

A Study on the Need of Paternity Leave, Laws and Its Implications in India

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ABSTRACT

If Mothers are entitled to Maternity leave, the fathers must also be entitled to paternity leave without any financial burden or without fear of losing jobs as childcare is a joint obligation. Paternity leave shall not only help wellbeing of newborn or adopted child but will also promote gender equality. Data from various employees of various sectors and segments (i.e. Government & Private and contractual & permanent respectively) has been collected. The major area that has been focused on in this research paper are The Paternity Benefit Bill 2019, provision for paternity leaves for employees in government and private sector, recent case law on paternity leave. My Survey uncovered the important fact that the paternity leave must be mandatory, which shall be possible only after the Paternity Benefit Bill 2019 becomes an Act, as such leave holds importance to fathers of newborn or adopted child and the mother.

KEYWORDS: Paternity Leave, Maternity Leave, Paid leave, ChildCare, Gender-Equality, Mandatory Leave.

I. INTRODUCTION

The term Paternity is derived from Latin term paternus which means relating to a father. Paternity leave can be understood as is a benefit under labour law that provides for protected leaves to father for taking care of a newly born or adopted child. Such leave can be paid leave, which if given to working men shall enable them to take time off from work to support spouse and care for the newborn or adopted child. Paternity leave can be availed during pregnancy period, labour or post delivery and recovery. Presently in India there is no Act/Legislation that governs or mandates the Paternity leave, due to which many fathers are deprived of the privilege of being with newborn or adopted child. In this context, it is pertinent to study on the need of paternity leave, laws and its implications in India. The objective of this paper is

to propagate the necessity and importance of paternity leaves so that there is gender neutrality.

II. BACKGROUND

In India, as per the Central Civil Services (Leave) Rules, 1972, a male government sector employee is eligible for paternity leave for 15 days before or within six (6) months of the delivery of the child or at the time of adoption of a new child. In year 2020, as per the centre government, the male government sector employees were entitled to Child Care Leave (CCL) only where the male employees are single parent (including divorcees or unmarried). Thus, such child care leave were in restricted to single parent.

In the year 2018, the government introduced the Indian Paternity Benefit Bill 2017 before the Parliament. The said bill addressed the benefit related to paternity. The bill was introduced with aim of providing gender neutral legislation to render parental benefits to the natural parents, adoptive parents, etc. But the said bill was not passed as it was argued that mothers are granted maternity leave to recover from post-delivery period/gestation period which is not the case in fathers.

III. THE INDIAN PATERNITY BENEFIT BILL 2017

The Paternity benefit bill 2017 showcases the necessity and importance of gender neutral parental leave policies in India as it breaks the notion that the responsibility of child care rests solely on women. The Bill's applicability and scope is extremely progressive and applies to whole of India. It applies to (a) every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; (b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a

State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months and (c) to every man who is self-employed or working in the unorganised sector or in establishments where less than ten persons are employed.

The Bill states that in case of Newborn child, Adopted Child or Surrogate child, the father shall be entitled to Paid leave. Paid leave shall be the daily wage payable fixed at the same rate as per the minimum wages fixed as per the Minimum Wages Act, 1948.

The bill lays down the maximum paternity benefit available to father i.e. The maximum period for which any man shall be entitled to paternity benefit shall be fifteen weeks (15 weeks) of which not more than seven weeks (7 weeks) shall precede the date of expected delivery, Provided that paternity benefit shall be availed up to three months (3 months) from the date of delivery of child, Provided further that where a man dies during this period, the paternity benefit shall be payable only for the days up to and including the day of his death, Provided also that where a man dies during the period immediately following the date of delivery of his child for which he is entitled for the paternity benefit, leaving behind the child, the employer shall be liable for the paternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

The proposed bill not only empowers man but also sets penal provisions for employer and employee, for proper implementation of proposed Act.

Also, as the Paternity benefits will create financial burden on the companies in order to counter that the bill proposed establishment of Parental Benefit Scheme Fund wherein employers, employees and the Central Government shall contribute in defined ratio.

IV. PATERNITY LEAVE PROVISIONS IN DIFFERENT STATE OF INDIA

There are some states in India have formulated their own specific provisions w.r.t paternity leave:

- The State of Maharashtra

In year 2017, specific provision applicable exclusively to public sector was announced wherein the male employees whose spouse are bedridden or are widowers, thus, unable to care for children are entitled to 180 days special leave until the child

reaches the age of 18 years. Such leave can be granted in three separate intervals for two months per year.

