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Paternity Leave Laws: A Comparative Analysis of Sweden, USA And India

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ABSTRACT

A comparative method of study of laws is adopted by various nations across the globe to improve and amend laws. One such area that needs to be highlighted by Comparative study is Paternity Leave Laws. According to the International Labour Organisation, paternity leave helps improve the overall well being of a newborn. Several countries have enacted laws on paternity leave that includes Britain, Estonia, Sweden, Japan, Bangladesh, etc. In countries like Pakistan, Nigeria does not provide any paternity leave.

This is a doctrinal method of research and seeks to analyse the law on paternity leave and draw legal implications. This research paper follows a Comparative Method of study of laws and compares Paternity Leave laws in Sweden, USA and India.

Sweden has the best Paternity leave laws with a more gender-neutral approach. The USA provides Paternity leave to its employees but it is unpaid. India still needs a uniform law on Paternity leave though private sectors have started including paternity leave policy in their employment agreement.

Keywords: *Paternity, division of labour, paid leave, gender equality, family welfare, etc.*

I. INTRODUCTION

In current times, when nuclear families are prevalent, the need for family support that is required during the maternity period is missing. So the whole responsibility is on parents. According to a report by ILO on Maternity and Paternity at work, there are 5 types of child care leaves that are being provided by the countries around the globe. There is Maternity leave, Paternity leave, Parental leave and Adoption leave. Studies suggest that Paternity leave can have a positive influence on the recovery of the mother, improvement of child health and a better division of responsibilities at home and at work. Paternity leave is basically the leave available to fathers during childbirth to take care of the baby.

Though there are many countries that provide compulsory paternity leave policy, India is still waiting to have such kind of exclusive legislation dealing with Paternity Leave. This paper studies paternity leave legislation prevalent in Sweden, USA and India. The paternity leave

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policy of Sweden is considered to be one of the best policies in the world to be available to fathers. The USA is a developed nation and still, it provides unpaid maternity and paternity leave. India being a developing nation has legislation for Central Government employees but this is not binding on the private sector and unorganized sector. This paper tries to find the significance of Paternity Leave laws by studying various aspects of Paternity leave Benefits available in the US, Sweden & India.

Meaning and importance

Around the World, the average paid maternity leave is 29 weeks, and the average paid paternity leave is 16 weeks. Similarly, on a global level, 107 countries offer parental leave that is available to fathers, which is more than half. There are 47 countries that offer more than four weeks of Paternity Leave while rich countries offer more than 12 weeks of Paternity Leave. Countries like Japan, Canada and Sweden, have options for more than a year of Paternity Leave².

“Paternity Leave is generally a short period of leave for the father immediately following childbirth to help care for the child and assist the mother.”³

International Labour Organisation in its Policy Brief Report⁴ has made it clear that there is a requirement of Paternity Leave policy to be adopted by all countries. It is important for the following reasons:

- For the development of the child and to reconcile work and family life.
- It enables fathers to assist the mother to recover from childbirth.
- It helps to establish breastfeeding as well as take care of siblings of the child.
- It enables the development of a more gender-equitable division of labour.
- Gives the message that co-parenting is important for the healthy development of the child.
- Paternity leave is either provided as a separate leave measure for fathers or included in the “special leave” provisions to which all employees are entitled. ILO policy also says that “where there is no legislation provided on Paternity leave then it suggests

² Claire Cain Miller, ‘Paid leave: The world has ‘found a way to do this,’ but the US still lags’, The New York Times, Oct 25, 2021, <https://www.chicagotribune.com/nation-world/ct-aud-nw-nyt-paid-family-leave-us-20211025-lq3xcollndnhtgnqsmguwwkwre-story.html>. (Retrieved on Jan,12, 2022).

³ ‘Maternity and Paternity at Work : Laws and Practice across the world’,(2014) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf (Retrieved on Jan,10,2022)

⁴ Supra

‘collective bargaining agreements’ for such leave”. Countries that offer paid paternity leave that is generally financed through social insurance, via taxes or contributions from employers and workers⁵.

