

# AN EMERGING NEED OF LEGISLATIVE POLICIES IN ORDER TO PROVIDE AND PROMOTE PATERNITY LEAVE BENEFITS

\*Garima Singh

Research Scholar, Faculty of law, University of Lucknow

## ABSTRACT

In older times, the men earned more in the household doing jobs whereas women stayed home and managed everything. But these days men & women are literate & economically independent with similar traits. In acknowledging her place as a mother, a core aspect of what makes the female unique lies within this divine calling. The role of the father is equal to the role of the mother in order to bring up a child in a healthy environment and to fulfill the concern comes the role of Paternity Leave which acts as an aid in fulfilling the said objective by giving an opportunity equally to both the parents to fulfil their responsibilities and also to giving a child environment of nourishment and bonding with parents. In a patriarchal society where motherhood is equated with raising a child solely by the mother sharing responsibility equally by the father acts as a hammer to the patriarchal mindset. Giving more time to women to work and take up the role of breadwinner brings them out of the idea of motherhood equated with raising a child as a responsibility solely of a mother. In order to incorporate the idea of Paternity leave to fulfill the above-mentioned objective now Judiciary as well as the legislature are considering the concept to be incorporated in our society slowly and steadily. With the state now recognizing Paternity leave in all sectors increasing the time period has opened a window for it to be recognized in Indian society.

**Keywords:** *Paternity Leave, Patriarchy, Indian Society, Matriarchy.*

## INTRODUCTION

In the past, men were the primary breadwinners, going outside for work while women managed households within. But now educated and self-sufficient alike, men and women share similar attributes. Acknowledging the natural role of women as mothers, an essential part of their divinity lies within. Demanding emotional and physical support for their children, motherhood requires. Keeping this in mind by the government, the Maternity Benefit Act was implemented in 1961 as a result of recognition. It is to be noted that playing a crucial role, fathers are also responsible for childbirth although women are those who typically give birth. But it cannot be denied that emotional and physical supports are expected of fathers during both pregnancy phases, for the mother as well as child.

Earnings and domestic duties alike are shedding their old constraints in the face of change. Maternity leave is now interchangeable with Paternity leave. Women continue to battle work-life balance independently, despite societal push for gender equality. A gender-inclusive society lies ahead with paternity leave as a key factor.

### WHAT IS PATERNITY

Paid or unpaid time off from work, paternity leave allows new fathers to assist with caring for their infant children. Motherly traditions are standardized, whereas paternity leave has a newer history in most societies. As fathers participate more actively in child-rearing, particularly during the newborn phase, paid family leave is gaining acceptance.

With the rise of nuclear families and dual-income households, the importance of paternity leave has increased. Raising children requires equal responsibility from both parents. Fathers, children, and the wage inequality that women encounter after maternity leave all stands to gain from paternity leave.

Merriam-Webster has defined Paternity in its dictionary as “the quality or state of being a father”.

### DEVELOPMENT IN INDIAN SOCIETY

The absence of dedicated, solitary laws has paternity leave in India in a bind. As revealed by Union Minister Jitendra Singh, unmarried male government employees can now avail themselves of financial assistance to the parents or guardians of a minor child for up to two years. The Maternity Benefit Act of 1961 was modified and titled **THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017 No.6 OF 2017 [27 March 2017]**. Section 5 of the said act provides female employees the privilege of taking 26 weeks of paid leave, with the option to use up to eight weeks beforehand. The Central Civil Services (Leave) Rules of 1972, 15 days of paternity leave is granted to male government employees either pre or post the birth of their child. Primarily benefiting a particular group of people, this approach to paternity leave in India has restricted applicability. It is widely accepted that motherhood equates to the majority of childcare responsibilities, additionally. Equal care giving status calls for a re-evaluation of women as breadwinners.

