



# TOWARDS INCLUSIVE PARENTHOOD: A LEGAL AND POLICY ANALYSIS OF PATERNITY LEAVE IN INDIA

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## ABSTRACT :

Despite the increasing conversation surrounding gender equality and shared responsibilities in parenting, India's legal system still provides limited acknowledgment of paternity leave. The current policies primarily emphasize maternity benefits, thereby perpetuating conventional gender roles and excluding fathers from being actively involved in early child-rearing. This research conducts a critical examination of the Paternity Benefit Bill, 2017, as a legislative effort to formalize paternity leave in India. It investigates the socio-legal necessity for paternity leave, assesses existing legal regulations and judicial responses, and underscores the challenges of implementation within India's varied workforce, including the informal sector. The study also performs a comparative analysis of parental leave systems internationally to grasp best practices globally. By utilizing doctrinal and policy analysis, the paper identifies legal uncertainties, social obstacles, and policy deficiencies that obstruct effective enforcement. The study concludes by suggesting a more inclusive and equitable parental leave policy that mirrors modern family structures and upholds constitutional principles of equality and dignity for all genders.

**KEYWORDS:** Paternity Leave, Gender Equality, Family Welfare Policy and Shared Parenting

## INTRODUCTION

**“...One who gives birth, one who initiates, one who imparts knowledge, one who provides food and protects from fear – these five are considered as fathers...”**

– Neeti Sastra<sup>2</sup>

Beginning with the Magna Carta, the Universal Declaration of Human Rights asserts that *“everyone, as a member of society, has the right to social security.”* The relationship between social security and social justice is well-established worldwide, with the former often seen as essential for promoting social unity and fairness. Laws are designed to meet the needs of society as a whole, ensuring fair treatment for every individual. The primary aim of a just society is to foster equality at its center, preventing any kind of injustice from taking hold. The fundamental purpose of any legal framework is to maintain equity and justice for all individuals. In the 21st century, India has significantly changed its perspective on gender equality, with lawmakers and the judiciary taking proactive steps to uphold the rights of women that have long been needed.

To protect the rights of working women during and after pregnancy, legislation now requires that organizations and workplaces offer maternity benefits to their female staff. In India, these maternity benefits are mainly regulated by the Maternity Benefit Act of 1961, which applies to businesses with ten or more employees. The law outlines that a female worker will receive maternity benefits based on her average daily wage from the three months leading up to her maternity leave. Initially, the Maternity Benefit Act provided twelve weeks of maternity leave, allowing up to six weeks before delivery. However, in 2017, the Act was amended to extend the leave period to twenty-six weeks, replacing the previous twelve. Now, out of the total twenty-six weeks, a maximum of eight weeks can be taken prior to delivery.

Having both parents present in a child's early days is vital. A father who works extensive hours and returns home fatigued may find it difficult to fully engage with his newborn. This time is crucial for establishing a strong connection between parent and child, and fathers should also be entitled to paternity leave to enable them to be involved during this significant period. Paternity leave refers to *“the duration a father is legally permitted to be away from work to care for his wife and newborn.”* It is an important family-oriented benefit provided by many employers. The primary objective of granting leave to fathers is to promote gender equality in society. It is essential to acknowledge that the responsibility of caring for a newborn falls on both parents, not just the mother. By fostering shared household responsibilities, paternity leave plays a role in enhancing gender equality at home and in the workplace. This article analyses the necessity and advantages of the paternity act, legal standards, international comparisons, the obstacles encountered, and offers suggestions and recommendations.

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<sup>2</sup> Neeti Sastra, Chapter 1, Verse 13.