Key Message by ILO

- Access to family leave for the care of newborn children is important for a worker’s ability to reconcile work and family life.
- Father’s leave, taking up of family responsibility and early interaction with the newborn child is directly related to successful child development.
- Recognition of men’s right to parenthood, responsibility to share unpaid care and household work will help to break down traditional social attitudes, resulting in greater equality for both men and women at work and at home.
- As per data available at ILO in the year 1994 statutory recognition to paternity leave provisions were given by 40 out of the 141 countries. By 2013, legislation on Paternity leave was provided in 79 countries of the total 167 countries⁶.
- Paternity leave is paid in 71 countries and employer liability is the prevalent source of funding.⁷
- A partner’s presence and support have an important influence on a mother’s decision to breastfeed.
- Paternity leave can have significant benefits for maternal and child health.
- As per EU Directive, there should be 4 months leave and gender-inclusive policies of paid entitlement.

II. HISTORICAL BACKGROUND

The concept of Paternity leave began in the USA, in the year 1969, when Gary Ackerman, a teacher by profession in New York City, had a daughter in late 1969. When Gary’s daughter was 10 months old, he had applied for paternity leave (without pay). The principal did not recommend the lawsuit and so did the superintendent. He was told that the childcare policies of the Board of Education are only for female employees. Gary went on leave from his job and filed a suit of discrimination with Federal Equal Employment Opportunity and sued the U.S. District Court board. Gary had filed a complaint along with his wife of discrimination with the Federal Equal Employment Opportunity Commission and sued the U.S. District Court Board.

⁵ Supra 1

⁶ Infra.

⁷ In case of Maternity Leave funding is mostly by social insurance.

Their argument: granting child-care leaves only to women is discriminatory and unfair in nature because it forces mothers to be housekeepers and child rearers and prevents husbands and wives from dividing up family responsibilities as they see fit.

In 1973, the Equal Employment Opportunity Commission, “found that the mothers-only rule ‘discriminates against male teachers as a class.’ As a result, the board says it will reword its bylaws to ensure equal rights for fathers.” That autumn, the relevant section of the Board of Education bylaws was amended so that it no longer referred to an affected teacher as “her” or relied on the timing of the teacher’s pregnancy, thus expanding its relevancy to fathers and to adoptive parents. This change by the Board of Education in its bylaws is widely regarded as the ground-breaking first step toward paternity leave’s existence. Ackerman’s motion to have a lawsuit filed against the Board of Education (separate from the EEOC case) considered as a class-action suit was denied because, though 40% of the Board of Ed’s teachers were men, he was the first male teacher ever and one of two in total to apply for childcare leave before that 1973 change. According to a New York Times article about the EEOC’s decision, at the time about 2,000 to 3,000 female teachers took maternity leave in the city each year. Eventually, Gary Ackerman was denied compensation as he had stopped teaching⁸.

III. UNICEF ON PATERNITY LEAVE

As per the UNICEF Report fathers who take paternity leave are more involved in childcare and other unpaid labour at home, which may support mothers’ breastfeeding and reduce the likelihood of post-partum depression, which in turn benefits infant health.⁹ According to this report, no country provides more than 14 weeks of paternity leave and the vast majority i.e. 92% provides less than 3 weeks of Paternity leave.

UNICEF provides 16 weeks i.e. two months of paid paternity leave across all of its offices worldwide. UNICEF is the first United Nations agency to extend such leave beyond the standard four weeks¹⁰. Paternity leaves increases fathers’ involvement, reduce gender inequality, and improve both infant and maternal health. Parental leave helps obtain immunization and other postnatal medical facilities too¹¹.

⁸ Lily Rothman, ‘Meet the Father of Paternity Leave’, (June 11, 2015) <https://time.com/3916437/paternity-leave-gary-ackerman/>, (Retrieved on Nov,24,2021)

⁹ ‘Paid Parental Leaves and Family-Friendly Policies- An evidence brief’, UNICEF, (2019) <https://www.unicef.org/media/95086/file/UNICEF-Parental-Leave-Family-Friendly-Policies-2019.pdf> (Dec, 17,2021)

¹⁰ Paternity leave, UNICEF South Asia,(Jun18,2018)<https://www.unicef.org/rosa/stories/paternity-leave#> (Dec, 10,2022).

