



PATERNITY LEAVE: BREAKING BARRIERS OF GENDER CONFORMITY

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ABSTRACT

Fatherhood often comes with a notion of engraved masculinity; it is due to this narrowly constructed belief of gender roles that men lose out on a lot of enriching experiences of their lives. One of the key experiences being, the precious time spent with one's new-born. Paternity leave in such a scenario would prove to serve as a stepping stone in changing the mindset about age old traditions of assigning the job of caregiving and nurturing only to women. This paper dives into explaining the need of the much-required paternity benefit bill, tabled in 2017. It further explores the gender-neutral policies of parental leaves prevalent in other parts of the World. In an attempt to align with the changing social dynamics in India, the paper goes on to give several suggestive measures with regard to some of the pressing issues, which have not been able to find a mention in the bill.

KEYWORDS: PATERNITY LEAVE, FATHERHOOD, GENDER-NEUTRAL



INTRODUCTION

We as a society have evolved a great deal. Far gone are the cavemen days where women would be cooped up in their spaces looking after their offspring while men would be out trying to sustain their families. Women have taken up roles far greater than just child rearing and bearing, it is high time that men come out of their gender conformist roles and experience the other side of life as well. In order to achieve this and set momentum for gender equality, it is imperative for nations to adopt national legislations that strive to achieve these goals.

“Many men no longer want to be identified just by their jobs.”

-Bengt Westerberg

(former deputy Prime Minister Sweden)

Keeping in view the agenda of gender equality in its true sense, A private member bill was proposed by the congress MP Rajeev Satav to bring men on par with women in terms of paid maternity leaves. **The Paternity Benefit Bill, 2017** seeks to equip every man, from the private and informal sector, to break the societal construct of gender roles, in order to equally participate in the crucial task of child development, assisting the mother to recover from childbirth and other family related responsibilities. **Paternity leave is generally a short period of leave for the father immediately following childbirth.** Paternity leave entitlements can be found in the national legislation of at least 79 countries out of 167 for which data are available: 29 in Africa, seven in Asia, five in Eastern Europe and Central Asia, 24 in the Developed Economies, 13 in Latin America and the Caribbean and two countries, Saudi Arabia and Syrian Arab Republic, in the Middle East. Paternity leave provisions are most common throughout the Developed Economies, Africa and Eastern European and Central Asian countries.¹

PATERNITY LEAVE: A NECESSITY

While in India the prevalent conditions clearly display a plethora of issues faced by women , a bill of such a nature would prove to be a stepping stone in the process of gender equality. Age old

¹Addati et al., 2014,Maternity and paternity at work: law and practice across the world. Retrieved from ilo.org: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf



assumptions relating men to be as the breadwinners leads to ignorance of their role as fathers and caregivers. Policies and legislations which normalise and deconstruct these rigid roles are exigent.

1. SHARING OF FAMILY RESPONSIBILITY

Parenthood essentially involves active participation of both spouses. This entails a need for co parenting rather than just leaving the mammoth task of parenthood on the shoulders of mothers and other women in the house. Family as an institution works towards shared responsibility and equal participation of each member is a prerequisite for smooth functioning of the same. Men should be viewed as an equal co parent rather than just being helpers to their women counterparts.

2. BONDING WITH THE CHILD AT AN EARLY AGE

For the establishment of a healthy father-child relationship, it is important for the newborn to get accustomed to the people around him/her/they. Fathers who take leave, especially those taking two weeks or more immediately after childbirth, are more likely to be involved with their young children (Huerta et al., 2013).² This fosters not only a gender neutral environment at home but also boosts the foundation of gender equality at work.

3. CHANGING MINDSET

It is only by taking active measures towards changing these societal roles can one accept to cause a wave of change in the predominant mindset instilled in the society. In a society like ours where patriarchal values are still to this day deeply rooted in the traditions , fathers taking leave to look after the infants and helping women are still looked upon with a wary gaze. Introducing uniform standards for paternity leave and inculcating this practice will only help the nation in changing its way for a better and more accepting future.

4. CHILD'S MENTAL DEVELOPMENT

Evidence indicates that this participation is a key factor of children doing better in life on almost every indicator of success (Flouri, 2005 and Lamb, 2010 cited in Asher 2011).³ The life a child leads at home and the behaviour he witnesses at an early age has a profound impact in ways he

²*Id.*

³*Id.*



perceives of the world. It shapes his personality and his conscience. An actively involved set of parents help in properly shaping the psyche of a child which in turn affects his mental development.

5. WOMEN'S HEALTH

Not only do the aftereffects of childbirth take a toll on a woman's body but it also has deeper effects on her mental health. According to a study the prevalence of postpartum depression in Indian mothers was 22%. Postpartum depression can predispose to chronic or recurrent depression, which may affect the mother–infant relationship and child growth and development.⁴ Raising a newborn is a stressful experience which leads to exhaustion, fatigue and other complications for a woman. The need for support from the other partner becomes even more pressing during these times.