### LEGAL DEVELOPMENT

A remarkable decision concerning paternity leave was made by the New Delhi High Court in 2009, even though no specific laws existed at the time. The court's recognition of paternity leave resulted in the teacher having his salary reimbursed in the case of **Chandramohan Jain v. N.K. Bagrodia School W.P. (C) No. 8104 of 2009, High Court of Delhi**. Turning point in the private school sector, this ruling demonstrates a milestone in establishing and securing paternity leave rights. Importance of paternity leave was confirmed by the court, not necessarily due to any laws in place. Following the enactment of the 2017 Maternity Benefits (Amendment) Act, 2017, another significant development took place. The new bill, known as the Paternity Benefits Bill, was introduced in the Lok Sabha in September by Maharashtra legislator Rajiv Satva. This Act aimed at providing

benefits to newborn's fathers and proposed to grant employees in the private unorganized sector, fifteen days paternity leave, which could be extended up to three months. The Act greatly emphasized to provide parents with equal benefits for both mothers and fathers.<sup>1</sup>

In the recent case of **B. Saravanan v Deputy Inspector General of Police**,<sup>2</sup> before the Madras High Court, a writ petition became filed against the desertion order issued by using the Deputy Inspector General of Police (DIG). The petitioner sought to have this order invalidated and requested the courtroom to order the respondents to reinstate the petitioner as an Inspector of Police at Kadayam Police Station.

In the above mentioned case **L. Victoria Gowri, J.** has held that the action of the respondents cancelling and refusing paternity leave to the petitioner would amount to violation of the Constitution of India under Article 21.

Consequently, the Court invalidated the challenged desertion order issued by way of the DIG and informed the DIG to reconsider the order. This directive covered granting the petitioner from the date of receiving a copy of the courtroom's order an additional 15 days to provide a cause of his unauthorized absence.

The Court said that though paternity/paternal leave are a kind of labor law benefit, the same has stemmed up from the right of a child to be protected under Articles 14, 15(3) and 21 of the Constitution of India. The Constitution provides with specific provisions in Chapter III and IV under Fundamental Rights and Directive Principles of State Policy respectively, recognizing the significance of child welfare, protection and development. Furthermore, Article 39(f) directs the State to ensure that children have the rights and resources necessary to grow up in healthy conditions, enjoy their rights in freedom and dignity, free from use, moral choice them, and neglect in childhood and youth. The Court said that the survival of a child vests with the joint responsibility of the family. Since the days of joint family system has almost diminished and when the challenges of nuclear families are unprecedented in India, it is high time for the policy makers to recognize right to paternity leave/parental leave to the biological/adoptive parents, as the basic human right of the respective prenatal/post-natal child.

Judge L Victoria Gowri quoting ethics once stated: "People who impart knowledge, initiate, transmit, nurture and protect from fear - these five are regarded as fathers."

Emphasizing the importance of the role of father in the upbringing of children, Justice Gauri emphasized that father and mother are important partners in parenting. In India, there is currently no statutory requirement for paternity leave for fathers working in the private sector. However, the Central Civil Service (Leave) Rules of 1972 contain provisions for paternity leave. It is important to note that many Indian states including Tamil Nadu do not offer this welfare benefit. This highlights the need for mandatory paternity leave in India. In a related case, the State of Himachal Pradesh (aka 'State-petitioner') filed a writ petition challenging the decision of the Himachal

<sup>1</sup> 678LS.p65, (July 22, 2017), <http://164.100.47.4/billstexts/lbillstexts/asintroduced/678LS%20AS.pdf>.

<sup>2</sup>W.P. (MD). No.19561 of 2023



Pradesh Administrative Tribunal ('under consideration') in the State's case in **H.P. V. Sita Devi**<sup>3</sup>. The Court had granted the respondent Sita Devi the benefit of reckoning maternity leave followed by the consequential benefit of supervised employment on completion of 8 years of service the Tarlok Singh Chauhan and Virendra Singh J.J. The State's request was denied and it was held that maternity leave was a fundamental right of the petitioners and could not be denied. In this case, the Court had issued an order that the maternity leave be used as a continuing service to the Plaintiff, pursuant to Section 25(b) (1) of the Industrial Disputes Act. The court emphasized that India is a signatory to several international treaties and conventions, such as the Universal Declaration of Human Rights, which was adopted by the UN on December 10, 1948. The Declaration took effect upon its ratification throughout the world that rights are paramount and must be pursued in on all circumstances. In addition, the court looked at issues related to the issues of the year internationally, such as the CEDAW, the treaty to eliminate all forms of discrimination against women and children, etc. which culminated in the Maternity Benefit Act, 1961 Furthermore, the court emphasized that every female and male employee, irrespective of their employment status (permanent, contractual, temporary, seasonal/temporary), has a fundamental right to maternity leave if appropriate, and paternity leave and childcare also cease (CCL). These rights aim to promote and protect motherhood and child rearing under Article 21 of the Constitution of India, and Article 42 of the Constitution.