¹¹ Paid Parental Leave and Family-Friendly Policies, UNICEF, <https://www.unicef.org/documents/paid-parental-leave-and-family-friendly-policies> (Retrieved on Jan,17,2022)

IV. PATERNITY LEAVE LAWS IN SWEDEN

In the year 1974, Sweden replaced gender-specific maternity leave with Parental Leave and became the first country in the world to provide gender-neutral laws on child care leaves. Sweden provides 480 days of paid Parental Leave when a child is born or adopted. A single parent is entitled to a full 480 days of leave. In the case of both partners, each parent is entitled to 240 of those days and it cannot be transferred to the partner¹².

Parents in Sweden can divide 480 days of leave between themselves. Each parent is offered 90 days off from work with a pay rate of 80 per cent of their regular salary. So, the compulsory Paternity leave period is 90 days. In addition, they are given 300 more days they can divide amongst themselves. The pay rate for this leave remains the same¹³.

V. PATERNITY LEAVE IN THE USA

The United States as a developed and wealthy nation provides unpaid maternity and paternity leave rather than paid maternity and paternity leave. Maya Rossin-Slater, an economist in the Stanford department of health policy who studies paid leave said “. “Any leave is better than zero leave”¹⁴.

Research shows that recovery time for birth mothers typically takes around six to eight weeks, and when fathers take paternity leave it helps in improved maternal and child health, increasing immunization and breastfeeding rates, and decreasing hospitalizations from infectious diseases¹⁵.

Despite popular support for paternity leave in the U.S., only a handful of states and cities have passed family leave and paternity leave laws. A 2018 report from the Organization for Economic Cooperation and Development (OECD) found that the U.S. stand last among 41 countries for parental leave laws, with all other countries guaranteeing between two and 21 months of paid leave¹⁶.

The United States does offer FMLA¹⁷ paternity leave, but that’s an unpaid benefit, making the

¹² *Work-life balance - sweden.se*, sweden.se,(Jun,1,2021), <https://sweden.se/life/society/work-life-balance> (Retrieved on Jan,8,2022)

¹³ *7 Countries with the Best Paternity Leave*, The GPS Team in Business, Global Compliance, (May,27,2021) <https://www.globalpeoplestrategist.com/7-countries-with-the-best-paternity-leave/>. ((Retrieved on Jan,19,2021)

¹⁴ Claire Cain Miller, *Paid leave: The world has 'found a way to do this,' but the US still lags*, The New York Times,(Oct 25, 2021), <https://www.chicagotribune.com/nation-world/ct-aud-nw-nyt-paid-family-leave-us-20211025-lq3xcolldnhgtgnqsmguwkwre-story.html>. (Retrieved on .Jan,12, 2022)

¹⁵ Adam Bulger, *What Are the Laws Around Paternity Leave and Family Leave in the U.S.?* (Nov, 18, 2021, 10:16 AM), <https://www.fatherly.com/love-money/paternity-leave-laws-state-us/> (Retrieved on Jan,18,2022)

¹⁶ Supra note 13

¹⁷ Family and Medical Leave Act,1993, USA (Federal Law)

issue of paternity leave pay one that makes access to paternity leave for men an issue of bifurcated access, where poor fathers can't access paid leave but the rich father can.

Family and Medical Leave Act is the only federal legislation that provides 12 weeks of unpaid leave (job-protected time off) to both parents :

- to care for a newborn,
- to care for a newly-adopted child or
- to take care of an ill family member
- Time taken off work due to pregnancy complications can be counted against the 12 weeks of family and medical leave¹⁸. FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with 50 or more employees.¹⁹ The law only applies to those who fulfil these conditions:
- should be an employee of a company of at least 50 employees (within a 75-mile radius)
- should have worked for at least a year and a minimum of 25 hours per week, or
- 1,250 hours during the 12-month period immediately preceding the leave.²⁰

Federal Employee Paid Leave Act, 2019²¹

As of October 2020, some federal employees qualify for paid family leave under The Federal Employee Paid Leave Act²². The Federal Employee Paid Leave Act applies from October 1, 2020, for paid leave to both parents in connection with birth or adoption of a child on the condition that subsequent to leave they will have to work for 12 weeks with the same employer. The FEPLA does not apply to private-sector workers and part-time workers. So, FEPLA :

- Amends FMLA and applies to Federal Civilian employees.
- 12 weeks of paid parental leave.
- The federal employee must meet the FMLA eligibility requirement.
- Paid leave should be availed within 12 months period or will lapse.

