

UNLOCKING EQUITY: THE TRANSFORMATIVE POTENTIAL OF PATERNITY LEAVE IN INDIA

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INTRODUCTION

In the tender moments when a child's first cry echoes through the air, the world seems to stand still, and a new chapter of life begins. Parenthood, with its boundless love and profound responsibilities, transcends mere biology, with a web of care, sacrifice, and unwavering devotion. Yet, nestled within the cradle of this journey lies the tale of societal expectations, gender stereotypes, and the quest for balance in an ever-evolving world.

As the pages of history turn, we see how the notion of parenthood has undergone a metamorphosis, shaped by the ebbs and flows of cultural norms and societal expectations. Traditionally, the mantle of caregiving has rested squarely upon the shoulders of mothers, while fathers have been cast in the role of providers, forging ahead on the path of breadwinning duties. But within the intimate moments of family life, a quiet revolution stirs—a revolution that challenges the age-old dichotomy of parental roles and beckons us to reimagine the meaning of parenthood.

Parental leave is an absence from work by the mother and father in order to care for the newborn, a combination of both maternity and paternity leave. Unfortunately, parental leave has become synonymous with maternity leave.¹

In the hustle and bustle of modern life, the concept of work-life balance emerges as a beacon of hope, offering respite from the demands of the daily grind. Rooted in the struggles of the Women's Liberation Movement, this pursuit seeks to create a space where professional ambitions and family responsibilities can coexist harmoniously. Yet, amidst the clamour for equality and progress, a poignant truth emerges—a truth that speaks to the shared humanity of mothers and fathers alike.

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¹ Krishnan, P. (2019) *Strengthening the maternity bill for maximum impact*, *People Matters*. Available at: <https://www.peoplesmatters.in/article/diversity/strengthening-the-maternity-bill-for-maximum-impact-19232> (Accessed: 14 February 2024).

As society progresses, women have increasingly entered the workforce and now contribute significantly to family incomes. Similarly, men in the 21st century are more engaged in household chores and caring for children than ever before. However, governmental policies and laws in India have yet to catch up with these changing dynamics.

With the changing times, men and women are no longer confined to their traditional roles of earning and housekeeping respectively. Men are no longer the sole providers and are actively participating in family responsibilities. Despite these shifts, women continue to bear the primary caregiving role. This remains true even in Scandinavian countries, pioneers in granting paternity leave and promoting gender equality both at home and in the workplace.

Paternity leave becomes all the more important in today's society where both parents are working and live in nuclear families as opposed to joint families. It is imperative for both parents to contribute equally to child-rearing. We need laws that encourage fathers to take leave so that mothers can return to work in a short time. Paternity leave is a necessity, as it allows fathers to fulfil their family responsibilities and mothers can get an equal opportunity to further their careers.

Article 21 of the Constitution guarantees a child's right to life. The child's development begins during the prenatal period, from the start of the mother's pregnancy, and continues through postnatal care until they reach adulthood. The involvement of both parents in prenatal and postnatal care is crucial for the child's right to survival. A responsible state is obligated to ensure dignified prenatal care for the foetus and adequate healthcare, hygiene, and sanitation for the child after birth, as noted by the court.²

WHAT IS PATERNITY LEAVE?

Paternity leave typically refers to a brief period of time off for fathers immediately following the birth of a child. Its primary purpose is to support the mother during the postpartum period, aiding in her recovery from childbirth and facilitating the establishment of breastfeeding. Additionally, paternity leave allows fathers to care for the newborn and any other children, attend to administrative tasks such as birth registration, and fulfill other family-related responsibilities.

