

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS (ISSN 2582 - 6433)

VOLUME 2 ISSUE 6
(April 2022)

Email –

editor@ijlra.com

Website – www.ijlra.com



IJLRA

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 5 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis


IJLRA
INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

EDITORIAL TEAM

EDITORS

Ms. Ezhiloviya S.P.

Nalsar Passout

Ms. Priya Singh

West Bengal National University of Juridical Science

Mr. Ritesh Kumar

Nalsar Passout

Mrs. Pooja Kothari

Practicing Advocate

Dr. Shweta Dhand

Assistant Professor

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Quarterly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

PATERNITY LEAVES: THE LABOUR LAW DYNAMIC

By: Jaishree Bhaduria

A. Abstract

Viewed through the lens of gender equality and progressive labour legislations the paper sets out to make a case for proper regulation of paternity leave and other benefits. With the global advances and developments, the modern world cannot afford to lack the regard for fatherhood. The paper introduces the very recent narratives on paternity leaves. It further presents analysis of the national stance on the subject and reflects on the progress made so far and miles that are yet to be walked. The paper categorizes the need for paternity leaves in three parts and provides for a conclusive remark.

B. Introduction

More than just a second parent or an extra set of hands, fathers are one of the best child development resources we have, and if we are going to give children the best start in life, we all need to fully recognize and utilize this role,” ~ UNICEF Chief of Early Childhood Development, Dr. Pia Britto.¹

A family is a functional unit of the nation, these unit contribute in the formation of society. In the modern world as we move ahead with technological advances, industrial revolutions, scientific development, progressive trade and commerce, we must give recognition to this small yet essential unit called FAMILY. In the preceding decades with enhancement of necessity of human rights we have sought to achieve various maternity benefits in the labour laws, the maternity benefit act has

¹ Press Release, *Fathers are one of the best, yet most underutilized child development resources – UNICEF*, UNICEF (Mar. 18, 2022, 12:35 PM), <https://www.unicef.org/guineabissau/press-releases/fathers-are-one-best-yet-most-underutilized-child-development-resources-unicef>

aimed to fulfill the directives under the Constitution of India. However with respect to the concept of parental leave, various nations as well as organizations and individuals lack the concern for paternity leave. Recently on 16th March 2022, the Aviation Minister, Mr. Jyotiraditya Scindia commented on the need of paternity leaves.² In accordance to him the airline industry must consider giving male employees paternity leave too, so that they can share the responsibility of bringing up children. Currently the maternity leaves are provided in accordance with the legislative act³ under the Airline Industry however no such policy is recognized for the male employees.

In today's time it becomes more or less essential that men are provided with sufficient paternity leaves, as it contributes in equalling the responsibility of both parents in the development of child and family. Few weeks ago the narrative of paternity leaves and fathers' care & responsibility ran deep across media platforms when Twitter's CEO, Mr. Parag Agarwal announced his time off from work for the birth of his second child⁴. When such business tycoons recognize the need of "time off" it provides a compelling ground for the policy framers and law makers to address the need for enforceable paternity leaves under all employments through out the nation.

C. National Status Quo

In the case of *Sh. Vijender Kumar v. Govt. of NCT of Delhi and others*⁵, the applicant being a driver in the Delhi Transport Corporation sought an order from the tribunal to direct the DTC authority (the respondents) to pay the salary of a month along with interest which was deducted by the respondents for the absence of the applicant as he was away for the birth of his second child. The applicant had contented, that he made an application of 15 days for the time off stating the aforementioned reason, in-spite of which his salary was deducted. It was further contended that as per the Central Civil Services (Leave) Rules, 1972, every male employee is entitled for paternity leave for 15 days, and since his wife gave birth a day prior to his application, he ought to have

² Press Trust of India, *Scindia bats for paternity leave in airlines; wants 50% women pilots*, THE TIMES OF INDIA (Mar. 18, 2022, 12:42 PM), <https://timesofindia.indiatimes.com/business/india-business/scindia-bats-for-paternity-leave-in-airlines-wants-50-per-cent-women-pilots/articleshow/90261210.cms>

³ Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (India)

⁴ Brinda Sarkar & Sreeradha D Basu, *Paternity leave gaining ground among Indian Companies*, THE ECONOMIC TIMES (Mar. 18, 2022, 12:54 PM), <https://economictimes.indiatimes.com/news/company/corporate-trends/paternity-leave-gaining-ground-among-indian-companies/articleshow/89669213.cms>

⁵ *Sh. Vijender Kumar v. Govt. of NCT of Delhi and others*, LNINDORD 2016 CATND 568

been granted the paternity leave. However the respondents submitted that Delhi Transport Corporation has neither adopted the leave rules of Central Civil Services nor has its own rules or provisions related to paternity leave. Therefore absence from duty with this reason cannot be accepted for claiming the deducted salary as well as the interest. The Central Administrative Tribunal dismissed the application as the applicant failed to showcase any rule or provision under which he would be entitled to paternity leave.

