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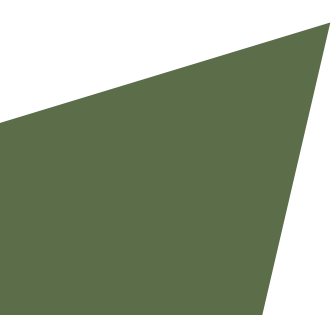
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# **Paternity Leave: A Thorough Analysis**

**G. Harini**

## ABSTRACT

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*Paternity leave is the leave granted to new fathers to take care of their child and family. The importance of paternity benefit is acknowledged by several countries which led to the adoption of paternity policy in such countries. This article details about the state of paternity benefit in India. It also discusses the reason behind the nonchalant attitude with paternity benefit in-depth. This article aims at providing insight to the readers on the importance of paternity benefit and the significance of such benefit in equal parenting. It also aims at enriching the readers with the legal provisions and compliances regarding paternity leave.*

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## INTRODUCTION

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Paternity leave popularly known as father's quota is the leave period given to new fathers, in most cases a paid leave, to take care of his new-born and his wife. It provides an opportunity for the new fathers to bond with the new-born and take care of their family.

Paternity leave is a boon to new dads to be with their family and be the backbone of the family at such an important time. This will give the new fathers an insight to childcare and will make them understand the significance of the role of a father.

The seriousness behind the equal parenting is being recognised lately. As a result, paternity leave policy has been adopted in several countries. The responsibility of fathers in childcare is being widely acknowledged. Thus, giving rise to the birth of several amazing paternity policies worldwide. Some of the countries with famous paternity policies are as follows:<sup>1</sup>

1. **South Korea:** South Korea offers 53 weeks paid paternity leave to new fathers.
2. **Sweden:** Sweden offers paid parental leave up to 480 days. Fathers get 90 days of paternity leave with 80% of salary.
3. **Norway:** Norway offers 46 weeks at full salary or 56 weeks at 80% of the salary to both the parents. The father has to take at least take 2 weeks of paternity leave at the birth of the child. And, he has to take 14 weeks of paternity leave before the child turns three.
4. **Finland:** This country offers 14 months of paternity leave for new dads. Each parent can claim 164 days leave.
5. **Japan:** The land of rising sun provides twelve months of paternity leave.
6. **Iceland:** Iceland provides 9 months of parental leave to both the parents. Each get three months leave and the remaining leave can be split between the new parents according to their necessity.

UNICEF has extended the paternity leave to sixteen weeks from four weeks worldwide. It is the first United Nations Agency to have such a huge paternity leave period.<sup>2</sup>

## PATERNITY LEAVE IN INDIA

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Paternity leave is not a foreign concept to India. India being a culture- oriented country, gives lots of importance to marriage and family. India considers marriage and family as sacred institutions. Bring up a child is of utmost importance in the country. Therefore, it is no surprise that many

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<sup>1</sup> <https://www.theladders.com/career-advice/6-countries-with-the-best-paternity-leave> last visited on June 3, 2020.

<sup>2</sup> <https://bel-india.com/what-is-the-state-of-paternity-leave-in-india/> last visited on June 3, 2020.



mothers leave their job to look after their child. In a country, where such values are attached to the upbringing of a child, the government realised the importance of maternity leave and passed a legislation regarding the same in the year 1961. But paternity leave was not given much importance or thought at that time. But now, India is in the list of top 14 countries which provides highest maternity benefit and is in top 13 countries which provides highest paternity benefit. This development was not sudden but it was rather a gradual one. It took quite a lot of time for India to realise that maternity leave is as important as paternity leave.

## **CENTRAL GOVERNMENT NOTIFICATION**

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Maternity Act, 1961 had a huge impact on the lives of the working women. After several decades of its practice, people slowly started to realise the significance of paternity leave in the upbringing of a child. So, the Central government in 1999 embedded Rule 551 (A) in Central Civil Services (Leave), 1972 providing paternity leave for male employees working in Central government.<sup>3</sup>

The Rule states that paternity leave shall be availed by:-

- A male central government employee, including apprentice and probationer,
- with less than two surviving children,
- for a period of fifteen days.

