



SOCIO-LEGAL FRAMEWORK OF PATERNITY LEAVE IN INDIA: A CRITICAL ANALYSIS

*By Dr. Karan Jawanda
Assistant Professor, University Institute of
Legal Studies, Panjab University*

*By Sanya Singh
LLM Scholar, University Institute of Legal
Studies, Panjab University*

***“Gender relationships are key to whether a
society orients to domination or
partnership in all its relations.”***

- Riane Eisler

We are blessed to be living in times when acknowledgment of human rights is at an all-time high. Today, legal rights are discussed at large and every day the world is educating itself in acknowledging and respecting different rights of the people. Women are one part of the society which had to fight hard to make its voice heard at a global platform. However, today we find feminist voices advocating their concerns with the world as a keen audience listening and coming forward to join the cause. Gender justice is emerging and being recognised as an important branch of law which for a long time needed our attention. Gender justice aims at reaching equality for all genders, redistribution of power, access and opportunities for people of all genders through elimination of harmful structures including homophobia, patriarchy,

and transphobia.¹ The primary concern of gender justice is to ensure harmonious development of all the genders bringing equality at ground level. Though the prime focus remains on the genders which have for long suffered injustice and have been put last during any consideration, it cannot be ignored that gender justice can lead to egalitarian society when men are also taken within its fold. Though patriarchy has always considered men as the stronger sex, it cannot be denied today that men all over the world have also been the victim of patriarchy along with all the other genders.

In the traditional patriarchal society, men were assigned the role of the provider for the family while women of the house were seen as the caretaker of the family. Since it is the mother who gives birth to a young one, it was the mother only who was primarily the responsible one for looking after the child after birth. Here the role of the father was naturally casted for him as the less emotionally attached parent. However, with time women stepped outside the bounds of the house and home-making and started demanding equal rights as given to men. Gone were the days when it was only the men who would go out for their jobs and earn, whereas the women would be present at home in order to take care of the household and ultimately depend on men functioning as the bread earners. Women became equally independent and educated as men. As more and more women population were employed as labour force and as a woman by the will of God has to be a mother, this issue came to forefront that naturally an expecting mother could not work up to the exact same level as

¹ Lidia Farré; “Parental Leave Policies and Gender Equality: A Survey of the Literature”; (Estudios De Economía Aplicada, Volume 34(1), 2016 Pg 45 – 60);

Available at
<https://www.redalyc.org/pdf/301/30143731003.pdf>



that of any other labour in the market. Being a mother requires her to be available for her child, emotionally and physically. Therefore, it became incumbent upon the employer to provide for maternity leave to expecting women. This was recognised by the Government through the introduction of Maternity Benefits Act in 1961.

This was done keeping in view the health of both the mother and the child. Taking maternity leave allows the mother the space and time to heal physically after giving birth without having to worry about the work pressures. As a result, the mother is able to take better care of the child as her focus and attention is not divided between her work and her child. Maternity leaves also provide an opportunity to the woman to spend more time with her infant. This ultimately strengthens the parent child bond which can last well beyond the childhood.

For years the priority for women's rights campaigners has been to increase the provision of maternity leave. However now, more and more governments are recognising the fact that the best way to improve a women's employment prospects and opportunities is to turn to the fathers instead. Therefore, the trend which is emerging is that in order to make maternity benefits effective, along with the mother, the father should also be allowed some time off the work so that he is better able to focus towards the needs of his family. It was many decades back that the feminists, family and fatherhood scholars argued that a father's involvement towards his family and especially his child has far

reaching benefits for families, ranging from the child's development to the attainment of gender equality and in totality, a wider social change. Therefore, the pressing need for having strong paternity leave for men is discussed in this paper. The present paper emphasises that it has been since long that a husband and a father has been marginalised when it comes to taking household and family roles. They have not been given adequate opportunity to embrace their fatherly role free of work stress. Thus, providing of paternity leave can be one step in this direction.