## REVIEW OF LITERATURE

1. Beyond the narrow statutory framework, legal scholars have scrutinized the Paternity Benefit Bill, 2017, highlighting its weaknesses and the absence of subsequent legislative action. In his article "Paternity Leave Policy in India: A Critical Analysis," **Ramasayi Gummadi(2021)** points out that the issue of paternity leave is largely ignored within the Indian legal system, and even the International Labour Organization has failed to establish a comprehensive framework on this topic.<sup>3</sup> The paper assesses the current Indian laws, provides a critical examination of the suggested Paternity Benefit Bill, and addresses its shortcomings. Furthermore, it investigates how the understanding of paternity is changing, especially following the decriminalization of homosexuality in India, which enhances the perspective on parenting rights. The author notably examines the case of Chandermohan Jain v. N.K. Bagrodia High School, which was the initial Indian case addressing paternity leave in a private institution, and provides practical suggestions for establishing enforceable paternity leave policies in India.
2. **Ananya Dhanuka and Kashish Banthia(2021)** contend that paternity leave is not solely an issue of labor rights but also a crucial reform aimed at challenging entrenched gender norms. They stress that while maternity leave has propelled women's empowerment, it also unintentionally upholds the stereotype of women as the principal caregivers. The authors support the introduction of paternity leave as a way to foster shared parenting, improve women's participation in the workforce, and redefine gender roles within families. Using examples from Scandinavian nations, they suggest incorporating these global best practices into Indian laws and policies to establish a more equal legal framework. Their research views paternity leaves as more than just a benefit; rather, it is seen as a transformative societal tool that resonates with India's constitutional pledge to equality as enshrined in Articles 14 and 15.<sup>4</sup>
3. Building on these viewpoints **L. Helan Jesus Mary(2023)**, a recent study underscores the increasing importance of paternity leave in advancing gender equality, work-life balance, and family welfare in India.<sup>5</sup> Featured in the International Journal of Creative Research Thoughts, this paper points out that although the 2017 amendment to the Maternity Benefit Act acknowledges fathers by offering up to 15 days of paid leave, there are still legislative and cultural hurdles to overcome. It highlights the absence of specific constitutional provisions and the fragmentation of labor and employment laws as key barriers. The article further calls for comparative legal education, campaigns to raise public awareness, and the expansion of policies to normalize shared parenting and enhance family structures in alignment with India's commitments to gender justice.
4. **Varshitha Sama et al.(2022)** examine the necessity for changes in company-level paternal leave policies, focusing on the adherence to corporate regulations and the changing dynamics of family units. The authors emphasize the importance of the case Chandermohan Jain v. N.K. Bagrodia High School as the first instance of judicial acknowledgment regarding the denial of paternity leave in private sectors. The research also critiques the Paternity Benefit Bill, 2017, arguing that India's legal system needs to evolve not only to accommodate traditional family structures but also to recognize non-heteronormative parenting situations, especially following the decriminalization of homosexuality. Their study underscores that reforms in institutions, development of corporate policies, and clear legislation must progress together to establish paternity leave as a legitimate entitlement.<sup>6</sup>
5. **Azimathul Marshiya M(2024)** conducts an in-depth examination of the urgent need for a formal paternity benefit framework in India.<sup>7</sup> Featured in the Indian Journal of Legal Review, the article critiques the disjointed nature of current labor protections and the lack of action concerning the proposed Paternity Benefit Bill of 2017. The author references constitutional provisions in Articles 14, 15, and 42 to argue for the state's responsibility in promoting gender-equitable parenting rights. This research also explores the administrative practicality of establishing a structured paternity leave system within the existing legal framework of India, ensuring alignment with both international obligations and domestic constitutional principles.
6. **Srishti Jain and Dr. Puneet Bafna(2024)** examine the connection between paternity leave and the constitutional guarantee established under Article 42 of the Indian Constitution, which requires the State to implement provisions for fair and humane working conditions.<sup>8</sup> Their research emphasizes how paternity leave policies correspond with the constitutional directive aimed at enhancing family welfare and protecting workers' rights. The authors contend that robust paternity leave measures are crucial not only for promoting gender equality but also for upholding constitutional responsibilities regarding labor welfare and social justice.
7. **Nayan Lodha(2023)** provides a critical analysis of the lack of mandatory paternity leave legislation across various sectors in India, highlighting that while civil servants are entitled to fifteen days of paternity leave under the Central Civil Services (Leave) Rules, 1972, the majority of

<sup>3</sup> Ramasayi Gummadi, *Paternity Leave Policy in India: A Critical Analysis*, 4 Int'l J.L. Mgmt. & Human. 420 (2021), <https://doi.org/10.1000/IJLMH.11478>.

<sup>4</sup> Ananya Dhanuka & Kashish Banthia, *Paternity Benefit Leaves in India: Need, Cost and Gender Reform*, 1 Int'l J. Pol'y Sci. & L. (Issue 4) (2021).

<sup>5</sup> L. Helan Jesus Mary, *The Need for Paternity Leave Legislation in India: Embracing Gender Equality and Family Well-Being*, 11 Int'l J. Creative Res. Thoughts (IJCRT) (Issue 7) (2023), <https://www.ijert.org/papers/IJCRT2307471.pdf>.

<sup>6</sup> Varshitha Sama et al., *Reforms Required in Paternity Leave – in Companies*, 3 Int'l J. Res. Pub. & Revs. 2512 (2022), <https://www.ijrpr.com/uploads/V3ISSUE12/IJRPR8777.pdf>.

<sup>7</sup> Azimathul Marshiya M., *Need of Paternity Benefit Law in India – Analytical Study*, 4 Indian J. Legal Rev. (Issue 2) (2024), <https://iledu.in>.

<sup>8</sup> Srishti Jain & Dr. Puneet Bafna, *Paternity Leave and Article 42*, 2 Indian J. Integrated Res. in L. (Issue 1) (2024), ISSN 2583-0538.

workers lack such entitlements. His examination bases the legitimacy of paternity leave on constitutional labor protections and emphasizes its significance for shared parenting, gender equality, and the transformation of caregiving roles in society. The article advocates for the universal extension of paternity leave rights to enhance family welfare and to challenge deeply rooted societal stereotypes that assign caregiving responsibilities exclusively to women.<sup>9</sup>

8. **Liji Shamini V.S.(2024)** conducts a thorough analysis of India's parental leave policies by examining them through the perspective of social justice and labor welfare, underscoring critical deficiencies in acknowledging non-conforming and non-binary parents. The article contends that current maternal and parental leave systems are based on discriminatory, normative family structures, which marginalize individuals outside of the binary gender norms. Additionally, the research investigates the opportunities presented by India's changing labor codes and potential judicial actions to advocate for inclusive, gender-neutral parental leave policies, referencing international instances that have adopted such reforms to enhance social security and promote sustainable development.<sup>10</sup>

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## SIGNIFICANCE OF THE STUDY

This research highlights the importance of gender-equitable parental leave policies, focusing on how inclusive paternity leave can promote shared caregiving, workplace equality, and social security in India.