² B Tilak Chandar, 'There Is Need for Paternity Leave Legislation in India, Says Madras HC' The Hindu (21 August 2023) <<https://www.thehindu.com/news/cities/Madurai/there-is-need-for-paternity-leave-legislation-in-india-says-hc/article67220018.ece>>

This type of leave may be granted either as a distinct benefit for fathers or as part of the broader "special leave" provisions available to all employees. In the latter scenario, childbirth or other family-related events are often specified as valid reasons for taking a designated number of days off, in addition to regular annual leave entitlements. In cases where national laws do not explicitly mandate paid or unpaid paternity leave, collective bargaining agreements between employers and labor unions may include provisions for such leave.³

THE EMERGING CONCEPT OF PATERNITY LEAVE IN INDIA

In 1961, the Government of India introduced the Maternity Benefits Act, which provided various benefits, facilities, and incentives for working pregnant women. However, there was no provision for paternity benefits in legislation at that time. Recognizing the importance of establishing such provisions to foster healthy family dynamics, the Central Government of India introduced paternity leave for Central Government employees in 1999 under the Central Civil Services (Leave) Rule 551 (A), 1972. As per this regulation, qualified male employees within the government sector are entitled to a 15-day leave period within six months of either the birth or adoption of a child. To qualify, an employee must have rendered service to the organization for a minimum of 80 days within the 12 months preceding the expected delivery or adoption date. Additionally, the regulation ensures associated benefits, such as the provision of full wages during the leave duration.

It's worth noting that this 15-day leave provision is exclusive to central government employees, and there isn't a formalized policy in place for those in the private sector. Nonetheless, numerous private companies choose to offer this benefit, albeit according to their own internal regulations.

In September 2017, following the enactment of the Maternity Benefit (Amendment) Act, 2017, Maharashtra MP Rajeev Satav proposed the Paternity Benefit Bill, 2018 ("PB Bill") in the Lok Sabha. This bill proposed granting new fathers fifteen days of paternity leave, extendable up to three months. The aim of the PB Bill is to acknowledge the crucial role fathers play in child-rearing and to afford them the opportunity to bond with their children while fulfilling their family responsibilities. The bill to provide paternity benefits to all employees was introduced but not passed in the Indian parliament. Despite the lack of legislation mandating paternity

³ Maternity and paternity at work. law and practice across the world - pdf free download (no date) *DocPlayer*. Available at: <https://docplayer.net/55270-Maternity-and-paternity-at-work-law-and-practice-across-the-world.html> (Accessed: 14 February 2024).

leave, it is becoming a more common benefit offered by employers in order to attract and retain top talent.

In India, all proceedings related to the approval of paternity leave are to be conducted before the Metropolitan Magistrate or a Magistrate of the first class. These courts have jurisdiction to hear any offenses under this Act, while lower courts do not have the authority to proceed with the trial.

In a 2023 case, the Madras High Court observed the need for paternity leave legislation in India. As the traditional joint family structure has largely faded away and the challenges faced by nuclear families in India are unprecedented, the Madurai Bench of the Madras High Court emphasized the need for policymakers to recognize paternity leave as a fundamental human right for both biological and adoptive parents of pre-natal and post-natal children.

Justice L. Victoria Gowri highlighted that many countries have enacted legislative measures to safeguard and support maternity and paternity, albeit not always meeting the standards set by the International Labour Organization (ILO). Recognizing the crucial role of fathers in providing the utmost care for both the mother and child, Justice Gowri emphasized that fathers and mothers are indispensable partners in the parenting journey.⁴

PATERNITY LEAVE – GLOBAL OVERVIEW

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While some nations have well-established provisions for paternity leave, others are still in the process of developing or expanding such policies.

In countries like Britain, Sweden, and Norway, parents are provided approximately a year of paid parental leave to care for their newborns during the critical and challenging initial period.⁵

1. **United Nations and International Organizations:** The United Nations and various international organizations have increasingly emphasized the importance of paternity leave as part of broader efforts to promote gender equality and work-life balance. Organizations like UNICEF have extended paternity leave benefits to their employees, with some offering several weeks to several months of paid leave.

⁴ Supra note 1

⁵ 'Paternity Leave in India: What Is Paternity Leave - Policy & Legislation' (BYJUS, 26 December 2022) <<https://byjus.com/govt-exams/paternity-leave-india/>> accessed 13 February 2024

