

# Analysis of Paternity Benefits in India

Jashan Merchant<sup>1</sup>

## Abstract

In today's socially aware times wherein more and more employees are becoming aware of their rights, maternity benefits has been the topic for nationwide debate with the latest amendment to the legislation increasing sanctioned maternity leave to 26 weeks, making India one of the most pro-maternity leave countries. In light of this legal development, the question arises, "Are paternity benefits feasible in the Indian context?"

Being a country based on customs and traditions, it has been practiced in India since the early ages that a man fulfills the role of a breadwinner in a family whereas a woman's responsibility is to manage household duties including bringing up children. However, with the dynamic change in economic and social scenarios, the contribution of a father in the family has grown from not just monetary to also being hands-on and present to take care of the children on an equal standing with the woman in the family. With both parents being economic contributors to the household these days, it is only natural and fair that the homely duties are divided in a balanced manner as well. Although various foreign countries such as Spain and Norway have recognized the significance of paternity leave and provided for the same in a codified manner, India still lags behind in the implementation arena, although the Paternity Benefits Bill, 2017 has been proposed in the Lok Sabha with the intention to become an enactment.

The abovementioned is an elaborate provision for paid leave to fathers including those with adopted children, signaling a new era in the inclusivity of the Indian legal system. This research project, hence, aims to analyze the feasibility of paternity benefits in India, primarily paternity leave, using this Bill as one of the major tools of analysis.

This project will keenly study whether, keeping in mind the current social fabric of Indian families, paternity benefits need to be on par with those of maternity provisions and if their codified existence will benefit society, and if so will discuss the implementation of the same. This topic has been chosen, as it is a fresh perspective on an aspect of labour law that till recently, only included one gender in its ambit. The researcher will provide original opinions and analysis on whether paternity benefits are the need of the hour or simply an unnecessary illusion.

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<sup>1</sup>Student, Maharashtra National Law University, Mumbai.

## **Need For Paternity Benefits in India**

In the Indian scenario, traditions and customs of an orthodox nature usually prevail wherein the woman is the caregiver of the family and a man fulfills the primary breadwinner's role. In accordance with this concept, a woman is usually given the responsibility of child caring whereas the father is expected to only financially provide for the same. However, due to rising inflation and modernization of times, in most households these days, both parents fulfill the role of financial providers, especially in the urban or semi-urban areas of India. Hence, in order to promote the spirit of fairness and equality, the father should also be given an opportunity to assist in the care of the child (especially at a newborn stage) from a hands-on perspective, which has been supported by the International Labour Organization (ILO) in its studies. This calls for paternity benefits being granted such as paternity leave and so forth.

## **Background of Paternity Benefits**

Since maternity benefits are well established and well known in India, the researcher will not dwell on the same, instead focusing solely on the paternity aspect. In 2017, Member of Parliament Shri Rajiv Sattav proposed the Paternity Benefits Act, "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." Although this legislation is currently in the Bill stage and has not been enacted, it is a promising step as it is a unique and revolutionary legal proposal that has been met with great enthusiasm from all quarters.

## **Analysis**

### **Positive Characteristics**

1. Inclusivity: This Bill applies to men working under Government establishments, commercial establishments, shops, self-employed or in the unorganized sector hence providing for this provision to be enacted at a large scale and ensuring a wide reach across all classes and sectors.
2. Term of paternity leave: This Bill allows for upto three calendar months of paternity leave to be granted, which is a rational time frame to provide support after childbirth.
3. Progressive concepts: The Bill also includes the situation of a "commissioning mother" i.e. a situation wherein the legally wedded wife of the man claiming paternity leave has birthed the child through embryo donation to another woman, hence keeping in tune with biological advancements by providing for infertile/ older couples who were unable to conceive a child naturally. Further, a leave for miscarriage upto 7 days is also provided

for, hence taking into account an emotional situation wherein parents have lost the child. Also, a father has full freedom to enter into a contract with his employer if benefits granted by them are over and above those stated in the Bill. The Bill also only applies to men with less than two surviving children, who may sound like a negative, however takes into account the population explosion India is suffering from and the benefits can act as an incentivized solution for the same.

4. Authorities clearly stated: The procedure for benefits being granted has been lucidly laid out, with a Government Parental Benefit Scheme being proposed to provide the paternity monetary benefits and Inspectors to be appointed by the Government in case employers' contravene the provisions of this Act, acting as a platform for an aggrieved father to claim his paternity benefits if not given, and criminal punishments for employers who do not comply.

### **Negative Characteristics**

1. Adoption: The paternity leave to be given for adoption of a child below three months is only fifteen days, hence not at par with that given for a biological child. This disparity is unnecessary and uncalled for as the care required by a newborn is the same regardless whether the same is adopted or biological.
2. Validity: Paternity benefits can only be claimed by a legally wedded husband; hence unmarried couples cannot avail of the same.
3. Lack of Procedure in relation to the Inspectors: The Inspectors, given the designation of public servants and acting as the authority to ensure implementation of paternity benefits, are to be appointed by the appropriate government, however their qualifications or process of appointment has not been provided for, creating a huge loophole which may give rise to confusion and bias.

### **Conclusion**

Coming to the question of feasibility of paternity benefits, the same can be said to not only be feasible but hugely beneficial from a social and economic standpoint for Indian families. Legally providing for child care responsibilities to fathers in the unorganized or self-employed sectors ensures that parents in more rural settings not working in routine white-collar jobs will also be able to claim the advantages of this legislation.

This Bill is hence a basic structure for the blueprint of paternity benefits to solidify in India. Although it does have more scope for progressiveness and inclusivity, the thought of it is a positive in the first place. With various well-laid out provisions, if implemented in an

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unbiased and proper manner, it has the potential to be a tool of great benefit to parents all across India and cement gender equality at a high level.