PATERNITY LEAVE IN INDIA

Law is made for the society, to cater to the needs of every member of the society. The purpose of an egalitarian society is to establish equality at the most fundamental levels so that injustice is meted out at the very root itself. The aim and objective of any law is to be just and fair to each and everyone. With the advent of 21st century, India has witnessed a sea change in the outlook of its laws towards gender equality with law makers and judiciary stepping up to uphold the rights of women which were long due to them. To protect the rights of working women throughout pregnancy and after childbirth, the law has made it mandatory for institutions and workplaces to provide maternity benefits to their female employees. Maternity benefits in India are largely governed by the Maternity Benefit Act, 1961 which is applicable to any establishment having ten or more than ten employees.² The Act provides that a working woman will be

² Flavia Agnes; "*Law and Gender Inequality : The Politics of Women's Rights in India*"; (Oxford University Press, London, 2001)



provided with and paid maternity benefit in proportion to her average daily wage accumulated in the three months prior to her maternity leave. The Maternity Benefit Act initially provided maternity benefit of twelve weeks, out of which up to six weeks could be claimed preceding the delivery. In 2017, the Act was amended to extend the period of maternity benefit to twenty six weeks in place of twelve weeks.³ Now out of the twenty six weeks, up to eight weeks can be claimed before the delivery.

However, it is not just the mother who need to be present for their child's early days but the father as well. A working father who works 9-5 throughout and comes home tired only to prepare for the next day might not be able to devote his undivided attention to his newborn child. The foundational days in which the child is in utmost need of his parents, which lay down the basis of a lifetime bond between the child and the parent, the father might be missing on this crucial time. Therefore, just like the mother, the father also needs to be provided a paternal leave. The expression paternity leave means a "*span of time that a father is legally allowed to be away from his job so that he can take care of his wife and new born baby*".⁴ Paternity leave is one of the many basic fundamental family-friendly benefits in the workplace. The primary objective and purpose of father's leave is to promote gender equality in the society and to be instrumental in this direction. It is not only the mother's

responsibility to take care of her new born child, but the father is equally responsible. This paves way for shared domestic responsibility and gender equality in family, society and even at workplace.

PATERNITY LEAVE FOR CENTRAL GOVERNMENT EMPLOYEE

In India, the provision for paternity leave for male employees of the Central Government is found under Central Civil Services (Leave) Rules, 1972. Section 43A and Section 43AA of Central Civil Services (Leave) Rules, 1972 which provide for paternity leave and play a crucial role in changing the overall configuration of the society's mindset. Section 43A furnishes paternity leave for a male Central Government employee (including an apprentice and probationer) having two or less than two children for a total period of fifteen days for the purpose of taking care of his wife and new born child. The benefit of this leave can be obtained within fifteen days before the date of delivery of the child or within six months from the date of delivery of child. If such leave is not taken within the prescribed period, then the benefit of such leave is treated as lapsed. Not only this, the male employee is paid a salary equal to the salary he last deducted immediately before proceeding on leave. Thus, the paternity leave is a paid leave. As per Section 43AA of the rules, 1972 the above-mentioned provisions are applicable even when a child is adopted. This was added

³ CS Nishvitha; "*An overview on the Maternity Benefit (Amendment) Act, 2017*"; Available at <https://www.icsi.edu/media/portals/22/Article%20on%20MBA%20Act,%202017.pdf>

⁴ Mari Rege and Ingeborg F. Solli; "*The Impact of Paternity Leave on Fathers' Future Earnings*" (Demography, October, 2013) Available at https://www.researchgate.net/publication/258055635_The_Impact_of_Paternity_Leave_on_Fathers'_Future_Earnings



through Amendment act, 2009. Therefore, it can be seen that the central government rules do not discriminate between an adopted and a natural born child when it comes to giving paternity leave to the father to stand as a strong support to the mother and his child.⁵ This is in consonance with the policy of the law to treat an adopted child as a natural born child only for all purposes. This is a salient feature of the paternity leave policy provided by central government for its male employees. Another salient feature is that paternity leave can be combined with any other leave as well.⁶ This would give extra days for leave to the new fathers.