2. **Europe:** Scandinavian countries like Sweden, Norway, and Finland are often lauded for their progressive family leave policies. In Sweden, fathers are entitled to 90 days of paternity leave at a significant portion of their normal salary. Norway provides flexibility, allowing fathers to take up to 10 weeks of leave depending on the mother's earnings. Finland offers fully paid paternity leave for 8 weeks, with the option for both parents to split an additional 23 weeks.
3. **North America:** Countries like Canada have implemented paternity leave policies to support new fathers. Canadian fathers can take up to 3 weeks of leave at 75% of their salary or 5 weeks at 70% of their salary.
4. **Iceland:** Iceland stands out with its unique approach to parental leave. Both parents are entitled to 3 weeks of leave each, and they can divide a total of nine months between them, with the flexibility to decide how to allocate the remaining months. They receive 80% of their salary during this time.
5. **Asia and other regions:** The landscape of paternity leave in Asia and other regions varies widely. Some countries, like Japan and South Korea, have introduced or expanded paternity leave policies in recent years to encourage greater involvement of fathers in childcare. However, the duration and benefits of paternity leave in these regions may still lag behind those in Western countries.

INTERNALISED BELIEFS

The concept of a "stereotype" refers to a generalized perception or preconceived notion regarding the attributes, characteristics, or roles associated with members of a specific group. Essentially, a stereotype assumes that all individuals within a particular social group possess certain attributes or traits (for example, teenagers being seen as irresponsible) or fulfil specific roles (such as the belief that women are primary caregivers). It's important to note that whether these attributes or roles are common among individual members of the group or not is irrelevant when categorizing a generalization as a stereotype. The crucial point is that, due to the presumption that a particular group possesses these traits or roles, individuals are automatically believed to conform to these generalized perceptions simply because they belong to that group. Consequently, all the unique aspects of an individual's personality are viewed through the lens

of these generalized perceptions or preconceptions associated with the group to which they are identified.⁶

Internalized misogyny, or in simpler terms, Internalised gender stereotype is defined as the involuntary belief by women that the lies, stereotypes and myths about women that are delivered to everyone in a sexist society are true. Now, this also applies vice versa, where certain stereotypical ideas are projected on men.

Internalized misogyny does not refer outright to a belief in the inferiority of women. It refers to the by-products of this societal view that cause women to shame, doubt, and undervalue themselves and others of their gender.⁷

MODES OF INTERNALISATION

These views and ideas are not ones that crop up suddenly in adulthood. Stereotypes are internally embedded in one's upbringing and environment and manifest as discrimination in adulthood. When women are subjected to certain treatment from a very young age, they are led to believe that the societal norms set for them are right and valid. The validity of these norms lies ingrained in their upbringing and environment since childhood. This internalization of stereotypes and gendered expectations can result in the normalization of discriminatory behaviour and attitudes towards women in adulthood. Moreover, individuals may internalize these beliefs without consciously recognizing or questioning their origins, leading to the perpetuation of gender inequality and discrimination. Thus, addressing internalized misogyny requires challenging and dismantling the underlying stereotypes and societal norms that contribute to its formation, starting from early childhood and continuing throughout one's life.⁸

1. Early Childhood Inculturation: During early childhood, individuals undergo a process of inculturation where societal norms and values are internalized. In the context of misogyny, young girls may be taught to conform to traditional gender roles and expectations, leading to the internalization of misogynistic attitudes and behaviours.

⁶ Rehel EM, 'When Dad Stays Home Too: Paternity Leave, Gender, and Parenting' (PhilPapers, 1 January 1970) <<https://philpapers.org/rec/REHWDS>> accessed 12 February 2024.

⁷ Kritika, *Paternity benefit laws in India- a necessity*, Legal Service India - Law, Lawyers and Legal Resources. Available at: <https://www.legalserviceindia.com/legal/article-2836-paternity-benefit-laws-in-india-a-necessity.html> (Accessed: 14 February 2024).

⁸ Ball, Carlos A., Gender-Stereotyping Theory, Free Expression, and Identity (November 14, 2019). William & Mary Bill of Rights Journal, Vol. 28, 2019, Available at SSRN: <https://ssrn.com/abstract=3487139>

2. Television and Cinema: Mass media, particularly television and cinema, play a significant role in shaping societal perceptions and attitudes. Misogynistic portrayals of women in media can reinforce negative stereotypes and contribute to the internalization of misogynistic beliefs among viewers.