The paternity benefit bill was introduced in the Lok Sabha by Shri Rajeev Satav in the year 2017⁶, just like its twin act, this bill aimed to regulate employment of men for a period before and after becoming a father along with grant of other benefits. The bill in its statement of objects and reasoning, presents a progressive and essential outlook towards paternity, parenting, and family well-being. The paternity leave framework brings about a wholistic change in various spheres. With the introduction of this policy a proper and essential development could be provided to the new born baby, a proper well being could be achieved through joint responsibility and corporation among new parents. An absence of paternity puts the mother with sole responsibility, and this attitudinal change of holding equal responsibility shall come about gradually through the means of a framework. One of the noteworthy feature of this bill has been that beyond providing for paternity leaves, it aims to provide the leaves within all sectors; these being, the organized and unorganized as well as under self employment. The leave dictated under the bill is, of seven days, which may extend to a period of three months. The bill however could not see the light of the day, failing to be passed the conclusion obtained for its resistance can be attributed to the following causes;

- I. The biological and physical element that during the entire childbirth process, it is the mother that is physically and biologically engaged in it and not the father. Thereby the need to provide such benefit is granted to the mother and seems optional to be granted to the male members of the society.
- II. The very purpose of the such benefit is to ensure healthy father and child development period, where the male members could take up the responsibility and contribute to easing and equalizing parental role. This benefit however could just be easily misused, bearing

⁶ Bill No. 90 of 2017

the stigma of child care being a women's sole responsibility, the father may not at all opt for sharing the responsibility.

In the recent case⁷ of 2019 where a Post Graduate Teacher, Chander Mohan Jain had applied for Paternity Leave in the Public School of Delhi, his application being rejected on the ground that the policy of paternity leave has not been adopted by the school governance and he had to take the leaves as per the regular rules. The case was dealt in the High Court by Hon'ble Justice Sunil Gaur where the respondent being the Director of Education took the stand in favour of plaintiff and stated that as per the CCS (Leave Rules) the plaintiff is entitled to paternity leave, since all unaided yet recognized schools run under the control of Director of Education. Therefore all rules which are applied to government schools in Delhi shall be applicable to unaided recognized public schools as well. By the virtue of this undertaking that the paternity leave is his matter of right the petition was disposed off. The case in itself is a mark of victory since the leave criteria shall be applicable on the private schools as well.

The acts of the industries and corporations all across the nation cannot be ignored. Their initiative in adopting a suitable framework for paternity leaves without the implications of legislation is remarkable. It was only in 2019 that the well known Indian multinational restaurant aggregator and food delivery company introduced a progressive stand by adopting its new parental leave policy. The parental leave policy of Zomato⁸ feats in challenging societal norms, precedents and even government policies. The company grants a twenty-six weeks paid leave or the number of leaves determined by government which ever is more, the same is being given to the male employees in the organization. The benefits granted are same and equal, contributing to the core concept of equality at workplace and home. Similarly Novartis, a global healthcare company, since July 2019 provides for, across all its offices, a equal parental leave policy.⁹ Companies like Facebook, Deloitte, Microsoft and many other provide between 12-17 weeks of paternity leaves across all its offices worldwide.

⁷ Chander Mohan Jain v. N K Bagrodia Public School & others, LNIND 2009 DEL 2364

⁸ Deepinder Goyal, *Introducing the new parental leave policy at Zomato*, ZOMATO MUNCHIES - THE BLOG (Mar. 26, 2022, 05:46), <https://www.zomato.com/blog/parental-leave-policy>

⁹ Novartis, *Global equal parental Leave Policy for all Novartis Parents*, NOVARTIS (Mar. 27, 2022, 12:22 PM), <https://www.novartis.com/news/global-equal-parental-leave-policy-all-novartis-parents>

D. Need for Paternity Leaves

I. Societal Change

In the ILO Maternity and Paternity at Work Report 2014¹⁰ researchers suggest that paternity leaves, family responsibility and child development are interrelated. Fathers take up paternity leave to provide care to the child are more likely to be involved in overall development of the young child. This course of action is likely create a ripple effect in terms of equality. Steps like these bring about a change in positive terms not only at home but at workplace as well. The assumption of men being the breadwinners for the family meanwhile ignoring the role as fathers and caregivers has for long hindered the societal growth in terms of family development. This outlook however has affected men and women both, the social attitude restricts or limits the role of men as fathers whereas the entire burden is shifted upon the women to provide as primary caregivers and solely look after the child during the initial months. By providing for maternity benefits and leaving behind the crucial aspects of paternity, a stereotypical attitude is reinforced in the society that women belong in the homes and bear the sole responsibility of taking care of the child while the male members of society belong in the workplace. The provisions equalizing the two narratives provide for combating such stigma and give shape to a healthy and much involved society.