ANALYSIS OF THE BILL

The Central government in 1999 introduced a fifteen-day paternal leave policy for its male employees. The central government male employees come under the Central Civil Services (Leave) Rule 551 (A) which provides fathers with less than two surviving children with a 15-day leave which is to be availed within 6 months from the birth of the child. If not availed, it will be considered invalid.⁵ It also provides for the leave salary of the 15 day period to be paid before the leave is availed. In Spite of such rules in existence the paternity laws in India remain in grey area due to the vagueness with which these laws are formed. The paternity benefit bill, 2017 is based on the lines of the Maternity Benefit (Amendment) Bill, 2016. Earlier this year, the Lok Sabha passed an amendment increasing maternity leave for working women from 12 weeks to 26 weeks for their first two children.

⁴ Upadhyay et al., 2017, Postpartum depression in India: a systematic review and meta-analysis. Retrieved from who.int:<https://www.who.int/bulletin/volumes/95/10/17-192237/en/>

⁵ The law blog, 2020, Is raising a child a mother's job alone? – The need for paternity leave laws in India. Retrieved from thelawblog.in:https://thelawblog.in/2020/07/29/is-raising-a-child-a-mothers-job-alone-the-need-for-paternity-leave-laws-in-india/#_cdn6



LISTED BELOW ARE SOME OF THE ESSENTIAL PROVISIONS OF THE BILL.

1. This bill seeks to bring about uniformity in providing the benefit of paternity leave to fathers working in all sectors including private and unorganised sectors. It states “every man” should be able to avail benefits under this bill which indicates a man, employed either directly or through any agency for wages in any establishment as well as self employed or unorganised sector male employee.
2. The Bill accommodates three circumstances under which a man will be the beneficiary of this paid leave:- (i) When a child is delivered by a man’s legally wedded wife; (ii) when a child is delivered by “his commissioning mother” (sic) where “commissioning mother” is defined in the Bill as “a biological mother who uses her egg to create an embryo implanted in any other woman”. This entails the provision of providing benefits to adoptive fathers and those who have had a child through surrogacy; and (iii) when a man legally adopts a child below the age of three months .
3. In the case of adoption the paternity benefit for a period of fifteen days from the date the child is handed over to the adopting father or legal husband of the commissioning mother, will be premeditated.
4. This bill puts a cap of upto 15 days paid paternity leave at the disposal of any man with less than two surviving children. Out of these days 7 days period can be availed preceding the date of expected delivery. Further this paternity benefit shall be availed to a maximum of three months from the date of delivery of child. This Act also provides provisions for exceptional cases like:-
 - where in an unfortunate event the man dies immediately following the date of delivery of his child for which he is entitled to the paternity benefit, leaving behind the child, the employer will be liable for providing the benefit for the entire paternity period to the nominee of that man.
 - If the child also dies during the paternity period, then the employer is liable to provide paternity benefit for the days up to the death of the child, including the date of death of child.⁶

⁶Pandey, 2018, Paternity Leave Policies in India. Retrieved from blog.iplayers.in: <https://blog.iplayers.in/paternity-leave-india/>



5. This benefit is available only if the man has actually worked in an establishment of the employer from whom he claims paternity benefit. This work shall not be less than eighty days in the twelve months immediately preceding the expected date of delivery of child .
6. The bill incorporates the formation of a parental benefit scheme fund. The funds for the scheme are to be provided by every male and female employee, employer and the central government in a prescribed ratio.
7. In an event of miscarriage, the employee is required to putforth the evidence of the same. After which he will be entitled to wages at the rate of paternity benefit for the period of seven days immediately following the day of the miscarriage.

CASE LAW : CHANDER MOHAN JAIN V. N.K BAGRODIA PUBLIC SCHOOL

In 2009, a progressive judgement was delivered by the High court of Delhi. In this case the appellant, a private school teacher moved to the High Court challenging the rejection of his paternity leave application and deduction of his salary by the defendant on the grounds that the institution so far has not adopted any facility to paternity leave. Despite there being no legislation, New Delhi High Court in this case held that all male employees of unaided recognised private schools were entitled to paternity leave under Central Civil Services (leave rules),1972. The court then directed the school to refund the deducted amount to Chander mohan Jain. Therefore, providing relief to private sector teachers.

COMPARATIVE STUDY

“We cannot be ‘For Every Child,’ if we are not also ‘For Every Parent.’”

**-Henrietta H. Fore
(UNICEF’s executive director)**

SWEDEN

Sweden was the first country to introduce parental leave since 1974, which could be split between both the parents. It also offers the longest legally granted parental leave among the Nordic



countries i.e. 480 days. Since 2016, the earmarked leave for each parent has been 13 weeks and the remaining 43 weeks can be divided between the parents.

DENMARK

In Denmark, parents have a total of 52 weeks of leave with parental benefits. New moms in Denmark get a total of 18 weeks of maternity leave: four weeks before the birth and 14 weeks after, all at full pay.⁷

The father is entitled to take two weeks of leave during the first fourteen weeks after the birth of the child. Then 32 weeks follow where the mother and father can freely share leave between them. They can choose to be on parental leave at the same time or in periods one after the other.

ICELAND

In 2000, Iceland became the first country in the world to introduce a parental leave model consisting of three parts. The new reform included an extension of the parental leave from six to nine months per child, and of these, three months were reserved for one parent, three for the other parent, and three months to divide as they wished.