The Court cited the case of *Municipal Corporation of Delhi v. The Women Workers (Muster Roll)*<sup>4</sup> case said, where the Supreme Court ruled that the provisions of the Maternity Benefit Act, 1961 extended maternity leave entitlement to women working casually or daily wage accumulation on an oral basis, and is not restricted to regular employees. Furthermore, the court emphasized that the purpose of maternity leave is to protect the dignity of motherhood by ensuring the welfare of women and children Maternity leave fulfills the broader objective of achieving social justice for women by seeking special attention on the discovery of mothers and childhood. The Court found that the respondent in the present case was a daily wage worker during her advanced pregnancy and would not have been forced to do hard labor not only her health and safety but also her child's welfare and development will be compromised. The court strongly emphasized that maternity leave is a fundamental right of the defendant and cannot be denied by the state. The court therefore concluded that the actions<sup>3</sup> of the appellant State violated Articles 29 and 39-d of the Constitution. Consequently, the court denied the petition.

### SEVERAL REASONS REMARKING THE SIGNIFICANCE OF PATERNITY LEAVE:

#### 1. Balancing Parental Responsibilities:

Without paternity leave, new fathers often miss out on the opportunity to actively participate in caring for their newborn child. This leaves the bulk of childcare responsibilities on mothers, which can be overwhelming.

<sup>3</sup> H.P. v. Sita Devi CWP No. 647of 2020.

<sup>4</sup>Municipal Corporation Of Delhi Vs. Female Workers (Muster Roll) 2000 (2) SCR 171

## 2. Strengthening Family Bonds:

Paternity leave allows fathers to bond with their newborns from the very beginning. Building this early connection is crucial for a child's emotional development and helps create stronger family bonds.

## 3. Gender Equality:

Lack of paternity leave can perpetuate traditional gender roles where women are primarily responsible for childcare and homemaking. It's important to recognize and promote the idea that both parents should share these responsibilities equally.

## 4. Work-Life Balance:

Paternity leave supports work-life balance for both parents. It enables fathers to manage their work commitments while also being present for their family during a crucial period.

## 5. Career Impact:

Without paternity leave, new mothers often face difficult choices, potentially leading to career interruptions or exits. This can contribute to gender disparities in the workplace and limit women's career opportunities.

## TOP COMPANIES WITH THE BEST PATERNITY LEAVE POLICIES<sup>5</sup>

Company	Vacation Time	Sick Leave	Parental Leave
<b>Google</b>	20 days	Unlimited	12 weeks
<b>Facebook</b>	21 days	14 days	4 months
<b>Amazon</b>	10 days	6 days	Up to 20 weeks
<b>Microsoft</b>	15 days	10 days	Up to 22 weeks
<b>Apple</b>	Up to 3 weeks	6 days	Up to 16 weeks
<b>Airbnb</b>	Unlimited	Unlimited	18 weeks
<b>Netflix</b>	Unlimited	Unlimited	52 weeks
<b>Salesforce</b>	15 days	5 days	Up to 26 weeks
<b>Uber</b>	15 days	Unlimited	18 weeks
<b>LinkedIn</b>	15 days	10 days	12 weeks
<b>Twitter</b>	20 days	Unlimited	20 weeks
<b>Adobe</b>	17 days	10 days	Up to 16 weeks
<b>IBM</b>	15 days	5 days	Up to 20 weeks
<b>Intel</b>	15 days	10 days	Up to 12 weeks
<b>Tesla</b>	Unlimited	Unlimited	Up to 16 weeks

<sup>5</sup>Devender Saini, Paternity Leaves Rules/Policy in India for Private Companies, <https://www.paclatestnews.com/paternity-leaves-rules-in-india-for-private-companies>.

## A BENEFIT OF PATERNITY LEAVE INCLUDES:

1. Increased and retained job satisfaction:

By offering paternity leave, companies demonstrate a commitment to balancing employee well-being with work-life balance. This can increase job satisfaction and reduce turnover, ultimately saving recruitment and training costs.

2. Improved productivity and engagement:

Fathers who take paternity leave return to work engaged and productive. Feeling supported and less stressed in the early stages of parenthood can have a positive effect on performance.