The Indian law on paternity leave, then, is not only extremely narrow in terms of the beneficiary class, but also seems to be based on the assumption that taking care of a child is primarily the mother's responsibility. It highlights the role of the father in raising children as a last resort, rather than as a matter of ordinary gender relations at home. In effect, it entrenches and emphasises on the same stereotypical notions about gender relations that the law must erase.

PATERNITY LEAVE IN PRIVATE SECTOR

While paternity leave is provided for Central and State government employees, there is no such law which indoctrinates the private sector to make it mandatory. Without any legislative obligation, paternity leave is open to interpretation and rewriting by individual

companies. The concept is not mandatory for private entities,⁷ they can set their own laws, rules and regulations regarding paternity leave on their own.

In the case of *Vijender Kumar v. Delhi Transport Corporation, Govt. of NCT, Delhi*,⁸ the applicant, a driver, filed an application to the DTC department for paternity leave to take care of his wife and new born baby. The application leave was rejected by the concerned department and they deducted the salary of applicant for the period of his absence. The applicant took leave for 15 days on his own (without sanction of paternity leave). So, the applicant filed the original application seeking a direction to the respondents to pay full payment of salary, along with interest. The applicant contended that he is entitled to paternity leave under the CCS (leave) rules, 1972. On the contrary, the respondents submitted that they have not adopted the CCS rules pertaining to paternity leave and under their rules there was no provision for paternity leave and hence, the applicant was not entitled to any such leave as well as the pay for such leave period. The Hon'ble Central Administrative Tribunal dismissed the application of the applicant holding that applicant failed to show any rule in which he was entitled for paternity leave and even the instances where the respondents have granted the paternity leave to any of the employee working over there. Thus, the abovementioned case law clearly showcases that as there are no laws making it obligatory

⁵ Dr. S. Ramachandran and Mandeep Kaur; "Rules of Maternity and Paternity Leave"; (MMUJMP, Vol 10(1) January-June, 2019); Available at https://www.researchgate.net/publication/340128117_Rules_of_Maternity_and_Paternity_Leave

⁶ *Ibid*

⁷ N.Gayathri and P.Karthikeyan; "Work Life Balance in India - A Social Responsibility or a Competitive Tool"; (IRJBM, August, 2013, Vol 1); Available at <http://irjbm.org/irjbm2013/August/Paper10.pdf>

⁸ *Vijender Kumar v. Delhi Transport Corporation, Govt. of NCDT*, 116 (2005) DLT 266, 2005



for private sectors to provide paternity leave, it is left for the individual companies to interpret and decide whether to provide paternity leave or not.

PATERNITY LEAVE BILL IN INDIA

India is among the 90 out of the 187 countries in the world that do not have national policies to ensure that new fathers get adequate paid time off with their babies,⁹ a feat that India should not be proud of. The International Labour Organization's Maternity and Paternity at Work Report 2014 quoted researcher Erin Rehel on role of the father, "*By drawing fathers into the daily realities of childcare, free of workplace constraints, extended time off provides the space necessary for fathers to develop the parenting skills and sense of responsibility that then allows them to be active co-parents rather than helpers to their female partners*".¹⁰ In its 2014 report, ILO stated that there is no standard that deals specifically with paternity leave however, the 2009 International Labour Conference Resolution concerning gender equality recognized that work-family reconciliation measures concern women and also men alike.¹¹ Therefore, various measures (such as provision of paternity leave and/or parental leave) are required to allow working fathers

to become more involved in the sharing of domestic responsibilities.

Thus, taking note of these fact, efforts have been made to table a bill regarding paternity leave in India. In September 2017, in accordance with the Maternity Benefit (Amendment) Act, 2017, a Paternity Benefit Bill, 2018 was introduced in Lok Sabha mandating that fifteen days paternity leave, extendable up to three months, be granted to new fathers. The idea of the Bill was to recognize the part played by fathers in the upbringing of children, and to give the new fathers the opportunity to reunite with their children without compromising their need to provide for their families. However, this bill has not become a reality in the country at the time of writing this paper. India still does not have a piece of legislation on this aspect.