### RESEARCH GAP

1. Despite various scholars examining the Paternity Benefit Bill, 2017, there is insufficient investigation into the reasons for its non-enactment and the ongoing legislative inertia that hampers gender-equitable parenting rights. The majority of literature critiques the bill yet fails to offer empirical analysis or legislative strategies for its enactment.
2. While *Chandermohan Jain v. N.K. Bagrodia High School* is frequently referenced as a significant case, judicial consideration of paternity leave is limited, particularly in the private sector. There exists a distinct gap in research regarding judicial trends, comparable case law, and the justiciability of paternity rights under Indian constitutional law.
3. The overlapping and disorganized provisions present in various labour laws, as highlighted by Helan Jesus Mary and Azimathul Marshiya, reveal a deficiency in a cohesive framework for parental leave. Further investigation is necessary to map out and reconcile the existing statutory, constitutional, and administrative regulations concerning paternity benefits.
4. The majority of studies tend to concentrate on urban, formal employment sectors, neglecting the informal workforce, rural environments, and intersectional identities (caste, class, religion). This creates a gap in understanding the effects of paternity leave or its absence on marginalized communities.
5. Current research is predominantly normative or theoretical. There is a notable shortfall in empirical studies, such as surveys involving male employees, insights from employers, perspectives of policymakers, and data from existing pilot programs or corporate leave policies.

### SCOPE OF THE STUDY

The study analyses the proposed Paternity Benefit Bill, 2017, judicial responses, international models (e.g., Nordic countries), and socio-legal perspectives on parenting in India''

### OBJECTIVES OF THE STUDY

1. To analyse the need and benefits of paternity leave
2. To examine the current legal framework and judicial interventions in India
3. To conduct a comparative analysis with international standards and practices
4. To identify the challenges in implementing paternity leave policies in India

### HYPOTHESIS

The introduction and implementation of a comprehensive paternity leave policy in India will significantly enhance gender equity in caregiving roles and contribute to improved family welfare outcomes.

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<sup>9</sup> Nayan Lodha, *Paternity Leave: A Need for Better Parenting*, 5 Int'l J. L. & Legal Jurisprudence Studies 175 (2023), ISSN 2348-8212.

<sup>10</sup> Liji Shamini V.S., *Conditional Social Cohesion for Non-Conforming: The Exclusionary Notions of Parenthood in Indian Parental Leave Policy*, 1 NLIU J. Labour & Emp. L. (Vol. I) (2024).

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## RESEARCH QUESTIONS

1. Why is there a need for paternity leave in India?
2. What does the current legal framework say about paternal rights?
3. How do international policies compare with Indian provisions?
4. What are the practical and legal challenges in implementing paternity leave?

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## METHODOLOGY

The study follows a doctrinal research method, supported by comparative analysis of international laws, policy documents, and Indian case law. Secondary sources such as journal articles, government reports, and legal commentaries are used.

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## LIMITATIONS

1. Lack of empirical data due to absence of an enacted paternity leave law.
2. Restricted to legal and policy analysis without field-based interviews or surveys.
3. Focus is limited to India with selective international comparisons.

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## NEED AND BENEFITS OF PATERNITY LEAVE

Gender roles dictate how society expects individuals to present themselves based on their assigned sex. Historically, women were expected to be docile and soft-spoken, while men were expected to be strong, aggressive, and bold. These stereotypical norms foster widely accepted judgments or biases toward certain groups or communities, often in an overly simplified and inaccurate manner. These norms frequently result in direct oppression and systemic inequality. The concept that "these gender norms do not represent innate truth" is widely recognized. Society often distinguishes the identities of men and women based on intellectual, cultural, physical, and behavioural traits, which are social constructs rather than reflections of individual capabilities. Even biologically, there is no inherent evidence that child-rearing should be solely a mother's responsibility or that men should be the primary breadwinners. The need for paternity leave arises from several important factors, including:

### *Gender equality*

Paternity leave promotes gender equality by recognizing and supporting the shared responsibility of both parents in care giving and child-rearing. It challenges traditional gender roles and stereotypes that often assign primary care giving responsibilities to women, while encouraging men to take an active role in parenting.

### *Bonding with the child*

Paternity leave allows fathers the opportunity to bond with their newborn child during the crucial early weeks or months of life. This bonding experience is not only beneficial for the father-child relationship but also contributes to the child's emotional and psychological development.

### *Support for working parents*

In dual-income households, paternity leave provides essential support for working parents by enabling fathers to take time off work to assist with childcare responsibilities. This helps to alleviate the burden on mothers and promotes a more equitable distribution of care giving duties within the family.

### *Health and wellness*

Paternity leave plays a vital role in enhancing the overall health and wellness of fathers by enabling them to engage in their child's care and support their partner during the postpartum phase. It can help alleviate stress, promote mental well-being, and strengthen familial bonds.