This leave has to be availed six months from the birth of the child. If not availed within six months from the birth of the child, the paternity leave will be treated as invalid. This leave is a paid leave. The amount of the salary which is usually being paid to the employee will be paid even during the leave period. This notification is what made India to enter into the list of top thirteen countries to provide highest paternity leave in India.

## **PATERNITY LEAVE IN PRIVATE SECTOR**

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Paternity leave is sanctioned via legal provisions for central government employees only. For, private sector, the leave can be determined by the particular organisation. There is no law for the same.

Some organisations in the private sector have incorporated paternity leave policy. Some examples of it are: Infosys - 5 days of paternity leave ; Oracle provides paternity leave for 5 days ; TCS gives 15 days of paternity leave; Microsoft offers paternity leave of 12 weeks; Starbucks allows 12 weeks paternity leave ; Deloitte gives their male employees 16 weeks of paternity leave and Facebook leads with providing 17 weeks as paternity leave.<sup>4</sup>

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<sup>3</sup>[http://blog.jurisprime.com/2019/01/30/535/?utm\\_source=Mondaq&utm\\_medium=syndication&utm\\_campaign=LinkedIn-integration](http://blog.jurisprime.com/2019/01/30/535/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration) last visited on June 4, 2020.

<sup>4</sup> <https://bel-india.com/what-is-the-state-of-paternity-leave-in-india/> last visited on June 4, 2020.

In the infamous case of *Chander Mohan Jain V. N.K. Bagrodia Public School and Ors.*,<sup>5</sup> the petitioner, Chander Mohan Jain, a Post Graduate teacher applied for 15 days paternity leave. The application was rejected and deduction was made from his salary for taking 15 days leave. Hence, the petitioner approached the court challenging the same. The respondents claimed that the school did not adopt any policy regarding paternity leave and therefore, paternity leave cannot be granted to the petitioner. The Delhi High Court held that *all male employees of unaided recognized private schools were entitled to paternity leave*. It directed the respondent to refund the amount deducted to the petitioner.

## **PATERNITY BENEFIT BILL, 2017**

After the amendment of Maternity Benefit Act in 2017, the concept of equal parental benefits bloomed. Mr. Rajeev Satav, a MP from Maharashtra proposed a bill known as Paternity Benefit Bill, in 2017 in Lok Sabha. This bill aims at providing benefits to natural parent (father), adoptive parent (father) and loco parent (father) working in all the sectors including unorganised and private sectors. This Bill provides for the following:<sup>6</sup>

1. Male employees with less than two surviving can avail maternity benefit of fifteen days of paternity leave, of which not more than seven days shall precede the date of expected delivery. It can be extended up to three months.
2. The paternity leave shall be a paid leave.
3. The employer should have worked for at least eighty days in the preceding twelve months. Recently immigrated employees are exempt from this condition.
4. If the employee dies after the birth of the child before availing the paternity benefit, then the employer is entitled to pay the benefit amount to the nominee of the deceased employee.
5. If the child dies, then the employer has to provide the benefit to the concerned employee up to the day of the death of the child.
6. In case of miscarriage, the employer has to pay the benefit to the employees till seven days after such miscarriage.
7. In case of adoption and surrogacy, the adopted father as well as the legal husband of the commissioning mother, can avail 15 days of paternity benefit from the date the child is handed over.

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<sup>5</sup> W.P ( C ) No. 8104 of 2009

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<https://blog.ipleaders.in/paternity-leave-india/#:~:text=The%20proposition%20of%20Paternity%20Benefit%20Bill%2C%202017&text=The%20bill%20states%20that%20all,the%20mother%20and%20the%20father.> , last visited on June 4, 2020.

8. Creation of paternity benefit fund. Employers, employees and government will have to contribute towards the fund. It will be utilised later to meet costs under this bill.