One of the appeals of this bill is that it will bring great comfort to male workers employed in all sectors, as the proposed bill seeks to cover the organised sector, the Government sector, the unorganized sector, the private sector and the self-employed.¹² Thus, the law will be applicable to all employees in a like manner. Moreover, every male employee, who has worked for a minimum of 80 days in an establishment, would become entitled to receive paternity benefits. Paternity benefits will be calculated

⁹ Rianna Lobo; "*India – Paternity Benefit Bill*"; (Mondaq.com, December, 20th, 2019); Available at <https://www.mondaq.com/india/employee-rights-labour-relations/877518/paternity-benefit-bill>

¹⁰ Aaliya Waziri; "*Acknowledging unpaid care work and the need for a Paternity Benefit Act*"; (Bar and Bench, February 3rd, 2021); Available at <https://www.barandbench.com/columns/acknowledging-unpaid-care-work-and-the-need-for-a-paternity-benefit-act>

¹¹ *Supra Note 31*

¹² Abhishek Yadav; "*Relevance Of The Paternity Bill In India*"; (Research Gate, January 2019); Available at https://www.researchgate.net/publication/331648974_Relevance_Of_The_Paternity_Bill_In_India



at the average daily wage paid to the employee for the number of days actually worked by him.¹³ In addition, the Bill proposes the establishment of a fund known as the Parental Benefit Scheme Fund. Under the terms of the Fund, the employer, employee and Central Government will be liable to contribute a certain amount to the Fund. This fund will be used to meet expenses related to paternal benefits under the Bill. In addition, the Central Government will reserve the right to issue guidelines known as the Parental Benefit Scheme for the purpose of providing fathers' benefits to all new fathers under the said Bill.

CRITICAL ANALYSIS OF PATERNITY LEAVE IN INDIA

WHY IS INDIA SHY IN TAKING PATERNAL LEAVE?

As per the study conducted by Times Jobs,¹⁴ 75% men working in Indian company have found paternal leave insufficient. The 'paternity leave survey' conducted by the Times Jobs included a total of 950 male employees, out of which 45% were parents. 60% of men replied that their company has a paternity leave policy while 30% said that their company does not offer any such leave is to men. With respect to the duration of the

paternity leave benefit, 20% men replied that they are offered between 10-15 days leave while an alarming 70% revealed that paternity leave benefit extends to less than 10 days only. 75% men have considered this duration to be far too less and insufficient.

The past year the entire world has remained shut down for a considerable part of year and this impacted the job prospects of millions of individuals. The pandemic has brought the fact of uncertainty of one's job to the forefront. CMIE data has shown that the employment rate of women in urban areas fell from 7.5% to 5.4% in February, 2021¹⁵ which was before the pandemic hit the country. During the pandemic, women jobs became 1.8 times more vulnerable to the jobs of men.¹⁶ One of the major reasons for this is the increase in unpaid care work done by women on a day to day basis. With the world being on lockdown, the burden on women to look after the household has only increased many folds. Finding it hard to balance work and home, many women have considered opting out of their jobs despite being given the opportunity of working from home. Thus, the reality before the world is that Covid-19 has affected gender equality as well. This is another strong argument in favour of paternity leave for men. If the responsibilities are shared in a domestic setting, the tasks at

¹³ "Three months of paid leave to fathers under National Paternity Benefit Bill, soon to be introduced in India"; (India Today, June 15th, 2018); Available at <https://www.indiatoday.in/education-today/gk-current-affairs/story/three-months-paid-paternity-leave-unicef-1261417-2018-06-15>

¹⁴ Apeksha Kaushik; "Paternity leaves are 'off-limits' for India Inc. employees"; (Times Jobs, June 15th, 2017); Available at <https://content.timesjobs.com/exclusive-timesjobs-survey-paternity-leaves-are-off-limits-for-india-inc-employees/articleshow/59139973.cms>

¹⁵ Mahesh Vyas; "Double-digit Unemployment Rate Returns"; (CMIE, May 2021); Available at <https://www.cmie.com/kommon/bin/sr.php?kall=warticle&dt=2021-05-24%2011:01:18&msec=696>

¹⁶ *Ibid*



hand for any women become a lot easier and this presents a ray of hope for women in employment.

