

## **Paternity Leave and Its Dimensions across the Globe**

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### **Abstract**

This research paper is a comprehensive piece of literature dealing in the concept of paternity leaves and its dimensions across the globe. With the changing needs of the society, the law is also meant to change as otherwise; the law of a country would have no significance. Maternity leave has existed since a long period of time as women began venturing out of their traditional roles and started earning. Consequently, questions began rising about the role a man towards his family. This research article not only highlights the current legal position on paternity leaves but also looks into the sociological aspect of the same. The current status of paternity leaves in several countries of the world has been discussed hereby. The author has also suggested that India should as soon as possible bring out its own paternity leave policy to be in line with other countries of the world.

**Keywords:** Paternity, maternity, leaves, economic, weeks, days, months, salary, society

### **Introduction**

Since times immemorial, division of labour on the basis of genders has existed in the society since times immemorial. Women have traditionally remained confined to the four walls of the house and have indulged in homely work like cooking, cleaning, taking care of children while men have traditionally ventured out of their homes in order to work and earn money for their families. With the advent of the society, the line between these gender defined roles of men and women got decreased but did not vanish away. Women started going out to work and built their own careers. Whenever women decided to expand their families, the employers took note of the same and granted such women maternity leave so that she could give birth and take care of her child and come back to her job once the things get settled. More often, women were paid during these leaves, implying towards the empathy of the employers towards women's role in her family. Men were initially not granted any leaves; rather paternity leaves which were at par with the concept of maternity leaves. This was because the traditional role of males was not related to caring about the family. Hence, initially even though the societal roles for the females were changing, the picture regarding the duty of men remained as it is. It is only recently that the world has recognized the duty of care of a man towards his family. The concept of paternity leaves has come into existence in the recent times only. Paternity leave, similar to maternity leaves, refers to the leaves given or the period of absence from the work for a male just before and after he becomes a father. Paternity leaves depict the changing nature of the society, which is slowly and gradually debunking the patriarchal notions prevalent since ages. Paternity leaves are representative of

the policies of the welfare state which aim at helping the fathers in responding towards the social and economic parameters relating to their work and families. Policy framers who aim at bringing in equality in social and economic matters credit globalization for being the reason of evolution of this concept and consider it to be an important way of helping the fathers in getting involved in their family lives.

### **Need for Paternal Leave**

There are several reasons in existence which depict the need of parental leaves:<sup>1</sup>

1. Patriarchal society: The culture of toxic masculinity has been in existence since times immemorial not only in India, but also throughout the globe. Parental leaves are an excellent way of breaking this image of men by depicting them as caring humans who want to take break from their daily routine for caring for their families. This debunks the image of a man as the breadwinner of the family.
2. Gender gap in Labour Laws: There is a lack of clarity regarding the paternity benefits while in some country they are given at par with maternity leaves, in other country they are not given at all.
3. Double Burden on Women: Considering maternity leaves to be the only form of leaves for nurturing a child does no good in decreasing the gap between the personal and professional life of the women. If only maternity leaves exist, it means that the women is expected to first complete her role as a professional in an office where she works, later to return to her home to play her role as a mother. The role of father in nurturing a child apparently does not exist in stringent societies, thereby putting extra burden on women who want to pursue their careers.

### **Advantages of Paternity Leaves**

Following are some of the most obvious advantages of paternity leaves:<sup>2</sup>

1. Improved Family Relations: Men have always been at the receiving end when it comes down to the role they play in their families. By given them paternity leaves, they are being given the right to spend quality time with their families when their time and attention is needed the most. It also has a positive impact upon the mental health of males.
2. Impact on child: It has been proved in various studies that if a father spends time with his child at and sometime after she or he is born; it is extremely beneficial for the child's development. Such children have been seen to be better students once they start going to schools.
3. Well being of the mother: Researches have shown that the support of spouse during and after the pregnancy in bringing up a child is a catalyst for the mother's well being. Post birth depression has been a matter of extremely rare occurrence for those mothers who had the support of their husbands in caring and nurturing the child after its birth.
4. Brings in equality: It has often been observed that many companies hesitate in giving jobs to married females as if she will go for maternity leave in the near future, it will be form of burden for the company to pay her for the time she is not present plus get her portion of work

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<sup>1</sup>"Paternity Leave", Drishti Ias ( February 2, 2021, 05:00 pm)<https://www.drishtiias.com/daily-updates/daily-news-editorials/paternity-leave>

<sup>2</sup>*Supra* note 1.

done by others. If paternity leaves are given at par with maternity leaves, it will no more be wrongful for the women as the companies would in such a case be not hesitant in giving work in their companies to married men.