- State of Kerala

In Kerala, a paternity leave applicable to government male employees is granted at the time of delivery of his wife for a period of ten (10) days for two (2) children each to its government male employees.

- State of Rajasthan

As per the Rajasthan Service Rules, 1951, Section 103a, a male government employees can apply for fifteen (15) days of paternity leave which can be granted maximum for two (2) times.

- State of West Bengal & Sikkim

In year 2016 State of West Bengal made provision for one (1) month paternity leave for its government employees. Similar provision was adopted by State of West Bengal in year 2023, wherein the Chief Minister of Sikkim made an announcement of one (1) month paternity leave for its government employees.

- State of Karnataka

In year 2023, the state government made paternity leave applicable to single male parent for a period of 6 months with a provision that if the male gets married during this paternity leave, the said leave shall end automatically.

- State of Uttarakhand

In year 2023 the state government announced that 180 days of child adoption leave shall be granted to male employees adopting a male child. Also, the state government granted 15 days paternity leave to outsourced and contractual employees aligning with government employees.

V. RECENT CASE LAW ON PATERNITY LEAVE

As per the recent judgement in B.Saravanan vs. The Deputy Inspector General of Police, Tirunelveli Region, Tirunelveli & Ors. before the Madaras High Court dated 11.08.2023 by the Hon'ble Mrs. Justice L. Victoria Gowri, held that "that in the context of Indian life, though the words **Maternity and Paternity sounds synonymous to motherhood and fatherhood, the survival of a child vests with the joint responsibility of the family as a whole. Since the days of joint family system has almost diminished/eroded and when the challenges of nuclear families are unprecedented in India, it is**

high time for the policy makers to recognise right to paternity leave/parental leave to the biological/adoptive parents, as the basic human right of the respective prenatal/post natal child.”

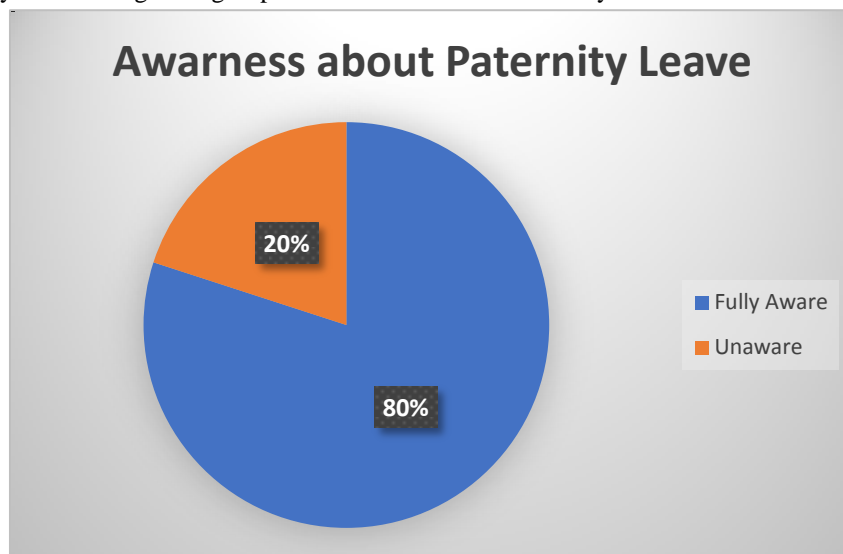
Also, the Hon’ble Court held that “The petitioner’s child’s right to live, survive, health and development of childhood which flows from Article 21 of the Constitution of India, guarantees the petitioner’s

right to seek paternity leave to attend his wife’s delivery.”

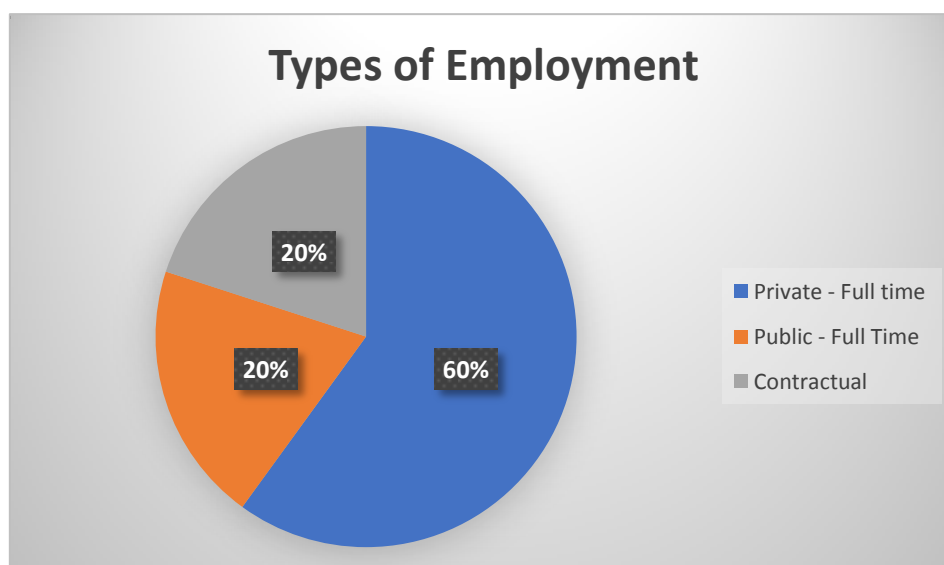
VI. INFERENCES BASED ON SURVEY COLLECTED