### *Workplace culture and efficiency*

Providing paternity leave reflects an employer's dedication to facilitating work-life balance and fostering family-friendly policies. This can lead to improved employee morale, loyalty, and retention, resulting in greater productivity and job satisfaction.

### *Legal and societal recognition*

Granting paternity leave assures that fathers receive legal and societal acknowledgment of their roles as caregivers and parents. It underscores the significance of fatherhood and the essential contributions that fathers make to their families and society at large.

Consequently, there is a need for gender-neutral parenting laws that encourage male partners to share childcare duties and actively participate in the holistic development of newborns. While India recognizes the necessity of maternity leave benefits, it is imperative to also acknowledge and implement paternity benefits effectively. This would enable women to attain equal economic status compared to men by easing the additional burden of unpaid labour and childcare, thus challenging existing societal stereotypes.

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## ADVANTAGES OF PATERNITY LEAVE

### *Women's empowerment*

Paid paternity leave assists in mitigating the double burden phenomenon. This concept pertains to the expectation that women should excel in both unpaid domestic responsibilities and their paid employment. By advocating for equal paid leave for both parents, organizations can shield mothers from discrimination related to hiring, promotions, and salary. This discrimination, often referred to as the motherhood penalty, arises from the lack of equitable paternity leave. A study by Akgunduz and Plantenga in 2012 examined the effects of varying parental leave durations on women's employment using aggregated macro-level data from 16 European nations from 1970 to 2010. The results suggest that longer leave durations positively impact women's labour participation, as shown by increased female employment-to-population ratios.

However, this positive trend diminishes when the leave duration is either very brief or excessively long, indicating an inverted U-shaped correlation between leave length and female employment participation. Thus, both very short and extremely long leave durations negatively affect women's employment engagement, while a moderate duration yields beneficial outcomes. The research indicates that an optimal paternity leave length of 28 weeks maximizes women's participation in the labour force. Understanding this research is critical as it establishes a quantifiable link between the ideal duration of paternity leave and the optimal benefits for women. A study conducted in Canada found that as fathers take more paternity leave, there is a direct association with mothers increasing their work hours. This, in turn, allows women to boost their economic involvement by reducing the burden of household tasks. It also encourages men to take on a greater share of child-rearing responsibilities.

### *Cost-benefit considerations*

There is a common belief that while large corporations can absorb the costs associated with enhanced paternity benefits, small businesses may find it challenging to bear these expenses due to financial limitations. Despite potential improvements in employee morale, overall productivity could decline due to resource reallocation and interruptions in training, which may adversely affect economic growth. It is a commonly held belief that while large, well-established firms can manage the financial implications of enhanced paternity benefits, smaller businesses may encounter difficulties due to their limited budgets. Although there might be an increase in employee morale, overall productivity could decline due to the reallocation of resources and interruptions in training. Despite these obstacles, there exists a mutually beneficial connection between labour rights and economic advancement. While some organizations might perceive this as a compromise, the implementation of paternity benefits can challenge patriarchal standards and enable women to realize their full potential free of gender discrimination.

This initiative creates a foundation for equality, permitting married women and mothers to excel and contribute to sustained growth. Although there might be immediate drawbacks in human resources, the long-range advantages of enhanced female employment will improve company productivity and draw in diverse talent through progressive policies. Ultimately, the upfront costs associated with enacting this policy will result in enduring benefits for businesses. By fostering gender equality in the workplace, economic progress can be accomplished as women are relieved of domestic duties and can engage in a supportive and inclusive work environment.

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## CONSTITUTIONAL PERSPECTIVE OF PATERNITY UNDER ART. 42:

The government has put in place various policies and provisions aimed at protecting women's interests and promoting a society free from gender bias. These initiatives are designed to ensure that women have the same rights as men and work towards the elimination of prevalent stereotypes and other forms of discrimination in Indian society. Although Directive Principles of State Policy (DPSP) cannot be legally enforced in court, they hold significant importance in governance, especially in lawmaking. Specific principles, such as Article 42, which stresses the need for fair and humane working conditions and maternity benefits, may indirectly impact discussions regarding paternity leave and family welfare policies.

The DPSP aim to establish the social and economic democracy promised in the Preamble<sup>11</sup>. Their goal is to create a “*socialist framework within society*” without siding with either extreme of Individualism or Socialism.<sup>12</sup> Revising article 42 within the DPSP of the constitution is important as it currently addresses only maternity leave within the entire constitution. This highlights the vision of the framers of our constitution to create a gender-neutral society. Following this, the Maternity Act and other associated laws were enacted to further this vision. However, it has become evident that a gender-neutral society cannot be realized without dismantling patriarchal gender role stereotypes in our society.

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<sup>11</sup> Durga Das Basu, *Introduction to the Constitution of India*, (22nd ed., 2015), p. 163

<sup>12</sup> Id.,

Changing article 42 within the DPSP of the constitution is vital since it is the only article in the constitution that discusses maternity leave. This indicates the ambition of our constitution's creators to foster a gender-neutral society. Laws like the Maternity Act were established to achieve this vision. Still, it is clear that true gender neutrality is unattainable unless the stigmas associated with patriarchal gender roles are eradicated from society.