¹⁸ 'Family and Medical Leave, U.S. Department of Labour, <https://www.dol.gov/general/topic/benefits-leave/fmla> (Retrieved on Jan,10,2022)

¹⁹ Supra 17, Family and Medical Leave, US Department of Labour

²⁰ Mora Hohman, 'What are the paternity and family leave laws in the U.S.?', What to expect, (July,2021 <https://www.whattoexpect.com/pregnancy/paternity-leave/>. (Jan,19,2022)

²¹ Paid Parental Leave, Department of Commerce,Office of Human Resources Management (2019), <https://www.commerce.gov/sites/default/files/2020-09/hr-bulletin-FY20-249.pdf>. (Retrieved on Jan,18,2022)

²² 'Paid Parental Leave for Federal Employees' Office of Human Resources Management, (2020) <https://www.commerce.gov/hr/paid-parental-leave-federal-employees>. (Retrieved on Jan,18,2022)

Private sector

- Some major American companies are starting to view paternity leave as an important benefit for valued employees. Companies offering progressive paternity leave are the exception, not the rule. Since 2015, for instance,
- Netflix has allowed working fathers to take unlimited leave during the first year after a child is born or adopted.
- Microsoft offers three months of leave to the father.
- Deloitte not only offers extensive paid paternity leave but provides programs to support parents, making the average time new dads take off 16 weeks.

VI. PATERNITY LEAVE IN INDIA

The Central Government of India made provision of Paternity leave for Central Government employees under the Central Civil Services (Leave Rules), 1972²³. Rule 43 (A) provides for Paternity Leave. It provides that a male Government Servant with less than two surviving children may be granted paid paternity leave of 15 days from the date of delivery of the child. Leave can be availed within six months from the date of delivery of the child. If Paternity Leave is not availed within the stipulated time period of six months it will lapse. These provisions are exclusive to Central Government Employees. For the Private sector, there is no law regarding paternity leave. Most private companies in India give about 5-10 days of paternity leave as a benefit, but they are not obligated to do so. Private companies such as Netflix, Tata Consultancy Services (TCS), etc.

S. No.	Institution Name	Paternity Leave Duration paid	Paternity Leave Duration unpaid	Total
1.	Central Govt. of India employees	15 days	N.A.	15 days
2.	Price Water Coopers India	5 days	N.A.	5 days

²³ *Central Civil Services Leave Rules*, Department of Personnel and Training, (Mar,03,2017), <https://dopt.gov.in/acts/central-civil-services-leave-rules-0>, (Retrieved on Jan,17,2022)

3.	Aditya Birla Group ²⁴	N.A.	N.A.	0 days
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Paternity Benefit Bill was introduced in Lok Sabha in the year 2017²⁵ as “The Paternity Benefit Bill 2017”²⁶. In its objective, the bill states that “to regulate the employment of men in certain establishments for certain periods before and after becoming a father and to provide for paternity benefit and certain other benefits”. Following categories of the establishment will be bound if this bill becomes an Act :

- Every establishment being a factory, mine or plantation
- It includes establishment belonging to government
- Establishment where persons are employed for the exhibition of equestrian, acrobatic and other performances
- Shops and establishments in a State, in which 10 or more persons are employed (or were employed on any day preceding 12 months) within the meaning of any law for the time being in force.
- Establishments as declared by State Government to be included within this Act.
- Every man who is self-employed or working in an unorganized sector, or in establishments where less than 10 men are employed.

According to **Section 3 clause (1)** “Paternity benefit” means the payment referred to in section 4.