Survey conducted by me was done on male and female in a group of 10 persons working in Public, Private and Contractual jobs and following are the outcomes represented in graphical manner :

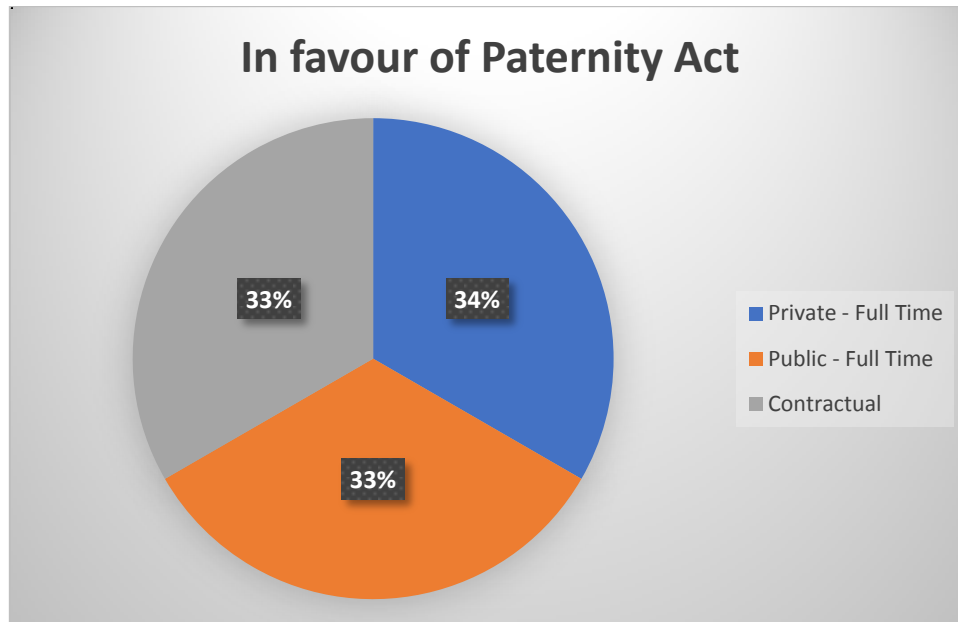
- (i) Only 80% amongst the group were aware about the Paternity leave.



- (ii) 60% of the people are working in Private full-time job, 20% in Public Sector and 20% in Contractual jobs.



(iii) When made aware about the Paternity act all 10 persons favoured the implementation of Paternity Act.



VII. CONCLUSION

In light of above it is imminent to see fatherhood synonymous to motherhood. Father's role shall be important not only for childcare but also for benefit of women care during the gestation period post-delivery of child, which is the main aim of the Maternity Benefit (Amendment) Act, 2017. The Bill for The Paternity Benefit Bill 2019 has been a stepping stone for moving ahead in the right direction i.e. treating Men equal to Women in establishing gender neutral parenting of child.

Paternity benefit Act shall act as a tooth to the Paternity leaves and shall give full and final effect to the already existing the Maternity Benefit (Amendment) Act, 2019.

As per recent case law makes it clear that that refusal of paternity leave to a father violates the child's right to life under Article 21 of the Constitution of India.

It is imminent that legal force is given to the Paternity Act as majority of Indian population are youth and majority of them are working in private sector. Presently absence of legal force contributes a sense of insecurity for job as well as inequality in family support.

In conclusion this paper lay emphasis on the enforcement of the Paternity Act and such act should not only cover father of any government or

private sector but it should be applicable to each and every establishment wherein males are working. As it is 21st century and India is a growing economy with majority of its population as youth, thus we need to empower both man and woman and break the gender bias for child care.

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