Incorporating paternity leave into Article 42 would provide substantial educational value, fostering a more gender-neutral society. Such an addition could shape societal perceptions and compel the state to adopt paternity leave policies. This would, in turn, help the judiciary recognize paternity leave as an essential human right. By embedding paternity and maternity leave in its constitution, India, as the largest and oldest democracy in the world, would convey a strong message about its commitment to a fair and just society.

The importance of amending article 42 within the DPSP of the constitution deserves emphasis. Presently, maternity leave is only mentioned in article 42, which clearly reflects the desire of the constitution's framers to create a gender-neutral society. “***Gender relationships are crucial in determining whether a society tends toward domination or partnership in all its interactions.***” To genuinely achieve this aim, it is essential to eliminate all patriarchal gender role stigmas. One effective method to accomplish this is by including provisions for paternity leave in Article 42. This would possess not only educational significance but also send a strong message advocating for a more gender-neutral society.

Furthermore, research has shown that institutional frameworks and policies can alter societal attitudes. By instituting a paternity leave policy, the government would fulfil its responsibility to consider this provision as a fundamental human right, while also driving a transformation in social opinions. As the largest and oldest democracy globally, India's incorporation of both paternity and maternity leave into its constitution would make a significant statement about its vision for a just and neutral society. Adding a paternity leave provision to Article 42 would help foster a fair and equal society by promoting gender equality, enhancing family well-being, and challenging traditional gender roles.

### GOVERNMENT SECTOR

Similarly, there is no comprehensive law regarding paternity leave for government employees, but there is a provision for Central Government Civil Services Employees under the existing law in accordance with ***Rule 551(A) of the Central Civil Services (Leave) Rules***. The situation for individuals employed by state departments remains uncertain, and it should be noted that the regulations under this rule do not adequately support same-sex couples. The provisions outlined under this legislation include:

- i. It is relevant to male employees.
- ii. It applies to those with fewer than two children.
- iii. The leave consists of a total of 15 days, with an additional 15 days to be taken within six months of the child's birth.

### PRIVATE SECTOR

There is currently no law requiring paternity leave in the private sector, which leads companies to determine their policies based on ethical considerations. Some examples of these companies are:

S. NO	ORGANISATION NAME	BENEFITS
1.	IKEA	Employees at IKEA are entitled to six months of paternity leave, which applies to adopted parents, single parents, and married parents, without any discrimination against same-sex parents.
2.	AMAZON	Amazon employees are provided with six weeks of paternity leave.
3.	ZOMATO	Zomato offers twenty-six weeks of paternity leave for its employees, also accommodating same-sex couples, making it unique.
4.	NOVARTIS	Novartis grants its employees twenty-six weeks of paternity leave.
5.	STARBUCKS	Starbucks provides a twelve-week paternity leave for its staff.
6.	MICROSOFT	Microsoft also offers twelve weeks of paternity leave for its employees.
7.	INFOSYS	Infosys allows for just five days of paternity leave for its employees.

It's crucial to recognize that these companies are not regulated and vary significantly in terms of paternity leave duration. With some offering six months while others provide just five days, it seems inequitable to have such disparity; employees shouldn't be deprived of their rights to parenthood simply because they work for different employers. Paternity and fatherhood are fundamental human attributes that should not be overlooked, as failing to acknowledge this could severely impact the social security of workers, ultimately disrupting the societal fabric.

## THE PATERNITY BENEFIT BILL- ANALYSIS

The Paternity Benefit Bill was introduced in the year 2017 by Shri Rajeev Satav.<sup>13</sup> While the bill is yet to be passed, it is officially viewed as a first step that is taken in order to regulate the employment of the men in certain establishments for some amount of time after they become a father in order to avail their paternity benefit. Below, we have listed several key provisions outlined in the bill:

### *Salaries and payments*

Each male employee seeking paternity leave is entitled to receive a paternity benefit at the rate of the average daily wage he earned on the days he worked, or at the minimum wage rate set or revised under the Minimum Wages Act, 1948, or at the rate of 10 rupees, whichever is higher, for the duration of his paternity leave.<sup>14</sup>

### *Total duration of leave*

Any employee with fewer than two living children is eligible for paternity benefits for a period of fifteen days, with no more than seven days taken before the expected delivery date of the child.<sup>15</sup> This leave can be used within three months from the child's birth. The bill also recognizes certain exceptional circumstances:

- A. If the employee dies immediately after the child's birth, for which he is entitled to paternity benefits, and leaves the child behind, the employer must provide the benefits for the entire paternity leave duration to the designated beneficiary of the deceased.
- B. If the child dies during the paternity leave period, the employer is responsible for providing paternity benefits, including the date of death, for the days up to the child's death.

### *Requisite work duration*

A man is entitled to paternity benefits only if he has worked for the employer for at least eighty days in the twelve months immediately preceding the anticipated delivery date. This eighty-day qualification period does not apply to men who recently immigrated to the state and whose wives were pregnant at the time of immigration.<sup>16</sup>

### *Parental benefit scheme:*

The Union Government will introduce a scheme called the Parental Benefit Scheme under this Act, aimed at providing paternity benefits to every man following appropriate guidelines.<sup>17</sup>

### *Paternal scheme benefit fund:*

The government will create a fund named the Parental Benefit Scheme Fund to support paternity benefits. Contributions to this Fund will come from workers of all genders, employers, and the central government in specified proportions.<sup>18</sup> The Fund will be used to cover the costs associated with paternity benefits under this Act.