3. Improved work-life balance:

Paternity leave allows new fathers to spend vital time with their newborns and support their partners, leading to better mental health and reduced stress. This improved balance allows them to function better once they return to work.

4. Positive Company Culture:

Offering paternity leave shows that the company values fathers and mothers sharing childcare responsibilities. This creates an inclusive and positive company culture and attracts top talent.

5. Compliance:

Many states have legal requirements for paternity leave. Providing this benefit ensures that companies comply with local laws, avoiding potential lawsuits and penalties. In summary, providing paid paternity leave not only helps employees in their personal lives but also has long-term benefits for businesses, including improved productivity, productivity and company culture, while ensuring compliance. It's a win-win situation for employees and employers.

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Indian paternity leave policies, as described, do lag behind those of several other countries in terms of duration and benefits. Here's a comparison with the policies of some other nations:<sup>6</sup>

- **India:** - Duration: 15 days  
Benefits: Pay during paternity leave  
Availability: Limited to government employees; not mandated for private sector.
- **Lithuania:** - Duration: 30 days  
Benefits: Paid at 77.58% of regular earnings

<sup>6</sup>Paternity Leave by Country, available at <https://www.safeguardglobal.com/resources/blog/paternity-leave-by-country> accessed on 23/09/2023.



Additional Shared Parental Leave: Up to 36 months

- **Japan:** - Duration: One full year

Benefits: 67% of regular salary for the first half (180 days), 50% for the remainder - Separate from maternal leave.

- **Sweden:** - Duration: 480 days of shared leave.

Benefits: Paid at varying levels, starting at 80% of regular salary - Encourages parents to split leave days.

- **Estonia:** - Duration: Two weeks of paid paternity leave at 100%

Additional Shared Parental Leave: 435 days.

- **Iceland:** - Duration: 12 months of combined maternity and paternity leave (six months each)

Transferable: Up to one month can be transferred between parents - Paid at 80% of annual salary.

- **Germany** (Unpaid leave mentioned): - Duration: 12 months paid leave, with an option for an additional 24 months unpaid As seen from this comparison,

India's paternity leave policy is notably shorter in duration compared to several other countries. Moreover, some countries provide more generous benefits, such as a higher percentage of salary paid during leave. Global trends in paternity leave are indeed moving towards longer durations and more gender-neutral policies, aiming to support greater gender equality in parental responsibilities.

TABLE FORMAT OF PATERNITY LEAVE ALLOWANCE OF DIFFERENT COUNTRIES<sup>7</sup>

Country	Paternity leave allowance
South Korea	548 days
Japan	365 days
Norway	365 days
Germany	365 days
Sweden	240 days

<sup>7</sup> [https://www.oecd.org/els/soc/PF2\\_1\\_Parental\\_leave\\_systems.pdf](https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf), accessed on 24/09/2023.

Country	Paternity leave allowance
Iceland	183 days
Denmark	168 days
Finland	160 days
Spain	112 days

## CONCLUSION

In summary, paternity leave matters because it promotes gender equality, strengthens family bonds, and helps both parents balance their work and family responsibilities, ultimately creating a more inclusive and supportive society. Providing paternity leave benefits in India is not only progressive but also necessary for several reasons:

1. Gender Equality:

Paternity leave policies promote gender equality by recognizing that fathers, like mothers, have an important role in childcare. It challenges traditional gender roles and promotes shared responsibility within families.

2. Family Friendly Workplace:

Providing paternity leave creates a family-friendly work environment that supports employee well-being. It helps them balance their professional and personal lives, reduces stress and increases job satisfaction.

3. Talent Attraction and Retention:

Competitive paternalistic leave policies can attract and retain top talent. Prospective employees often consider work-life balance and family support when choosing their employers.

4. Inclusivity:

A robust paternity leave policy means a commitment to inclusion, which takes into account a variety of family structures and individual circumstances. This inclusiveness contributes to a diverse and welcoming workplace culture.

5. Employee Empowerment:



Paternity leave empowers working parents to be actively involved in raising their children without sacrificing their jobs. It supports their physical and emotional well-being, benefiting employees and their families.

6. Compliance:

In many countries, including India, paternity leave is mandated or encouraged by law as a best practice. It is important for companies to comply with these rules to avoid lawsuits. Overall, paternity leave policies contribute to an equitable, inclusive, and supportive work environment. Companies that recognize these benefits and implement effective paternity leave policies are likely to see better results.



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