5. Debunks Patriarchy: Undoubtedly, paternity leaves are rightfully in violation of the societal norms like that the mother has the sole duty of nurturing the child, the father's work is limited to earning money, etc.

### **Paternity Leaves in India: an in-depth Analysis**

There is no paternity leave related national policy in India. However, after the introduction of the Maternity Benefit (Amendment) Act, 2017, a Paternity Benefit Bill was also brought forth in the year 2017. This bill aims at protecting the Paternity rights of the men. Some of the important provisions of the bill have been enumerated below:<sup>3</sup>

1. With regards to applicability, in the opinion of the author, it bill is more than perfect as it virtually includes almost all categories of jobs in which men can be working in. The Act is applicable to all establishments belonging to the Government of India or private sectors, such as factories, mines, plantations, etc. Both men in the government and private sectors are protected by the regulations, including those who are self-employed or operating in an unorganized sector where less than ten are employed.

2. Salaries and Payments: Each male employee seeking paternity leaves shall be entitled to receive a paternity benefit at the rate of the average daily wage payable to him on the days he worked, or at the minimum wage rate fixed or revised in accordance with the Minimum Wages Act, 1948 or at the rate of 10 rupees, whichever is the higher for the time period of his paternity leave.

3. Total Duration of Leave: Any person with less than two living children shall be eligible to receive paternity benefits for a period of fifteen days, not more than seven days prior to the anticipated date of delivery of the child. It will be used for up to three months from the child's date of birth. The bill also recognized certain exceptional set of circumstances which are as follows :

A) If the person dies immediately after the date of birth of the child for which he is entitled to the paternity benefit and leaves the child behind, the employer shall be liable to the candidate of that man for the benefit for the entire paternity duration.

B) If the child also dies during the paternity era, the employer is responsible for offering paternity compensation, including the date of death, for the days up to the child's death (child).

4. Requisite Work Duration: A man would only be entitled to the benefit if he has currently served in the business from which he receives paternity benefit in the 12 months immediately preceding the anticipated date of delivery for a period not less than eighty days. The eighty-day qualification period will not extend to a man who recently immigrated to the state and whose wife was pregnant at the time of immigration.

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<sup>3</sup>Priyanshi Pandey, "Paternity Leave Policies in India", Ipleaders (February 4, 2021, 06:00 am) <https://blog.ipleaders.in/paternity-leave-india/>

5. Parental benefit Scheme: Under this Act, the Union Government will introduce a scheme with suitable guidelines to be known as the Parental Benefit Scheme to provide every man with paternity benefits.
6. Paternal Scheme Benefit Fund: Under this program, for the purposes of paternity benefits, the government would develop a fund to be referred to as the Parental Benefit Scheme Fund. All workers (regardless of gender), employers and the central government should contribute to the Fund in the proportion prescribed. The Fund would then be used under this Act to cover the expenditures associated with paternity benefits.<sup>4</sup>
7. Advance Payment of Salary: The paternity benefit sum shall be paid upfront by the employer to the employee for proof that his wife expects a child for the period preceding the date of planned child-to-man delivery, and the amount due for the corresponding period shall be paid to the employee within forty-eight hours of proof being provided.
8. No dismissal clause : Whenever a person takes break in compliance with the provisions of this Act, his employer shall be held to be unlawful in discharging or dismissing him from the institution during or because of such absence or in giving notice of leave or dismissal on the day on which the notice expires.
9. Inspecting Officer: The appropriate government may appoint officers by providing notification in the Official Gazette as it considers it appropriate to be an inspector to achieve the objectives of the Act. The local boundaries of the jurisdiction within which they will perform their functions will be defined by the authority concerned. Within the meaning of Section 21, every inspector appointed under this Act is deemed to be a public servant.<sup>5</sup>
10. Non Fulfilment of benefit: If an employer does not pay a man entitled under this Act any amount of paternity benefit, he will be punished with imprisonment, not less than three months, but may extend to one year and with a fine not less than twenty thousand rupees, but may extend to fifty thousand rupees.<sup>6</sup>
11. Miscarriage: In the case of pregnancy loss, the bill provides that a worker is eligible to earnings at the rate of paternity benefit for a period of 7 days immediately following the date of the pregnancy loss after the producing of such proof.<sup>7</sup>
12. Adoption: According to the provisions of this bill, for a duration of 15 days from the date on which the newborn is transferred to the adopting father or legal husband of the commissioning mother, any man who legally adopts a child under the age of three months or to the legal husband of the commissioning mother shall be entitled to paternity benefits.<sup>8</sup>

### **UNICEF on paternity leaves**

As per the analysis of the United Nations International Children's Emergency Fund (UNICEF), India is one among the ninety countries who have no national policy on paternity leaves. Around two third of the world's children live in such countries whereby their fathers receive no paternity leaves as a result of which such children mostly miss out upon the love

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<sup>4</sup>Ibid.