### *Advance payment of salary*

Employers must pay the paternity benefit upfront to employees who provide proof that their wife is expecting a child. This advance payment should cover the period before the expected delivery date and the amount due must be paid within forty-eight hours of receiving the proof.<sup>19</sup>

### *No dismissal clause*

Employers are prohibited from discharging or dismissing an employee during or because of his paternity leave taken in accordance with this Act. It is also unlawful to issue a notice of leave or dismissal that expires during the paternity leave period.<sup>20</sup>

<sup>13</sup> The Paternity Benefit Bill, 2017, Bill No. 151 of 2017, Lok Sabha (India).

<sup>14</sup> Id. § 4(1).

<sup>15</sup> Id. proviso to § 4(3)

<sup>16</sup> Id. § 4(2)

<sup>17</sup> Id. § 5

<sup>18</sup> Id. § 5(2).

<sup>19</sup> Id. § 6(1).

<sup>20</sup> Id. § 7.

### *Inspecting officer*

The appropriate government may appoint officers as inspectors through a notification in the Official Gazette to enforce the Act's objectives. The jurisdiction of these inspectors will be defined by the relevant authority. Under Section 21, inspectors appointed under this Act are considered public servants.<sup>21</sup>

### *Miscarriage*

In the event of a pregnancy loss, the bill entitles a worker to paternity benefits at the regular rate for a period of seven days immediately following the pregnancy loss, upon providing the necessary proof.<sup>22</sup>

### *Adoption*

Under this bill, any man who legally adopts a child under three months of age, or the legal husband of a commissioning mother, is entitled to paternity benefits for fifteen days from the date the newborn is transferred to him.<sup>23</sup>

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## INDIAN JUDICIARY ON PATERNITY LEAVE

There is a significant lack of judicial precedents in the legal field regarding the non-existence of legislation in the private sector related to paternity leave and benefits. Although there have been several instances where paternity leave requests have been presented to the courts, a unified policy has yet to be established.

In the notable case of *Chander Mohan Jain vs. N.K. Bagrodia Public School and Ors*<sup>24</sup>, the petitioner was a postgraduate educator at N.K. Bagrodia Public School, the respondent. He requested paternity leave, but the school denied his application, citing the absence of a paternity leave policy and stating that such leave was not required by Indian law. The school recommended that he apply for leave according to existing rules instead. As a result, the school deducted his salary for the 15 days he took off. The petitioner then sought judicial review of this decision. The Delhi High Court determined that all male employees of unaided recognized private schools are entitled to paternity leave under the oversight of the Director of Education, pursuant to the Delhi School Education Act and Rules (DSEAR), 1973, and the Central Civil Services (Leave) Rules, 1972. Additionally, the court instructed the respondent school to reimburse the deducted salary to the petitioner.

In the case of *Rakesh Malik vs. State of Haryana and Other*<sup>25</sup>, both the petitioner and his wife were employed as JBT Teachers in the Haryana Education Department. Sadly, the petitioner's wife passed away due to medical issues during childbirth. Under these tragic and pressing circumstances, the petitioner filed a writ petition requesting a mandate to compel the respondent authorities to consider allowing him child care leave or paternity leave. The petitioner's lawyer acknowledged that, at present, there are no legal provisions or directives in Haryana for providing paternity leave or child care leave to fathers. The court acknowledged that the matter raised in the petition pertains to policy development. It is the responsibility of the respondent State to evaluate and make a decision regarding the provision of paternity leave or child care leave for fathers. The court, using its exceptional jurisdiction under Article 226 of the Constitution of India, refrained from intervening in policy determinations in this context.

In the case of *Vijendra Kumar vs. Delhi Transport Corporation, govt of NCD*<sup>26</sup>, the applicant stated that his wife had given birth to their second child, and he requested 15 days of paternity leave, during which he did not report to work. The respondent denied his leave application based on DTC regulations, which do not include provisions for paternity leave, and subsequently deducted 15 days' salary. The applicant submitted an OA seeking a ruling for the respondent to pay his full salary along with 24% interest under the CCS (Leave) Rules, 1972. The court dismissed the appeal, indicating that the DTC lacks provisions for paternity leave and has not incorporated the CCS paternity leave regulations.

In the matter of *Dr. N. Siva Krishna vs. National Board of Examination and Ors*.<sup>27</sup>, the petitioner exceeded the maximum allowable leave period during his DNB training at Bhopal Memorial Hospital and Research Centre due to health issues, which rendered him ineligible for the examination. He contended that the NBE Leave regulations were discriminatory and violated Article 14 of the Indian Constitution. The court found that, according to the NBE Leave guidelines, male candidates are entitled to up to one week of paternity leave, which can be extended if necessary. However, the petitioner's prolonged absence hindered him from finishing his training within the specified timeframe, consequently preventing him from taking part in the upcoming examination.

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<sup>21</sup> Id. § 21.

<sup>22</sup> Id. § 4(4).

<sup>23</sup> Id. § 4(5).