In India, the concept of paternity leave is new and many male employees are not availing this benefit while many are simply not given an opportunity to avail it. This can be very well gauged from the fact that when Indian cricket team captain, Virat Kohli, announced that he would be taking paternity leave to attend to the birth of his child and to support his family, a debate was sparked with many arguing between national duty of a player and the family responsibility of a father. Surprisingly, it was men only arguing that duty as a player comes first and foremost, and the attention to family responsibilities can be paid later on. Therefore, this goes to show the attitude of Indian men towards paternity leave. There are a number of contributing factors to this trend. It is more about the mindset of the society than the companies or laws. Looking after the child is not seen as the primary responsibility of the father and thus, men focus on their role as earning members of the family only. A recent study done by Promundo, a US-based organisation,¹⁷ has revealed that over 80% of men in Egypt, India, Pakistan, Moldova, Nigeria and Mali said changing nappies, bathing and feeding children were a woman's job. Men shirk from family duties because it has been engrained in them since childhood that looking after the homely stuff is solely a woman's job. This mindset creates a major hamper in rural areas where men would not be interested in availing the benefit of

paternity leave because they simply do not understand its various benefits and facets.

Furthermore, in India the new parents have a huge support system, be it from the parents or domestic helps. Often in case of working parents, the grandparents of the new born look after the child in the hours their parents are working. Because of this help, many working parents especially fathers do not see the need to avail paternity leave. They instead, choose to focus on their work because the child is well look after. For many men, the worry is also that a break may become a career setback especially if the period is over one month. New mothers often find it difficult to get integrated in the workforce after their maternity leave. This trend in women's employment becomes a factor which further forces their counterparts in job to not avail the paternity leave benefits. Since today's times have becomes insanely competitive, men refuse to see the need for such leaves. In our social set-up, where men are still considered the "breadwinner", for these very reasons, men may not be comfortable availing paternity leave.

However, the attitude which India needs to develop towards paternity leave is beautifully exemplified in the case of *Dr. N Siva Krishna v. National Board of Examination*.¹⁸ The Court held and observed that it is also relevant to refer to Article 15(3) of the Constitution of India which specifically carves an exception in respect of any special provision for women and children. Thus, in view of Article 15(3) of the Constitution of India, it would not be open to anyone to assail

¹⁷ Josh Levs; "All In : How Our Work-First Culture Fails Dads, Families, and Businesses--And How We Can Fix It Together"; (Harper Collins Publishers, 2015)

¹⁸ *Dr. N Siva Krishna v. National Board of Examination*, (2015) 7 SCC 392



any provision of law on the ground that special arrangements have been made with respect to women and children. Maternity leave, is in fact, for the benefit of the mother and child. Paternity leave is also to allow a father to take care of both the mother and child. Therefore, in one sense, even paternity leave can be said to be in aid of the woman and/or child involved.

REQUIREMENT OF PATERNITY LEAVE IN INDIA

Paternity leave and gender dynamics: Paternity leave is a way to deal directly with the gender inequalities that prevail both at the workplace and at home.¹⁹ The undue and unfair amount of burden of childcare placed on women at home is bound to and does, spill over into their workplace and professional lives. Its natural consequence is that it puts obstacles across women's careers and might reduce chance of growth in the job while some women may choose to quit altogether.

Gender Equality: Gender equality is an ideal, a value, and a socio-political goal of democratic societies. It is also an overarching concept, present in every layer of social life.²⁰ Gender equality these days is embedded in major human rights instruments and is an independent goal of sustainable development. One of the goal of gender

equality sustainable development is to recognise and value unpaid care and domestic work through the provision of social services, infrastructure and social protection policies and to promote shared responsibility within the family as appropriate across the nation.²¹ Paternal leave and incentives for a father's leave-taking constitute critical attempts to promote gender equality by challenging the stereotypical male gender role. To promote the involvement of men in care responsibilities is an example of how legislation and regulation can help change society through the establishment of a legal framework that not only allows but also encourages men to take care of their children. As per ILO figures, an Indian woman on average spend 297 minutes daily on unpaid work, mostly caring for children or elders; the average male, on the other hand, puts in just 31 minutes.²² No wonder India is bucking the global trend of improved gender parity in labour force participation but the proportion of female labour force participation in India is just 27%, as compared to 79.9% among men.²³ Therefore, as the practice of equally shared parenting is fast gaining ground in the West, India also must pave the way for attitudinal change by making changes on the legislative front.