The initiative had an immediate and powerful effect. Before the reform, less than one per cent of men in Iceland went on parental leave; after the reform, this skyrocketed to 87 per cent.⁸ Today, Icelandic fathers take a larger share of all parental leave than in any other Nordic country.

FINLAND

Finnish parents have 53 weeks of leave, and since 2013, Finnish fathers are entitled to nine weeks of paternity leave until the child is two years old that cannot be transferred to the mother. The payment rates for parental benefits range from 70 to 100 percent. Parents would be allowed to transfer 69 days of their quota. Single parents would be allowed to use both allowances.⁹

⁷ 2020, shared and paid parental leave: the nordic gender effect at work. Retrieved from norden.org: <https://www.norden.org/en/publication/shared-and-paid-parental-leave-0>

⁸ *Id.*

⁹ BBC, 2020, Finland to give dads same parental leave as mums. Retrieved from bbc.com: <https://www.bbc.com/news/world-europe-51384614>



Starting in 2021, Finland will give all parents leave, regardless of their gender or whether they are a child's biological parents. Under the new law, each parent will be allowed 164 days, or about seven months, the government said in a statement. A single parent can take the amount of two parents, or 328 days.¹⁰

PORTUGAL

Portugal already has a gender-neutral system, with 120 days paid at 100% of salary and another optional 30 days at 80% of salary.

UNICEF

In 2018, UNICEF modernized its approach to parental leave provisions, with up to 16 weeks of paid leave for paternity across all of its offices worldwide – the first United Nations agency to extend such leave beyond the standard four weeks.¹¹

SUGGESTIONS

MANDATORY LEAVE:

In corporate culture and elsewhere women face a bias in the hiring process, lack of paternity leave only magnifies the already worsened condition. Putting in place a policy which grants mandatory paternity leave benefit to the male employees will in turn create a space which provides equal opportunity at work. To begin with, we need to mandate a minimum 90 days of leave for fathers, which can be encouraged through quotas which lapse if fathers don't avail them. This idea is borrowed from the renowned Swedish parental leave model, which has set world standards for ensuring father's participation in unpaid reproductive work.¹²

¹⁰ Business insider, 2017, The 8 countries with the best paternity leave policies in the world. Retrieved from businessinsider.in: https://www.businessinsider.in/these-10-countries-have-the-best-parental-leave-policies-in-the-world/finland/slidelist/53818311.cms?utm_source=copy-link&utm_medium=referral&utm_campaign=Click through social share

¹¹ UNICEF, 2018, 2 in 3 infants live in countries where dads are not entitled to a single day of paid paternity leave. Retrieved from unicef.org: <https://www.unicef.org/press-releases/2-3-infants-live-countries-where-dads-are-not-entitled-single-day-paid-paternity>

¹²Satoor, 2019, Are We Allowing Fathers to Be Equal Parents? Retrieved from thewire.in: <https://thewire.in/rights/are-we-allowing-fathers-to-be-equal-parents>



HOMOSEXUALITY

In present times where masses are actively working and struggling for the inclusion and acceptance of the lgbtq+ community, the bill remains surprisngly silent on the position of same sex couples on adopting. In **Navtej Singh Johar v. UOI**, Supreme Court decriminalised homosexual relationships. This has set a progressive precedent for the country to follow , under this backdrop it is necessary that upcoming bills work in the advancement of this goal instead of turning a blind eye towards it.

WOMEN TO BE INCLUDED AS BENEFICIARIES OF PARENTAL BENEFIT SCHEME FUND

As aforementioned, the bill proposes for the formulation of a Parental Benefit Scheme Fund, in which employees (irrespective of their gender) along with the employers and central government have to contribute. This fund should finance shared parental leave, as opposed to solely paternity leave. Since it incorporates the contribution from women for the formation of the funds, it is only fair that they are entitled to receive the benefits from this scheme through a mechanism of shared parental leave rather than just appropriating all funds for paternity leave.

STATUS OF LIVE IN COUPLES:

This bill has put paternity in a demarcated area and considers for the benefit only those fathers which are in a legal matrimony. It is essential that bills made should cater not only to law but to changing trends in the society as well. India has already accepted the status of live-in couples. The same is reflected in laws, such as **the Protection of Women from Domestic Violence Act, 2005**, which have paved the path to recognise such relationships, extended legal rights and remedies under its ambit to partners who live together in a shared household through a “relationship in the nature of marriage”. It is important that the bill includes the status of such couples as well.



CONCLUSION:

Fundamental rights hold an esteemed value in our country for they form the essence of our constitution. Thus, it is even more crucial to strike equality between men and women. For the said purpose, paid paternity leave benefits is an urgent need of the hour. It is the duty of the government to put such legislation in place, which helps in accelerating the social development of the Nation. Paternity leaves not only provides support to mothers in their postpartum periods but also helps fathers in developing an everlasting bond with their newly born infants. Afterall, A good foundation leads to a good upbringing!

REFERENCE: [HTTPS://LEXFORTI.COM/LEGAL-NEWS/](https://lexforti.com/legal-news/)