3. Language and Communication: Language plays a powerful role in shaping attitudes and beliefs. In everyday communication, women may be subjected to objectification, derogatory language, and invalidation, not only by men but also by other women. This form of gendered language and communication can perpetuate internalized sexism by reinforcing traditional gender roles and policing behaviours that deviate from societal expectations.

4. Family Dynamics: Family environments can serve as breeding grounds for the internalization of misogynistic beliefs. Gendered expectations and attitudes may be reinforced within the family structure through interactions, behaviours, and role modelling. Children may internalize attitudes and behaviours observed within their families, perpetuating traditional gender roles and stereotypes.

5. Socialization Processes: Beyond the family unit, broader socialization processes within communities, peer groups, and educational institutions can also contribute to the internalization of misogyny. Social norms, peer pressure, and institutional practices may reinforce gendered stereotypes and expectations, leading individuals to internalize misogynistic beliefs and behaviours as they navigate social interactions and relationships.

6. Religious and Cultural Influences: Religious and cultural beliefs and practices can shape perceptions of gender roles and relationships. Within certain religious and cultural contexts, women may be assigned subordinate roles and subjected to discriminatory practices, leading to the internalization of misogynistic attitudes and beliefs among adherents. This internalization can be reinforced through religious teachings, cultural traditions, and community norms.

7. Workplace Dynamics: The workplace can also be a site for the internalization of misogynistic attitudes and behaviours. Gender discrimination, harassment, and unequal treatment in professional settings can contribute to the internalization of beliefs about women's inferiority or suitability for certain roles. Additionally, organizational cultures that perpetuate gender stereotypes or limit women's advancement may further reinforce internalized misogyny among employees.

BOUND BY A SOCIAL CONSTRUCT

The call for greater paternal involvement in parenting is motivated by the overlooked need to acknowledge men's entitlement to parenthood and their obligation to participate in unpaid caregiving and household duties. Assumptions that frame men as breadwinners, ignoring their role as fathers and caregivers, remain extraordinarily persistent, especially within workplace contexts where policies often fail to challenge traditional social norms and behaviours. While men may feel valued as workers, their paternity and care responsibilities are often ignored. Fathers perceive that, while family-friendly policies theoretically cater to "parents," societal norms, lack of uptake by other men, and unsupportive workplace environments often lead to these options being utilized primarily by women.

Thekla Morgenroth, a research fellow in Social and Organisational Psychology at the University of Exeter, UK says⁹ –

“Women are no longer seen as less competent than men, but women continue to be seen as more communal – warm, nurturing and caring – than men and, in turn, as more suitable for roles that require these attributes such as childcare,” they explain. “Men, on the other hand, continue to be seen as more agentic: decisive, assertive, competitive.”

She also explains that although gender roles at work have changed, gender stereotypes still continue to persist, regardless of the rising number of women who are entering and staying in the workforce.

Moreover, women are often assigned the responsibility of household chores, which can lead to perceptions of lower productivity. However, in the absence of sole responsibility for childcare, they can utilize this time to advance their careers. This dynamic contributes to the gender pay gap in the workplace, where women are typically paid less than their male counterparts for similar roles. Women may also temporarily or permanently leave their jobs to prioritize childcare and family responsibilities, resulting in a lack of diversity within organizations.

This can influence decisions regarding parental leave in several ways. "First, women and men may internalize these stereotypes, leading men to believe they are not suited for caregiving

⁹ Cox, J. (2022) Paternity leave: The hidden barriers keeping men at work, BBC News. Available at: <https://www.bbc.com/worklife/article/20210712-paternity-leave-the-hidden-barriers-keeping-men-at-work> (Accessed: 14 February 2024).

roles and may be hesitant to take parental leave. Additionally, their female partners may also endorse gender stereotypes and discourage their male partners from taking parental leave because they question their capability."

A crucial aspect is that gender stereotypes are not only descriptive but also prescriptive, dictating societal expectations of how women and men should behave, including the notion that men should prioritize work over family commitments.

