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Shattering Stereotypes: The Push for Paternity Leave Equality in India

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ABSTRACT

Paternity leave legislation is a crucial aspect of gender equality and family dynamics. In India, the absence of a comprehensive law on paternity leave in the private sector has led to a lack of awareness and understanding of its significance. This is further exacerbated by the prevailing notion that childcare is primarily a woman's responsibility, which is perpetuated by the absence of paternity leave. The International Labour Organization has been urged to introduce mandatory paid paternity leave to address these issues and promote gender equality.

Keywords: Paternity leave, paternity benefit.

I. INTRODUCTION

The traditional concept of joint families has gradually given way to the prevalence of nuclear families in India. In this evolving societal landscape, it becomes imperative for policymakers to grasp the significance of paternity rights. Unfortunately, there is a notable absence of statutory provisions in India that bind the private sector to offer paternity leave or any related benefits. While gender inequality in India has traditionally been a concern predominantly for women, it also significantly impacts men. The lack of paternity laws reinforces the prevailing notion that childcare is primarily a woman's responsibility, overlooking the essential role fathers play in their children's lives. Despite the Indian Constitution guaranteeing equal rights to men and women, gender inequality persists.

Surprisingly, India lacks specific legislation addressing paternity leave, and its provision is not mandatory in the private sector. However, a few corporations, such as Wipro, Infosys, and TCS, have taken a progressive step by including paternity leave in their HR policies.

II. PATERNITY LEAVE

The International Labour Organization defines paternity leave as a brief period of leave granted to fathers immediately following childbirth, allowing them to assist in caring for the newborn

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and supporting the mother. Essentially, paternity leave offers fathers the opportunity for paid leave to spend quality time with their infants and families.

In 1999, recognizing the importance of supporting new fathers, the government of India introduced paternity leave provisions for Central government employees through the Central Civil Service (Leave) rule 551 A. This legislation grants eligible employees, with fewer than two surviving children.³

In 1961 Maternity Benefit Act came into force. Maternity Act 1961, applicable to those establishment employing 10 or more employees. The statute includes conditional benefits to female employees. Those female employees who worked 80 days in 12 months preceding the date of their delivery are eligible for maternity benefits. The act covers all maternity benefits such as

- Right to payment of maternity benefit
- Payment of medical bonus
- Leave for miscarriage
- No deduction of wages in certain cases
- Forfeiture of maternity benefit
- Employment of women prohibited during a certain period⁴

III. NEED FOR PATERNITY LEAVE LEGISLATION

1) Evolving situations

First things first both men and women increasingly contribute to the workforce and second, the concept of the nuclear family prevails in India. It's difficult for women to take care of newborns alone and men need to understand the difficulties women go through while taking care of a child. Paternity leave allows fathers to be part of the process and it also reduces the burden on women.

2) Gender equality

The absence of a dedicated paternity leave law in India perpetuates gender imbalances and reinforces outdated stereotypes. While maternity benefits are well-established, the lack of parallel provisions for fathers implies that childcare remains primarily perceived as a woman's responsibility. This oversight not only disregards the crucial role fathers play in child-rearing

³ Central Civil Services (Leave) Rule, 1999, rule 551 (A)

⁴ Maternity Benefit Act, 1961

but also hinders progress towards genuine gender equality.

3) Help in increasing the women's workforce

Many women after having kids decide to leave their career and focus on raising their kids. Paternity legislation is vital for several reasons. Firstly, it acknowledges the changing landscape where both parents are actively engaged in their careers. Granting fathers the right to paid leave fosters a more equitable division of childcare responsibilities, reducing the burden on mothers and strengthening familial bonds.

Moreover, such legislation aligns with the broader goal of gender equality. By recognizing and supporting the role of fathers in parenting, we contribute to building a more inclusive and progressive society. Encouraging fathers to take an active role in childcare from the early stages of a child's life not only benefits families but also promotes a healthier work-life balance for both parents.

4) Reduces the dual burden on women

Paternity legislation can serve as a catalyst for increasing the participation of women in the workforce. The availability of paternity leave helps address the dilemma many women face between career advancement and family responsibilities. When fathers are afforded the opportunity to share the responsibilities of newborn care, it alleviates the burden on women, enabling them to sustain and progress in their professional pursuits.