<sup>24</sup> W.P(C) No. 8104 of 2009

<sup>25</sup> W.P(C) No. 8104 of 2009

<sup>26</sup> CWP No.3225 of 2013 (unreported)

<sup>27</sup> WP (c) 4111/2015



In the more recent case of *B. Saravan vs. The Deputy Inspector General of Police and Ors*,<sup>28</sup> the petitioner, who is an Inspector of Police at Kadayam Police Station in Tirunelveli District, requested 90 days of paternity leave to support his wife, who became pregnant through In Vitro Fertilization (IVF). Even though the leave was verbally approved at first, the second respondent later issued a brief order to revoke it, citing law and order concerns in Kadayam. As the expected delivery date approached, the petitioner was compelled to contest the cancellation of his leave by submitting W.P (MD) No. 11862 of 2023.

The High Court determined that paternity leave, while a benefit under labour law, arises from the child's right to protection under Articles 14, 15(3), 21, and 39(f) of the Indian Constitution. Both parents are crucial in providing care during pregnancy and after birth, which is vital for the child's right to survive. A welfare state has an obligation to ensure dignified prenatal care for the foetus and to provide adequate health care, hygiene, and sanitation for the child post-birth. The petitioner's child's right to life, thrive, and develop as guaranteed by Article 21 empowers the petitioner to request paternity leave to assist his wife during childbirth.

## COMPARATIVE ANALYSIS OF PATERNITY LEAVE IN OTHER PARTS OF THE GLOBE:

Maternity leave is recognized globally, whereas paternity leave is a more recent concept that plays a crucial role in allowing new fathers to nurture their children in a positive environment. The right to paternity leave is becoming increasingly widespread, although significant variations in the benefits afforded to fathers exist around the world.

### UDHR ON PATERNITY LEAVES:

The Universal Declaration of Human Rights (UDHR) was introduced on December 10, 1948.<sup>29</sup> It was created as a “*common standard of achievement for all peoples and all nations*” and has acted as a reference point for assessing compliance with human rights.<sup>30</sup> In 1952, it was decided to separate the provisions of the Declaration into two distinct treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

*Article 2* of the UDHR emphasizes the fundamental principle of equality and non-discrimination, stating that everyone is entitled to the rights outlined in the Declaration without distinction. *Article 7* ensures equality before the law without discrimination, and *Article 23(2)* provides for equal pay for equal work without discrimination.<sup>31</sup> In 2000, the Human Rights Committee published General Comment No. 28 concerning the Equality of Rights between Men and Women (Article 3).

*Article 3* of the Convention asserts that governments must undertake all necessary actions to ensure that men and women have equal access to the rights defined in the covenant<sup>32</sup>. These actions include eliminating obstacles, raising public awareness, and enacting domestic legislation. *Article 55(c)*<sup>33</sup> obliges the United Nations to promote “*universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion*,” aiming to foster conditions of stability and well-being. *Article 56*<sup>34</sup> mandates Member States to take action in order to achieve the objectives set forth in *Article 55*.

### UNICEF ON PATERNITY LEAVES

UNICEF has identified India as one of 90 countries lacking a national paternity leave policy. Two-thirds of the globe's children reside in countries where fathers do not receive paternity leave, depriving them of their fathers' affection and commitment during crucial early months. Research indicates that fathers who engage with their newborns from the moment of birth are more likely to be actively involved in their child's development. Studies referenced by UNICEF reveal that children who enjoy strong bonding interactions with their fathers exhibit better psychological health, self-worth, and overall life satisfaction as they grow. It has motivated lawmakers to implement national family-friendly policies that endorse childcare and development, including paid paternity leave, allowing parents the necessary time, support, and knowledge to care for their children. In 2018, UNICEF updated its parental leave policy, becoming the first United Nations agency to extend parental leave from four weeks to sixteen weeks.

### Sweden:

Sweden is frequently recognized as a leader in policies promoting gender equality, particularly in terms of paternity leave. Fathers in Sweden have access to a substantial 480 days of paid parental leave, with 90 of those days designated solely for fathers. This forward-thinking policy has effectively motivated fathers to become more involved in child-rearing, resulting in enhanced gender equality and stronger bonds between fathers and their children.

<sup>28</sup> W.P.(MD).No.19561 of 2023 (unreported)

<sup>29</sup> Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N.

<sup>30</sup> Ibid., Preamble

<sup>31</sup> Universal Declaration of Human Rights, 10 December 1948, GA Res. 217 A (III), Articles 2, 7 and 23(2).

<sup>32</sup> UN Doc. HRI/GEN/1/Rev. 7, p. 178, Human Rights Committee, General Comment No. 28: Equality of Rights between Men and Women (Art.3)

<sup>33</sup> Charter of the United Nations, 1945 (1 UNTS XVI), Art.55(c)

<sup>34</sup> Charter of the United Nations, 1945 (1 UNTS XVI), Art.56

**Norway:**

Equitable Distribution of Leave Norway is also recognized for its dedication to promoting gender equality through its paternity leave regulations. The nation employs a “*use it or lose it*” approach, whereby a specific portion of parental leave is allocated exclusively for fathers. This policy ensures that fathers engage actively in caregiving, leading to a fairer allocation of childcare responsibilities and enabling mothers to return to work more quickly.