Section 4 (1) states that “Subject to the provisions of this Act, every man shall be entitled to, and his employer shall be liable for, the payment of paternity benefit at the rate of the average daily wage for the period of his actual absence, that is to say, the period immediately preceding the day of delivery of the child to his legally wedded wife, or commissioning mother the actual day of delivery of the child to his legally wedded wife, or commissioning mother and any period immediately following that day”²⁷.

So, as per this bill, every man who is expecting a child is ‘entitled’ and his employer is ‘liable’ to provide Paternity benefit. There is a prerequisite condition that the employee claiming

²⁴ Arundhati Ramanathan, ‘Why do companies balk at giving Paternity Leave’ (Sep,12,2016, 2:04 A.M.) <https://www.livemint.com/Companies/m0QY7KIIn4BghpvmmGZMMI/Why-do-companies-balk-at-giving-paternity-leave.html> (Retrieved on Jan, 14,2022)

²⁵ By Maharashtra M.P. Rajeev Satav

²⁶ The Paternity Benefit Bill,2017, <http://164.100.47.4/billtexts/lbills/lbills/asintroduced/678LS%20AS.pdf>. (Last visited Jan,19,2022).

²⁷ Supra 25, The Paternity Benefit Bill,2017

paternity leave and benefits should have worked for 80 days within the last 12 months from the expected date of delivery. The average daily wage for paternity should be calculated on the basis of the average wage of the last three working months. There is a provision of 15 days of paid Paternity Leave, and this leave should be availed within three months of the date of expected delivery of the child. This leave is available to any man with less than two surviving children. Section 5 of this bill provides that Central Government shall formulate a scheme to provide funds for Paternity Benefits²⁸. That fund shall be used to meet the costs related to Paternity Benefit under this Act. The man applying for paternity leave shall give notice to his employer that

Some of the biggest aspects mentioned in the bill are:

Applicability, Payment, Working Duration, Duration of Leave, Parental Benefit Scheme, Parental Scheme Benefit Fund, Advance payment of Salary, No dismissal, Inspecting Officer, Bon-fulfillment of Benefit, Miscarriage, and Adoption²⁹.

Paternity Leave in Private Schools³⁰

Chander Mohan Jain V. N.K. Bagrodia Public School and Ors³¹

In 2009, a private school teacher Chander Mohan Jain moved to the High Court of New Delhi and challenged the rejection of his paternity leave application, as well as the deduction of his salary by N K Bagrodia Public School. He took a leave to take care of his wife, and their newborn baby. Despite the lack of legislation, New Delhi High Court said all male employees of unaided and recognized private schools have the right to paternity leave. The court instructed the school to refund the amount to the teacher.

VII. CONCLUSION

Though maternity leave is recognized it took years to realize the importance of Paternity Leave Laws. One of the factors for this is social conditioning, that it is a women's duty to raise a child and a man's duty is solely to provide for the upkeep of the family. Such kind of mindset needs to be replaced with a more gender-neutral approach. The status of paternity leaves in India is at a primitive stage and there is a need for a more holistic approach when bringing such legislation. The state shall bring such laws for the Welfare purpose. To deal with the issue of post leave resignation employers can make a binding agreement with the employee that they

²⁸ Section 5(1), Parental Benefit Scheme to provide paternity benefit to every man.

²⁹ Infra 31, Bel India article.

³⁰ James Vazquez, 'What is the state of Paternity Leave in India?', (Jan,19, 2021) <https://www.bel-india.com/what-is-the-state-of-paternity-leave-in-india/> (Retrieved on Jan, 10,2022)

³¹ W.P (C) No. 8104 of 2009

have to compulsorily work for a minimum period post leave.

The important contributions of Paternity leaves are the improved child health and maternal health, enhances gender neutrality, reverses gender stereotypes, tries to erase social stigmas associated, division of labour, decreased divorce rates, lesser rates of postpartum depression and overall welfare of the family and hence society.

The suggestion includes that for funding of Paternity leaves for unorganised sector Government may adopt pool funding as advised by ILO or collective bargaining agreements if the law is being delayed for the sole reason of lack of funds. As far as the private sector is concerned if companies are providing Paternity leaves at their foreign offices then they should be mandated to continue such policy in India also.

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