To address these pressing issues, it is imperative for India to enact comprehensive paternity leave legislation. Such a legal framework should extend beyond the public sector and cover all types of employment, fostering a more inclusive and supportive work environment. By recognizing the shared responsibilities of parenting, paternity legislation not only promotes gender equality but also contributes to the overall well-being of families and the advancement of society as a whole.

5) Children become Healthier

The presence of multiple caregivers not only distributes the workload but also fosters a nurturing environment. Studies indicate that children with a network of caregivers, including fathers, tend to be healthier. The positive effects of parental involvement and leave extend beyond emotional bonds to tangible health outcomes.

Remarkably, the provision of parental leave alone has been associated with a noteworthy reduction in child mortality rates. Research suggests that offering parental leave can lower child mortality rates by as much as 5%. This indicates that the availability of parental leave plays a

vital role in creating a supportive foundation for infant care, contributing to healthier outcomes for newborns.⁵

IV. INDIAN SCENARIO – PATERNITY LEAVE

In India, only central government servants have paternity leave rights mentioned in section 551 (A) of the Central Civil Service (Leave) rule which says –

“**Paternity Leave** – (1) A male Railway servant (including an apprentice) with less than two surviving children, may be granted Paternity Leave by an authority competent to grant leave for a period of 15 days, during the confinement of his wife for childbirth, i.e., up to 15 days before, or up to six months from the date of delivery of the child.

(2) During such period of 15 days, he shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(3) The Paternity Leave may be combined with leave of any other kind.

(4) Paternity Leave shall not be debited against the leave account.

(5) If Paternity Leave is not availed of within the period specified in sub-rule (1), such leave shall be treated as lapsed.

(6) The Paternity Leave can be granted only in a single spell.

Note:- The Paternity Leave shall not normally be refused under any circumstances.”

In 2018 Paternity Benefit bill was proposed by Rajeev Satav in Lok Sabha, Maharashtra. The bill aims to provide paternity leave of 15 days extended up to 3 months. There is no provision for paternity leave in the private sector. Private companies have the right to draft their paternity leave policies

many big companies in India provide their employee's paternity leave for example TCS gives 15 days paternity leave, Wipro 8 weeks, Zomato 26 weeks and Infosys 5 days.

V. CASES LAWS

In the year 2009, in **Chander Mohan jain v. N.K Bagrodia Public School**

In a first ever litigation over an employee claiming paternity leave to take care of his wife and newborn, Chander Mohan Jain, a private school teacher, approached the Delhi High Court to contest the denial of his paternity leave application and the subsequent deduction from his salary by N K Bagrodia Public School. His request for leave was made to attend to his wife

⁵ WebMD Editorial Contributors, What is paternity leave ?, WebMD,(11 July, 2023), <https://www.webmd.com/baby/what-is-paternity-leave>

and newly born child. In the absence of specific legislation on paternity leave, the Delhi High Court, in its judgment, established that all male employees of unaided recognized private schools were entitled to paternity leave.

Consequently, the court issued a directive for the school to refund the deducted amount to Chander Mohan Jain, providing a significant legal precedent and relief to private sector teachers. This decision sets a noteworthy standard for recognizing and granting paternity leave rights to male employees in unaided private schools⁶.

B. Saravanan v Deputy Inspector General of Police, W.P.(MD). No.19561 of 2023

Justice L. Victoria Gowri noted that a majority of countries have enacted legislative provisions to safeguard and endorse maternity and paternity rights, even if these provisions may not consistently align with International Labour Organization (ILO) standards. Recognizing the crucial role fathers play, Justice Gowri emphasized that while many legal frameworks prioritize the well-being of mothers and children, it is imperative to acknowledge the integral role of fathers. In the realm of parenting, both the father and mother are indispensable partners, jointly contributing to the nurturing and upbringing of their children. The court was addressing a petition filed by B. Saravanan, an Inspector of Police at Kadayam Police Station in Tenkasi District, who sought paternity leave for 90 days from May 1 as his wife conceived through In Vitro Fertilisation (IVF). Although initially granted leave, it was abruptly canceled due to perceived law and order issues before it commenced.

With the delivery date extended to May 31, the petitioner approached the court for relief. The court directed him to submit a representation, leading to the sanction of leave until May 30. However, as the delivery occurred on May 31, he sought an extension through a WhatsApp message, citing the need for his wife's care.