<sup>5</sup>Supra note 3.

<sup>6</sup>Supra note 3.

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and affections of their fathers in the early childhood.<sup>9</sup> UNICEF Executive Director Henrietta Fore said that:

“ Positive and meaningful interaction with mothers and fathers from the very beginning helps shape children's brain growth and development for life, making them healthier and happier, and increasing their ability to learn. It's all of our responsibility to enable them to fill this role.”

Statistics show that they are more likely to play a more involved role in the growth of the child as fathers interact with their babies from the start of life. Study also indicates that they have greater psychological wellbeing, self-esteem and life-satisfaction in the foreseeable future when children communicate favourably with their fathers, UNICEF said. UNICEF encouraged policymakers to put in place national family-friendly policies that promote childcare and growth, including paid paternity leave, to help provide parents with the time, support and knowledge they need to take care of their children. In the year 2018, UNICEF has overhauled its approach to parental leave provisions; it became the first United Nations organization to expand parental leave far beyond usual four weeks to the period of sixteen weeks.

### **Paternity Leaves in some of the countries of the world**

Sadly, India and Nigeria are the home to one of the world's largest population of children and yet have no parental leave policy. However, many countries in the world have their own parental leaves policy. Some of them have been discussed below:<sup>10</sup>

1. Japan: Japan's approach to paternity leave looks progressive with the figure of 30 weeks leave, but as per UNICEF, only over 5 percent of fathers who applied for parental leaves took paid leave in 2017. Personnel shortages, employers not providing it, and "unfavourable atmosphere" were the main reasons for not availing it. Leave is tax-free and for the first 180 days, 67 percent of earnings are generated and 50 percent of earnings afterwards are generated.

2. South Korea: It was very unusual for men to take paternity leave in South Korea till the parental leave policy was enforced in the year 2007. In the year 2018, 17 percent of all parents who took leaves were men, but the majority of men feared of the effect it would have on their jobs, a government report had found.

3. Spain: Spain is fast overtaking other countries in terms of paternity leaves, having increased its paternity leave from two to eight weeks between the span of 2016 and 2019, and this year it has increased to 12 weeks. Paid at 100% of the net income, fathers are not permitted to transfer their partners the weeks they do not need. In 2021, Spain is further going to increase the time period of paternity leaves to a total of sixteen weeks which would then be at par with the time period of its maternity leaves.<sup>11</sup>

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<sup>9</sup> “India among over 90 nations without paid paternity leave for new dads: UNICEF”, The Economic Times ( February 1, 2021, 06:00 pm)

<https://economictimes.indiatimes.com/news/politics-and-nation/india-among-over-90-nations-without-paid-paternity-leave-for-new-dads-unicef/articleshow/64587239.cms>

<sup>10</sup>Miranda Byrant, “Paternity leave: US is least generous in list of world's richest countries”, The Guardian (February 4, 2021, 01:00 pm) <https://www.theguardian.com/us-news/2020/jan/29/paternity-leave-us-policy>

<sup>11</sup>Ibid.