These are some important elements in this bill. The bill incorporates the concept of equal parenting and gives benefit to the male workers working in all sectors. The Act provides equal treatment in case of adoption and surrogacy. It also provides benefits in case of miscarriage and death of child after birth. Several positive attributes of this bill make it very attractive and desirable. This bill is a boon to new fathers. But sadly, this bill has not been passed yet. If this bill becomes an Act and comes into force, it will be causing a huge positive impact in the society and in the mind-set of the people.

## **WHAT WAS THE REASON BEHIND THE DELAY IN RECOGNITION OF PATERNITY LEAVE?**

India being a country which gives importance to parenting than any other country, recognised the concept of paternity leave very lately. It is very well known that both the mother and father play significant role in childcare and has to participate equally in the upbringing of the children. Not only a mother, but a father also has a lot of responsibilities in the upbringing of the child. So, why was paternity leave neglected in India while the maternity leave was introduced in India? Let's dwell into it.

The idea that it is the duty of the men to provide financial assistance to their family whereas, women have to take care of the household chores, still couldn't be uprooted fully from the minds of the people. Even though, some people name them a non- patriarch, still some patriarchal values linger in their minds. This was the main reason paternity leave was and is not being given importance like maternity leave. This reason does not only apply to India but also to several other countries. In 2018, Nigerian Parliament rejected the bill providing paternity benefit by stating that men should be trying to provide upkeep of the family rather than staying home.<sup>7</sup>

The perception that it is the duty of the women to take care of their children is deeply rooted in the minds of the people. This idea is the outcome of the patriarchal practices and values. People have pre-determined the roles of mother and father and according to it, a mother ought to take care of her child and a father need not involve with childcare all the time like the mother. When

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<sup>7</sup> <https://www.premiumtimesng.com/news/headlines/267133-nigerian-parliament-rejects-paternity-leave.html> last visited on June 4, 2020.

these roles are reversed in any household, the huge amount of criticisms and hate they may get subsumes the support they receive.

Bringing up a child has been engraved in the minds as a duty of the mother. Since, women have started working and started striving in all the sectors, the importance of maternity leave was recognised. And people started having the opinion that a woman has to go to work as well as parent her child ,whereas, it is plenty if the man to goes work and provide financial assistance to his family. The entire burden is shifted on to the head of women. This may be the prominent reason why still paternity leave has a shorter duration than maternity leave.

It is true that women may face health issues after giving birth and it is the cause behind providing maternity leave. But it is being used as a mere excuse for the reason behind providing no maternity benefit. When a woman faces such health issues, isn't the duty of the husband to take care of the child while his wife recuperates? But it doesn't happen so in most cases. Some other female relative takes care of the new mother and the child in such cases.

If a couple has a child, then the grandparents, mainly grandmother, or any other older female start staying at their place to take care of their new-born child just because the father of the child is very busy with his work at the office. This is a peculiar trend home to several patriarchal societies. These are the practical difficulties faced by new parents and the enforcement of paternity leave may help alleviate these problems.

## CONCLUSION

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Paternity leave should be made available to all the male employees just like how it is in other countries. In order for a stable marriage and family, paternity leave will play a significant role. It would help the new father to bond with his new-born and family. It enables the father to appreciate his family and appreciate his role as father. It reduces the burden and helps in decreasing the pressure faced by the mothers.

Most women experience Postpartum Post-Traumatic Stress Disorder (PTSD) after giving birth. They face severe depression and become emotional and suffer mood swings. Overcoming postpartum PTSD is a very big task. The aggrieved women have to fight mental issues as well as health issues. Not taking caring of such mothers will make them succumb to depression. If she is supported by her husband at this time, it will be easy for her to overcome it and maintain a happy relationship with the family.

Providing paternity leave not only benefits the institution of family but also promotes gender equality. Enforcing legal provisions for the same would help in breaking down the norms and would facilitate in re-writing the roles and responsibilities of women and men. It would ultimately benefit the country. After all, happy citizens is the main goal of a welfare state, right?