¹⁹ "Parental Leave Systems"; (OECD Family Databases); Available at https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

²⁰ Miriam Rocha; "Promoting gender equality through regulation: the case of parental leave"; (TTPL, Volume 9, 2021); Available at <https://www.tandfonline.com/doi/full/10.1080/20508840.2020.1830565>

²¹ Francine D. Blau and Ronald C. Ehrenberg; "Gender and Family Issues in Workplace"; (Russel Sage Foundation, New York, 1997)

²² "Maternity and paternity at work Law and practice across the world"; (International Labour Office, Geneva, 2014); Available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf

²³ Ibid



Prevention of discrimination against women at workplace: As seen above, the participation of women in labour force in India is quite low as compared to men. Often the employers do not want to hire women because women are expected to be involved in both professional as well as home making business. Parental leave can help in reducing the discrimination against women in workplace; particularly at the stage of hiring. The reason is that if it is equally possible for men and women to take leave, employers will be less reluctant to hire women of childbearing-age. It is also widely observed that women who opt for the full term of maternity leave often return to work to a decreased share of profile responsibilities or at a lower pay. Making paternity leave mandatory could promote the culture of not penalising women for maternity leave and also not discriminating against women during recruitments.

On the employer's front the work would not be affected much as both the men and women would be equally sharing the responsibilities at home as well as managing their work on professional front.²⁴ Also, paternity leaves help in improving the health of new mother²⁵ as it provides her time to care for herself without having to worry about the needs of the child as she can be assured that her child is in the safe hands of the father himself. This further enables a woman to work outside the home more, focus better on work and increase their income.

²⁴ Victoria Gordon and Beth M. Rauhaus; "*Maternity Leave - Policy and Practice*"; (Routledge, 2nd Ed, New York, 2013)

²⁵ Gayle Kaufman; "*Fixing Paternity Leave : The Six Month Solution*"; (New York University Press, New York, 2020)

In conclusion it can be summarised that the advantages of paternity leave percolate down to women and children as well. The gendered segregation of workers is one of the key barriers towards gender equality and a more egalitarian society in general. The 'men as sole breadwinners' model is a concept which has become outdated and is deeply orthodox one at worst.²⁶ Society has changed drastically but some stereotypes and beliefs are so deeply entrenched in the public awareness that only tangible steps will help us move closer towards achieving gender equality, and bringing a policy for paternity leave is one of such steps.

COMPARATIVE ANALYSIS OF PATERNITY LEAVE IN OTHER PARTS OF THE GLOBE

Paving way for rights of women has been the outcome of a centuries long struggle, and the result is still not uniformly visible across the globe. Certain countries have shown a huge response to the outcry for the rights of women in a domestic set up as well as the world beyond the home. However, there are countries which still are ruled by patriarchal mindset and consider women as the weaker gender. This difference in attitude of different parts of world in recognition and protection of rights of women can also be evident from the family policies of the state. How the countries treat families which are the basic unit of society, tells us about the welfare goal

²⁶ Josie Cox; "*Paternity leave: The hidden barriers keeping men at work*"; (BBC, July 12th 2021); Available at <https://www.bbc.com/worklife/article/20210712-paternity-leave-the-hidden-barriers-keeping-men-at-work>



of the state. Japan leads the world in paid leave for fathers. It is the only country that offers at least six months at full pay for new fathers. On the other hand, USA fares the worst, having no paid parental leave. New parents get 12 weeks of unpaid leave but the law applies only to those at a company of at least 50 employees, and have worked for at least a year.