WAY FORWARD

In 2020, the Central Government made a significant stride by extending "child care leave" (CCL) benefits to male government employees who are single parents, encompassing widowers, divorcees, or unmarried men raising children solo. Under this revised policy, they are entitled to receive 100% of their leave salary for the initial 365 days and 80% for the subsequent 365 days. This move, heralded as progressive by Union Minister Jitendra Singh, marks a departure from the previous norm where CCL was exclusively available to female employees.¹⁰

Dr. Jitendra Singh emphasized that the provision of Child Care Leave (CCL) is reserved solely for male employees categorized as "single male parents," which includes widowers, divorcees, or unmarried individuals expected to shoulder childcare responsibilities alone. However, upon closer scrutiny, a contradictory aspect of this change emerges. Married male employees find themselves conspicuously excluded from this new provision, implying that they do not require such leave, presumably because their wives are assumed to be the primary caregivers at home. Paradoxically, this exclusionary policy inadvertently perpetuates the very stereotype it seeks to challenge.¹¹

It is crucial to recognize that while paternity leave benefits working mothers, its primary and ultimate beneficiaries are fathers. Society must shift away from traditional perceptions of

¹⁰ Indulia B and Ridhi, 'Male Government Employees Who Are Widowers, Divorcees or Unmarried Are Entitled to Child Care Leave: Dopt' (SCC Blog, 27 October 2020)

<<https://www.sconline.com/blog/post/2020/10/27/male-government-employees-who-are-widowers-divorcees-or-unmarried-are-entitled-to-child-care-leave-dopt/>> accessed 13 February 2024

¹¹ Deshpande A, 'Explained: Why India Needs Paternity Leaves' (Ungender, 16 December 2021)

<<https://www.ungender.in/explained-why-india-needs-paternity-leaves/#:~:text=The%20Central%20Government%20recently%20announced,days%20of%20leave%20and%2080%25>> accessed 15 February 2024

fatherhood, promoting active co-parenting rather than viewing fathers solely as assistants to their partners or wives.

It is imperative to recognize that while paternity leave indeed benefits working mothers, its principal and ultimate beneficiaries are fathers. Society must shift away from conventional perceptions of fatherhood, promoting active co-parenting rather than viewing fathers merely as assistants to their partners or wives. The absence of explicit policies and legislation enabling fathers to fulfil their role as co-parents relegates them to a subordinate position, despite their equal importance in their children's lives alongside mothers.

India stands to learn from the progressive models of paternity leave implemented in countries like Sweden, where parents enjoy a total of 480 days of parental leave, with each parent obligated to take a minimum of 90 days, or Finland, where each parent is entitled to 164 days of leave. Such models prioritize gender equality and familial involvement, fostering a more balanced and equitable approach to parenting responsibilities.

CONCLUSION

While paternity leave may not serve as a universal solution to promote the equal distribution of family responsibilities, especially considering that many countries offer limited paternity leave days, its implementation alone is unlikely to significantly alter traditional gender roles, but it represents a significant step toward challenging traditional gender norms.¹²

Nevertheless, by establishing a legal entitlement to paternity leave in national legislation, governments, employees, employers, and societies collectively acknowledge the value of caregiving by both women and men, marking a crucial stride toward advancing gender equality both within the workplace and at home.

It is imperative to devise policies that challenge the societal stigma suggesting that men are solely responsible for financial provision and incapable of childcare. Gender stereotypes not only impact women but also have adverse detrimental effects on men

Without access to paternity leave, men miss out on opportunities to bond with their children during their early developmental stages. Therefore, parental leave regulations should strive for

¹² Paternity leave (2000) UNICEF. Available at: <https://www.un.org/womenwatch/osagi/pdf/unicefpaterleave.pdf> (Accessed: 20 February 2024).

gender neutrality, ensuring equitable access for both men and women. Implementing fair parental leave policies is vital for dismantling traditional gender roles and fostering a more egalitarian society.

Regrettably, existing maternity benefit laws have failed to adequately protect the rights of women working in the informal sector, and there is a notable absence of legislation specifically addressing maternity benefits for contract-based women employees. Achieving effective implementation of paternity leave in the informal sector remains a distant prospect.

In our contemporary society, where the pursuit of gender equality is paramount, women continue to face the uphill battle of balancing work and family responsibilities alone. Therefore, the introduction of paternity leave represents a significant stride toward creating a more gender-equal society, where both men and women can equally participate in caregiving and thrive in their personal and professional lives.