In response, authorities issued a desertion order on June 22, prompting the petitioner to challenge it in court. The court, recognizing the unique circumstances where a dutiful husband sought paternity leave for his pregnant wife, emphasized that the authorities should have granted leave.

Stressing the child's right to life under Article 21 of the Constitution, the court highlighted the importance of parental roles during prenatal and postnatal care. The authorities' refusal of paternity leave was deemed a violation of Article 21, impacting the child's right to survive, live, and develop in a healthy environment. Consequently, the court quashed the desertion order

⁶ Chander Mohan jain v. N.K Bagrodia Public School,(2009), W.P (C) No. 8104

and instructed authorities to reconsider the petitioner's case, reinstating him as Inspector of Police within four weeks.⁷

VI. INTERNATIONAL SCENARIO

(A) Paternity law in US

At present, the United States lacks a comprehensive nationwide policy on paid paternity leave. The closest federal legislation addressing paternity leave is the Family and Medical Leave Act (FMLA). This law extends to all full-time employees in public agencies, schools, and companies with over 50 employees, granting them the entitlement to take up to 12 weeks of unpaid leave. This unpaid leave is specifically intended to facilitate the care of a new child or an immediate family member.

(B) Paternity leave in Japan (パパ休暇 papa kyūka)

Japan distinguishes itself by offering an extensive parental leave policy, providing up to one year of paid leave for both mothers and fathers. This includes several weeks of maternity and paternity leave before and after childbirth. Following this period, parents have the option to take childcare leave until their child reaches one year of age.

"In 2021, the Japanese parliament enacted a significant change by passing a bill that grants new fathers four weeks of flexible paternity leave, paid at up to 80% of their salary. This legislative move aligns with the government's ambitious targets: to increase the proportion of men taking paternity leave to 50% by 2025 and an even more ambitious 85% by 2030. To support this initiative, the government is actively enhancing benefits to address concerns about potential income loss during paternity leave, aiming to encourage more fathers to take advantage of this valuable opportunity.

" **Childcare Leave (育児休業 ikuji kyūgyō)** is available to both male and female employees until the day before their child's first birthday, encompassing biological and adoptive children. The regulations governing childcare leave closely mirror those of maternity and paternity leave. For households where both parents are employed, the Dad and Mom Parental Leave Plus (パパ・ママ育休プラス papa・mama ikukyū purasu) system allows both parents to take childcare leave concurrently. Additionally, fathers can extend their leave until the child is 1 year and 2 months old if they apply after the mothers have taken their leave. In special circumstances where both working parents are unable to secure daycare facilities for their child

⁷ B. Saravanan v Deputy Inspector General of Police, (2023), W.P.(MD). No.19561

after turning one year old, they have the option to apply for extended childcare leave, allowing them to continue until the child reaches 2 years of age.⁸

(C) Paternal leave in Canada

As of March 2019, Canadian parents have access to a total of 40 weeks of parental leave. Notably, five of these weeks are specifically designated for fathers to take time off work and care for their newborn.

The standard parental benefits cover a maximum of 35 shared weeks, complemented by an additional 5 weeks referred to as 'daddy days.' These benefits are paid at a weekly rate of 55 percent of the parent's average weekly insurable earnings.

It's important to note that one parent cannot receive more than 35 weeks of standard or 61 weeks of extended parental benefits. The remaining 5 weeks of standard or 8 weeks of extended parental benefits operate on a use-it-or-lose-it basis, encouraging a more balanced distribution of parental responsibilities.⁹

While there isn't a specific international convention solely focused on paternity benefits, there are broader conventions and recommendations that touch upon family and work-life balance, which can indirectly impact policies related to paternity benefits. Here are a couple of relevant ones:

1. **International Labour Organization (ILO) Maternity Protection Convention, 2000 (No. 183):** While primarily focused on maternity protection, this convention recognizes the importance of involving both parents in the upbringing of children and encourages states to provide paternity leave or parental leave.¹⁰
2. **ILO Workers with Family Responsibilities Recommendation, 1981 (No. 165):** This recommendation encourages member states to adopt measures to reconcile family and work responsibilities, including the provision of parental leave for both fathers and mothers.¹¹

UNICEF formerly provided four weeks of paid paternity leave to male staff, but this has recently been increased to sixteen weeks globally. Developed countries like Britain, Norway,

⁸ Arzaqia Luthfi Yani, Maternity, Paternity, and Childcare Leave in Japan, TOKHIMO, <https://www.tokhimo.com/post/maternity-paternity-and-childcare-leave-in-japan-1#:~:text=In%20Japan%2C%20parents%20are%20entitled,child%20is%20one%20year%20old>.