NORWAY: The Norwegian benefit system for new parents is one of the most generous and flexible in the world. Children are considered a priority in Norwegian society.²⁷ This can be seen from the fact that all core education and higher education is delivered free of charge. But the focus on children starts long before school in Norway. The first years of a child's life are seen as key for the child's development. For this very reason, parents are entitled to a combined 12 month's leave related to the birth of a child.²⁸ However, an important feature of Norway's policy that they offer parental leave in place of paternal leave. This leave includes both women and men as a family and does not only cater to a specific sex. Both the parents together are entitled to a combined total of 48 weeks leave in connection with the birth and after the birth.²⁹ This can be extended to 58 weeks if a lower rate of payment is accepted by the parents. This time also includes the mother's right to leave for up to 12 weeks during the pregnancy and six weeks of leave reserved for the mother after the birth.³⁰

²⁷ Berit Brandth and Elin Kvande; *“Designing Parental Leave Policy: The Norway Model and the Changing Face of Fatherhood”*; (SCM, Bristol University Press, 1st Ed, 2020)

²⁸ Eydal, Guðný Björk, Rostgaard and Tine; *“Fatherhood in the Nordic Welfare States : Comparing Care Policies and Practice”*; (Policy Press, 2016)

When both parents are entitled to the parental benefit, the parental benefit period consists of a maternal quota, paternal quota and a joint period that can be shared as desired.

FINLAND: This Nordic country provides for paternal leave exclusively for fathers unlike its neighbouring country. Fathers can, after the birth of the child, take paternity leave for a maximum of 54 working days.³¹ Of this, the father can be at home at the same time as the mother for a maximum of 18 working days, i.e., approximately three weeks. Thus, this is a small window of time where both the mother and the father get to spend time as a family and to grow and develop their own bond with the child as well as each other. This is an excellent provision especially in modern times where the needs of people are much beyond physical and financial support and mental health is an emerging area of utmost concern. In this way, an opportunity is given to both the parents to develop their emotional connect with each other which is ultimately crucial for providing a healthy life to the child. Paternity leave begins after maternity leave. The parents are paid a **parental allowance** (*vanhempainraha*) for 158 working days.

JAPAN: Japan has among the most generous parental leave of any nation in the entire world. Fathers can take up to a year off – two-thirds of it with full pay – after the birth of a

²⁹ *“Parental Leave Systems”*; (OECD Family Database, 2020); Available at https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

³⁰ *Ibid*

³¹ Carl Cederström; *“State of Nordic Fathers”*; (Nordic Council of Ministers, 2019)



child. But few, if any, men use the benefit. OECD figures show only around 3% of Japanese fathers take any paternity leave.³²

SUGGESTIONS AND CONCLUSION

In domestic set up where affording a comfortable life for the family is the prime concern, financial considerations are powerful factors which weigh heavily in making leave decisions. The wage gap between male and female work force in every field is not a hidden fact and women still earn about 15% less than men, on average in many countries. So, economically speaking, it is usually only logical for the fathers to continue working, especially if the parent's leave is paid less than the previous salary, or it is not paid at all. This is an important factor which impacts the use of paternity leave by men as child birth is often a time of great pressure on household budgets. Many families may feel inadequate. With the increased economic expenses, in terms of medical bills, food, clothing and others, not many men can afford to opt for paternity leave if it is not paying them well. On the contrary, neither Prince William and Mark Zuckerberg had to lose sleep by making huge cuts in the family income when they decided to spend their time hugging and changing diapers of their infant for a while. Not surprisingly, research suggests that the use of paternity leave may be higher if the leave is not only paid but is well paid - perhaps half

or more of past salaries.³³ Father's rates in Iceland and Sweden are well paid over 60% of the final income. Similarly, policy reforms in 2007 in Germany brought well-paid bonus months to partners; as a result, the share of children whose father has taken leave has increased by more than 50% in Germany between 2008 and 2013, to 32%.³⁴ Therefore, the requirement is not only to have a paternity leave policy but to have a well paid leave policy as well. A policy which is just for the purposes of sticking on papers without having any real time benefits, will not have any impact towards gender equality in the society. Weak paternity leave policies exist in many countries and in many workplaces even today and they are unable to serve their purpose as men simply are ignoring such policies and choosing work over their child simply because they cannot afford to lose their income.