4. Iceland: Fathers have their three months of parental leaves which is at par with mothers. There is another three months of parental leave which can be granted to a man but it is at his own choice to take these leaves or transfer them to their wives. At the figure of 80 per cent of earnings, leave is paid. Both parents are entitled to leave, regardless of their job status, but on average, working men are paid much more to take leave because of gender pay differences.
5. Sweden: At 78 percent of the earnings, the father can firstly take 10 days of parental leave. Either of the parents is then entitled to take up to 480 days of parental leave. Fathers or mothers, both can take 195 days leave at 78 percent of earnings and then of 45 days at a fixed rate of 180 kronor, subject to the conditions that they have the requisite job history and income criteria.
6. Mexico: Officially, fathers are entitled to 100% paid leave for five working days if they are working in the organized sector of economy. The majority men do not fall within this category as around 60 percent of men are employed outside the formal economy. The policy is also applicable in case of same sex couples.
7. Australia: Paternity leaves are not recognized in Australia. 18 weeks of paid maternity automatically goes to the mother until and unless she wants to transfer it to the father of the child. Despite this, "dad and partner pay" grants two weeks of pay which is almost always the national minimum wage value, to new father' and mothers' partners for taking unpaid leaves.
8. The United Kingdom: Paternity leave is only available to workers (not to self-employed or contractors). Paternity leaves are payable for a maximum of two weeks at either £ 149 (about \$ 195) a week or 90% of the regular weekly pay of the employee, whichever is lesser than the other. It is possible to take leave, which cannot be divided, between the birth of the child and up to 56 days later.
9. The United States of America: Fathers in America are not protected by any national paid leave program or policy. Under the United States Family and Medical Leave Act, the only available form of parental leave is unpaid leave and it grants protection to about 60 percent of the American men. Nevertheless, eight states in the US which are the California, New Jersey, Rhode Island, New York, Washington, Massachusetts, Connecticut and Oregon, and the District of Columbia have formulated their own paid paternity leave plans that provide a portion of the employee's compensation for parental leave.
10. New Zealand: When a baby is born or adopted, the Parental Leave and Employment Security Act 1987 provides for partner/parental leave. Partner's/paternity leave is a continuous period of unpaid leave of up to 2 weeks available to a woman's spouse who has had a baby, which may be taken at or around the moment of creation or adoption.
11. People's Republic of China: There is no uniform statutory guideline on parental leave in China. However, paternity leaves as per every province's rules start from a period of seven days (Shandong and Tianjin) to 30 days/one month (Yunnan, Gansu, Henan, and Tibet) in all the provinces. However, the time period of fifteen days is the most excepted time period of parental leave in China.
12. France: In France, the time period of paternity leave is of a period of eleven days if there is a single child and eighteen days if there are multiple births. Allowances given during the leave are however at par with those given in the maternity leaves.

13. Brazil: In Brazil, A male employee is entitled to pay paternity leave for up to 5 days. An employer can offer an extra 15 days of paid paternity leave and reclaim the amount paid from the federal government's tax benefits. The employee is entitled to paternity leave in the case of an adopted child.

From all the aforesaid countries, it is evident that Japan by far has the longest period of paternity leaves that is of a period of thirty weeks. However, the condition of paternity leaves in developed nations like USA is a matter of distress.

### **Granting of Paternity Leaves: Implications**

When parents take leave to nurture the child, it impacts the company's economic stability as there will be no work done by the men but still they will be paid, and if it stretches over a long period of time, the institution is financially impacted and then the employee then suffers losses as his salary is cut down wholly or partially so as to maintain the balance. It can also have certain adverse impacts on the father's career; like he can be surplused by his juniors in matters of promotion, he would be receiving lesser salaries for some time period, etc. However, it is to be noted that these are the same set of effects which are observed and registered in cases where women go on a maternity leave. Therefore, to study and find the solution to these issues in light of only paternity leaves will be the re-establishment of patriarchal norms which establish the role of men as that of a breadwinner and of a woman as that of one who takes care of the home and family. The economic implications of maternity and paternity leaves can be minimized if after some certain threshold of number of leaves, the parents of the child be given the option of as to who out of both of them is willing to stay at home and take care of the child while the other wishes to go out and earn.

### **Conclusion**

Giving birth to a child and taking care of him or her have always been the job of the female , mainly because of biological reasons , but also because of the societal reasons which have established certain straight jacket formula for the roles of men and women . Since laws have always been a reflection of the collective conscience of the people, the fact that paternity leaves had no legal status for quite a long time in most of the countries is reflective of the society's classification of men as breadwinners and females as caretakers of the home and family. With the advancement of times as females started going out to work, the concept of maternity leaves evolved as a result of the harmonious construction between the traditional role of women in the society and the existence of women in her career. This after some time raised concerns about men's responsibility towards his family members. Hence, the interaction between the traditional role of men and new role of men led to the evolution of concept of paternity leaves throughout the world. Each society as per its needs, structure and pace of advancement has perceived paternity leaves. In some countries paternity leaves have no legal sanction ( like in India ), in some countries paternity leaves are not granted as extensively and seriously like the maternity leaves while in other countries , there is virtually no difference the number of maternity leaves and number of paternity leaves . In one of the most economically and socially advanced country that is USA, there is no concept of paternity leaves. This shows that paternity leaves are not always restricted because of societal

reasons, even the economic reasons have a full fledged role to play in this regards. Talking about India, the bill which was introduced in 2017 to provide for paternity leaves is a detailed and comprehensive bill which will definitely put an end to this issue if enacted and consequently promulgated in an effective manner. With the changing needs of society, men's role in society should also change, even in regards of its place in the life of his children.

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