II. Gender Gap in Labour Law

Having to undergo the period of pregnancy and childbirth one after the other is an incomparable acclamation. The Maternity Benefit Act now provides a total of 26 weeks of general maternity leave which is justified by the requirement of healing the body and nourishing the child. However the only provision that exists in India for paternal leave is through the CCS (Leave Rules) of 15 days which are only applicable on public sector. Therefore the leave that is required by men all across the nation does not have regulation at all. Many firms and corporations grant the 15 days paternal leave by sou-motto formation of such Human Resource Policy, but still a large number of industries and corporations do not consider the granting of the same. The great distinction in

¹⁰*Maternity and Paternity at Work: Law and Practice across the World*, INTERNATIONAL LABOUR ORGANISATION (Mar. 27, 2022, 12:27), https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_242615.pdf

provisions somewhat hinder the scope for opportunistic environment in the case of women, after analyzing the cost for grant of maternity benefit the organizations may seek to engage men rather than women for the desired job. During childbirth it is causal leave or medical leave that is opted in place of paternal leave, which is an upsetting situation. It is through legal policies that a change is desired at societal level, lacking behind in framing a proper regulation for paternity leave limits the hope for equalizing the role of men and women as employees and also of fathers and mothers as parents.

III. Family Development

Childbirth is one of the sensitive things there could be, and with the birth of new born babies the care giving is a full time job. The challenge here is to strike a balance between work obligations and childcare duties at least till the time, the child is old enough to be on its own for long intervals of the day. The care that goes into the initial days of parenting is immeasurable, often times paid care is either not available or it is very expensive. During the initial months of childbirth parents do not consider paid care as they feel that the child is too young to be cared for by any other person. Thereby the parents alone put in the efforts to see to the child till it is old enough to be on its own. Since law in India provides for a well regulated Maternity Benefit framework, the mothers can easily access the benefits thereof and see to the child care or parenting needs. The same however is not available to fathers across all the domains. The CCS (leave rules) have limited applicability leaving behind the wholistic work environment and family requirement of the nation. The duration for paid paternity becomes a secondary aspect of discussion where in existence the country has only limited or no regulation governing the applicability of same. It is due to the deep understanding of social responsibility reasons that many corporations today provide for paternity leaves and benefits under their Human Resource policy. In the Chapter¹¹ “The Role of Fathers in Child and Family Health” the authors reflect on the research that suggests that fathers involvement in a child’s life since birth is beneficial to children in countless ways but there stands a to need to conceptualize the same as a part of supportive family system. Paternal involvement since birth in many has been linked to a positive and wholistic development of the child. Fatherhood,

¹¹ Yogman M.W., Eppel A.M. (2022) The Role of Fathers in Child and Family Health. In: Grau Grau M., las Heras Maestro M., Riley Bowles H. (eds) Engaged Fatherhood for Men, Families and Gender Equality. Contributions to Management Science. Springer, Cham. https://doi.org/10.1007/978-3-030-75645-1_2

motherhood along with childcare constitutes to be a healthy development of the family in totality. Thereby suggesting a great need for provisions bearing paternity leave.

E. Conclusion

With the steady progress of developing rights and modern legislations, a country as India cannot lack in addressing the need for wholistic paternal policy. The regard for child development stands high and paternity leave is one of the major contributing aspect of the same. The dire need for gender neutral provisions are slowly paving their way into the legal framework by changing the outlook of society at large. Although with respect to paternity leaves, the progress is by far been very slow and discerning especially by the way of wholistic legislation. However the internal policies of various organizations turn to the benefit of male employees and their families. Family is an essential unit of the society and the bill of 2017 could have contributed immensely to the benefits of this unit. In conclusion, the provisions currently applicable in India do neither address the need for healthy and developing family environment nor contribute to limiting or eliminating gender related stigmas in the minds of many in the society. With this situation at hand, there arises a great necessity for the formation of paternity benefit legislation.