**Iceland:**

Iceland has made large strides in advancing gender equality and achieving a work-life balance. Along with offering generous parental leave, the country established a “*daddy quota*” in 2000, which allows fathers to take non-transferable leave. Iceland's strategy has positively influenced gender equality, as fathers now utilize a significant share of available leave, resulting in greater participation in child-rearing.

**Canada:**

Canada has acknowledged the crucial role fathers play in child upbringing and has worked to enhance paternity leave provisions. In 2019, the Canadian government extended the length of parental leave from 35 to 40 weeks, creating more chances for fathers to take time away from work. Additionally, the policy permits parents to access an extended leave of up to 69 weeks at a lower benefit rate, providing fathers with extra flexibility in caring for their children.

**Japan:**

In Japan, where established gender roles have historically been predominant, recent initiatives seek to encourage more fatherly participation. The country launched a “*Papa-Katsu*” campaign to advocate for work-life balance and motivate fathers to make use of their paternity leave. In support of gender equality, the government has also introduced monetary incentives for companies that assist and encourage fathers to take advantage of their designated leave.

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**CHALLENGES TO IMPLEMENT PATERNITY LEAVE IN INDIA**

Implementing paternity leave in India faces several challenges, including:

***Cultural norms and gender roles***

Men are traditionally expected to be the major breadwinners, while women are responsible for care-giving. Promoting dads taking time off work to care for their children may encounter push-back.

***Absence of awareness***

Many employees and companies may be unaware of paternity leave policy or its advantages. A lack of understanding might lead to underutilization of available leave and unwillingness to advocate for its introduction.

***Workplace culture***

In many workplaces, there is a culture of long hours and a focus on productivity over work-life balance. Employers may be hesitant to implement paternity leave policies due to concerns about disruptions to workflow or increased costs.

***Legal framework***

Although Indian labour laws include maternity leave, there is presently no formal provision for paternity leave. Introducing paternity leave would involve legal changes and may encounter political or logistical challenges.

***Financial implications***

Employers may be apprehensive about the financial impact of paid paternity leave, particularly for small and medium-sized businesses with limited resources. Some may see it as an extra expense rather than an investment in employee well-being and retention.

### ***Stigma and discrimination***

Men who take paternity leave may face stigma or discrimination in the workplace, including concerns about being perceived as less committed or dedicated to their jobs. Overcoming these perceptions is essential to creating a supportive environment for fathers to take leave.

### ***Supportive infrastructure***

Implementing paternity leave requires supportive infrastructure, such as policies for leave administration, clear guidelines for eligibility and entitlements, and mechanisms for addressing grievances or disputes. Developing and implementing these systems can be complex and time consuming.

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## **FINDINGS:**

Introducing paternity leave is a crucial move towards fostering gender-neutral parenting, achieving workplace gender equality, and challenging societal norms. Paternity benefits address these stereotypes from multiple perspectives. Firstly, they enhance women's economic participation, contributing to the breakdown of gender barriers. Secondly, they alleviate the burden of unpaid domestic labour from women, allowing them to balance work and family more effectively. Thirdly, they lower hiring costs for women by mandating equal parental benefits for all genders. Lastly, they permit men to take leave without feelings of guilt and encourage traditional males to adopt modern views on fatherhood.

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## **RECOMMENDATIONS:**

1. Establish a national paternity leave policy that applies uniformly to both public and private sector employees. This will guarantee that all fathers, irrespective of their employment type or the size of the company, have access to paternity leave, ultimately reducing inequalities between sectors and promoting a more equitable workplace.
2. Look to countries with successful paternity leave models, such as Sweden, Iceland, and Norway. Sweden's provision of 90 days of paid paternity leave encourages fathers to be involved in childcare and fosters gender equality. Implementing similar strategies could improve India's supportive framework for working parents. For instance, Norway's laws allow fathers to have up to ten weeks of paid leave, which enhances bonding and shared responsibilities, benefiting the family unit as a whole.
3. Set a minimum paternity leave duration of 15 days, with the possibility of extending it to 10 weeks or more. This allows fathers to be present during the crucial early moments of their child's life, providing support to both the mother and the infant.
4. Ensure that paternity leave is fully compensated, so fathers do not encounter financial strain when taking time off. Paid leave encourages a greater number of fathers to take advantage of this benefit, aiding in the normalization of paternity leave within the workplace culture.
5. Make certain that paternity leave benefits are inclusive of adoptive fathers, acknowledging the variety of family structures and their unique requirements.

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## **CONCLUSION**

Access to paternity leave should be available to all male employees, as seen in many other countries. Offering paternity leave is essential for nurturing healthy marriages and families. This type of leave allows new fathers to form strong bonds with their children and families, enhancing their appreciation for fatherhood. The roles in a child's birth are equally shared between both parents, making it irrelevant to determine who contributes more. Moreover, it alleviates the pressures on mothers, providing them significant relief. Introducing paternity leave not only fortifies family bonds but also advances gender equality. By pursuing legislative action for paternity leave, conventional standards can be challenged, leading to a reevaluation of gender roles and responsibilities. Ultimately, this change would benefit society as a whole.

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