However, gender norms and cultural norms still pose significant barriers to fathers who cannot be cared for. A 2013 study of Korean trade unions³⁵ which asked fathers in Korea why they decided not to take time off; indicated that more than half were concerned about the unfair discrimination they would face. In France, where men account for only 4% of parents applying for parental benefits, 46% of fathers who do not take full leave say they do not care.³⁶ In all OECD countries except for at least 50% of people who believe that paid leave should be available to parents

³² Douglas Broom; "*The 'future' prime minister of this country just made history by challenging gender stereotypes*"; (World Economic Forum, February 7th, 2020); Available at <https://www.weforum.org/agenda/2020/02/paternity-leave-japan-government-minister/>

³³ Jody Heyman; "*Paid parental leave and family wellbeing in the sustainable development era*"; (PHR, September, 2017); Available at <https://publichealthreviews.biomedcentral.com/article/s/10.1186/s40985-017-0067-2>

³⁴ Ibid

³⁵ *Supra Note 30*

³⁶ *Supra Note 24*



believe that leave should be taken “completely” or “mostly” by the mother. In some countries, such as the Czech Republic, the Slovak Republic and Turkey, 80% support this statement. Such figures largely showcase how society has cast everyone into their stereotypical roles and how this illogical assignment of roles is impacting individuals, families and societies as a whole. Men are shirking from taking on the role of an active father only due to the prevalent mindset that domestic affairs are the prime responsibility of a woman. Men from the very inception of their lives are told to switch off their emotional side and this is a major reason preventing men from understanding the significance of paternity leave and its benefits for the family. Looking after a child and his needs, is not just the task of a mother but an equal duty of the father as well. Paternity leave is a beneficial policy which highlights this aspect and works towards enabling fathers to take up their duties towards the new born child. One way to tackle this problem is to make paternity leave for a certain number of days as mandatory leave for fathers. Providing mandatory leave would reduce the social stigma attached to the utilization of paternity leave by fathers. This would help the fathers in opting for paternity leave with ease and comfort by removing any dilemma due to external factors.

In the end, the employer's views and the environment in the company clearly play an important role. Some employers may view a father who is taking long leave of absence as a non-commitment to his job, leading to fathers who think of long term-leave of fear for their job and promotion in their career. In Japan and Korea, fathers who are on paid

parental leave are worried that this will have a detrimental effect on their work and their relationship with their colleagues. Such a work ethic may not be so common in many other countries, but even in Sweden, working in a small workplace or in one with a long-hours culture can prevent fathers from using parental leave. Public policy can provide excellent conditions to allow fathers to spend more time with their children. But change needs to come both from employers and the father himself, if we are to succeed in a better sharing of paid and unpaid jobs between men and women. This is not only about promoting gender equality at work and at home; it is also about improving the quality of life—for men, women and children. Therefore, prevailing work atmosphere and notions and concepts prevalent at workplace and play an important role in either encouraging or discouraging men from opting for paternity leave. Active effort on part of employers is required to ensure men that paternity leave will not have an adverse impact on their performance or their evaluation as an employee. Social changes are required which includes cultural acceptance of policies such as paternity leave. It is only when men will feel secure with respect to their job prospects, they will feel comfortable and confident in availing paternity leave.

For advocates of paternity leave, recent years have brought some good news. High-profile companies like Amazon, Netflix, and Microsoft have created or expanded their programs. Twenty-nine percent of organizations now offer some paternity leave, up from 21% a few years ago, according to the Society for Human Resource Management. Many private companies operating in India have also offered a fresh outlook by



introducing paternity leave for its employee. This has been a welcome measure in a regressive society such as India especially in 21st century when moment for recognising equal rights and responsibilities for both men and women has been gaining momentum. And firmly, many states are developing paid family vacation insurance schemes, which include new father's leave. However, this is an aspect where India needs to work. The need of the hour is for India to have a strong paternity leave policy. For this India can look for inspiration from other countries especially the Nordic countries which have given the world near to an ideal paternity leave policies.