⁹ Uros Vucendic, A Guide to Paternity Leave in Canada, Vacation tracker, <https://vacationtracker.io/blog/a-guide-to-paternity-leave-in-canada/#:~:text=In%20Canada%2C%20paternity%20leave%20is,reserved%20just%20for%20the%20father>.

¹⁰ International Labour Organization (ILO) Maternity Protection Convention, 2000, (No. 183).

¹¹ ILO Workers with Family Responsibilities Recommendation, 1981 (No. 165).

and Sweden provide a year of paid leave to new fathers. Many big companies of the world like Coca-Cola, Johnson & Johnson, and Netflix provide paternity leave to new fathers.

VII. CONCLUSION AND SUGGESTION

"Ensuring the health and well-being of infants is a paramount consideration, and parental leave emerges as a crucial factor in this equation. The demands of caring for a baby are substantial, and having an extended support system through parental leave can significantly contribute to a child's health.

Evolving time demands Paternity Benefit legislation in India. If we compare India with other Developed countries like Britain, Canada, Japan, and Sweden, we lack paternity benefit legislation. In this new era, we can say that both men and women become breadwinners and it's high time for our government to realize that we need new legislation. The benefit of Paternity legislation is that it's not only going to increase the scope of Gender Equality but also help in increasing the workforce of women."

(A) Suggestions –

1. Comprehensive Legislation for All:

We advocate for legislation with extensive coverage, encompassing all types of factories and employees, irrespective of their positions. Paternity benefit laws, applicable to both the public and private sectors, serve as a catalyst for encouraging workforce participation.

2. Provision for Bereaved Fathers:

A crucial aspect of new legislation should include provisions for compassionate leave. Specifically, fathers should be granted one year of paid leave in the unfortunate circumstance of their wife's demise post-childbirth. This compassionate approach supports grieving fathers during a challenging period.

3. Changing Perceptions and Promoting Gender Equality:

A significant hurdle to widespread acceptance of paternity leave is the prevailing belief that child-rearing is solely a woman's responsibility. To address this, the Government of India should embark on an extensive awareness campaign. By challenging societal norms and promoting a more balanced view, such initiatives not only alleviate the burden on women but also contribute to an increase in the female workforce.

4. Incentivizing Paternity Leave:

To further encourage the uptake of paternity leave, the Indian government can introduce incentives. This might include tax exemptions or offering one-year free medical treatment for newborn children. By providing tangible benefits, the government actively supports fathers in taking an active role in childcare responsibilities.

The compensation is covered by labor insurance, ensuring that the employee receives financial support without being subject to income tax. This is due to the nature of the compensation, which is categorized separately from taxable income. The intent is to provide employees with essential benefits through labor insurance without imposing additional financial burdens through taxation.

5. Child care leaves allowance

We need child care leave allowance that is inclusive and applicable to all employees, irrespective of the method of child acquisition—whether through adoption or biological means. This progressive measure recognizes the diverse ways in which families are formed and ensures that all parents, regardless of the nature of their child's arrival, are entitled to the same child care benefits. By extending these allowances universally, we foster an inclusive work environment that supports the varied paths individuals take in building their families and caring for their children.

6. Amendment to the Employee State Insurance (ESI) provisions

We recommend a thoughtful amendment to the ESI provisions to incorporate paternity benefits for registered employees. Recognizing the evolving dynamics of family responsibilities and the crucial role fathers play in childcare, the inclusion of paternity benefits within the ESIC framework would contribute to a more comprehensive and equitable employee welfare system. This amendment seeks to align ESIC provisions with contemporary family needs, providing registered employees the support they require during significant life events such as the birth or adoption of a child.

In conclusion, parental leave is not merely a matter of convenience for parents; it is a fundamental component in the promotion of child health. By acknowledging the demanding nature of caring for a baby and providing the necessary support through parental leave, societies can take a significant step towards ensuring the well-being of their youngest members. I like to say that If governments and private enterprises support the notion of statutory paternity leave in India, it will be a minimal first step in enabling society to

recognize that parenting and childcare are a shared obligation of both men and women.

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