. The reduced advantage is a consequence of population control policy of the Indian government. In order to ensure gender justice at workplace and at home, the advantage of paternity leave should not be reduced to zero even in case of two or more than two surviving children but at least 75% of the reduced maternity leave should be given as paternity leave.
- 3. Provision of mandatory paid paternity leave:** There must a mandatory paid provision of paternity leave in India. Some men may feel uncomfortable in taking off time from work due to the existing toxic masculine culture. The laws and policies should be compelling in nature so that the fathers are encouraged to contribute equally towards child rearing responsibilities. A person who is on paternity leave should not be permitted to engage in any kind of paid work on temporary basis. A birth of a child means an additional expense in the family, so a paid leave would not create stress in the minds of the breadwinners and will peacefully help them in embracing their fatherhood. Companies like Zomato and IKEA have already implemented the provision of paid paternity leave for all the male employees and hence it clearly shows that granting paid leaves to all the male workers will not prove to an obstacle in the organization's economic growth.

4. **Teaching the young minds:** Children must be taught in a very young age about gender equality and the boys should be encouraged to manage household chores by helping their mothers. They must be acquainted with equality at schools also. Schools should conduct programs which promote equality so that these values are instilled in the young minds. They should be kept away from all the existing stereotypes and prejudices. Introducing such changes in the academic curriculum will also help in the change. The paternity and childcare leave regulations must be formulated in a way that addresses prejudices against fathers taking leave to the extent possible, and also be accompanied by active efforts at the workplace to overcome such notions. The only way to achieve true gender equality is to seek an equitable distribution of household chores and at work. One place to start is to make sure that from the moment an infant is born; all parents have joint duty for the child's wellbeing. Not only should mothers be given time off to give their children, but fathers should be provided time off as well. It should be natural for both the parents to take care of their children.
5. **Adopting International Initiatives:** Nordic countries such as Norway, Finland, Iceland, Sweden and Denmark are pioneer of Paternity Leave. India must adopt their model and introduce an independent legislation for paid paternity leave in the country.¹¹

CONCLUSION

The Constitution makers have framed various laws and policies to protect the interests of women and ensure their equal participation in all the fields. Unfortunately the vital provision of paternity leave has been neglected till date. The Government has turned a blind eye to this dire need. It is high time that we realize and make mandatory norms so that fathers too play a significant role in the upbringing of their children and establish a strong bond with them. This in turn will help the women to excel in their careers as now they are forced to create a work balance. This leads to a huge increase in the load of pressure upon their shoulders. Therefore a mandatory independent legislation will help in bridging the stereotypical gap by

¹¹ Kritika, Paternity Benefit Laws in India- A Necessity, Legal Service India E-Journal (Jan.19, 2022,03:00 PM), <https://www.legalserviceindia.com/legal/article-2836-paternity-benefit-laws-in-india-a-necessity.html>



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establishing an egalitarian view of society. Parental leave should not discriminate men against women and there should be equitable parental leave. This will eventually help in breaking traditional roles of men and women.

