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## PATERNITY LEAVE AND ARTICLE 42

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### Meaning

"Paternity Leave" is defined as "a period of time during which the father of a new child is authorised to be away from work," according to the Oxford Dictionary. Paternity leave is a right granted to fathers to take time off work after the birth of their kid. Paternity Leave is when a father is working as an employee and is given time off to care for his new-born child.<sup>1</sup> Its primary goal is to help the wife recover from childbirth and form a bond with her kid.

In January of year 2021, Indian captain Virat Kohli took a paternity leave and decided to forego the India-Australia test series. Paternity leave has been the subject of ongoing debates and discussions since then. Paternity leave has not always been considered socially acceptable in the workplace. Men were expected to provide for their families, while women were expected to look after them. As our world becomes more contemporary, the concept of paternity leave is becoming increasingly acceptable for fathers to take.

### Need for Paternity Leave

While fathers may not face the same physical challenges as birth moms (recognising that some mothers have children through adoption, surrogacy, and other means), spending time at home with their child and partner is essential. Providing a longer paid leave term, more flexibility in the scheduling of the leave period, or increased financial support would all encourage new fathers in taking the leave.

Co-parenting during the first days, weeks, or months of a child's life can be of great help in shaping the dynamics of the family. Parental leave also allows fathers to lay the foundation for a more equitable distribution of future responsibilities. Parental leave helps to build a very strong relationship with children over time. Parental leave can improve the starting conditions for working mothers. Their vacation helps them support their partner's career goals and minimize the negative impact on their career progress.

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<sup>1</sup> Gavett G., Brave Men take Paternity Leave, Harv. Bus. Rev., July 14 2014, at 3.

## **Matter of Equality**

The fight for equality between men and women is never-ending. One way to begin is to ensure that all parents have joint responsibility for the kid's well-being from the minute the child is born. Not only should mothers be allowed to take time off to care for their children, but so should fathers. A father's responsibility for his child should be as natural as a mother's.

In India, the time has come to create a more gender neutral and just society, and providing paternity leave for men can be a big step in that direction. This will not only help to eliminate stereotypes and male macho attitudes from society, but it will also relieve women of the psychological pressure and burden of child rearing, allowing them to work freely. Paternity leave has been extensively recognised and garnered positive responses all around the world, with numerous European countries and multinational corporations (MNCs) enacting rules to recognise it.

## **Paternity Leave in India**

There are no national laws on paternity leave in India. MP Rajiv Satav submitted a Paternity Benefit Bill in Lok Sabha for the first time in 2017<sup>2</sup>, in a historic step to protect working men's fatherhood rights and offer a nationwide recognition of paternity with uniform policy across all sectors. Unfortunately, the bill could not become law, and India continues to lack paternity leave legislation.

The government has implemented a number of regulations and provisions to protect women's interests and to build a gender-neutral society in which women have equal rights to men and stereotypes and other forms of discrimination are eliminated from Indian society. The Maternity Benefit Act of 1961, as well as subsequent laws such as the Employees State Insurance Act of 1948, the Central Civil Services Rules of 1972, the Mines Act of 1952, the Plantations Labour Act of 1951, and the Equal Remuneration Act of 1976 (ERA), were passed to ensure women's participation in the workplace and to provide job protection during their maternity leave. Pregnant women are entitled to up to 26 weeks of paid leave with job security under this act (amended in 2017).

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<sup>2</sup> The Paternity Benefit Bill, 2017

These acts are in compliance with Article 42<sup>3</sup> of the Indian Constitution, which states that "the state shall make provision for providing reasonable and humane working conditions and maternity relief." The Maternity Benefit Act, as well as all other similar legislation, are to be viewed in light of Article 42 of the Indian constitution, which, while not enforceable by a court, is fundamental in governance and requires the state to provide for maternity relief and to provide just and humane conditions.

The Maternity Relief Act, like many other such statutes, ensures women's involvement in the workplace even while pregnant and preserves their jobs, but it also reinforces the notion that child rearing is solely the responsibility of women and fails to create a gender-neutral society. That is why, even after 75 years of independence, patriarchal gender roles persist, implying that a mother's sole obligation is to care for her kid. Although the mother biologically gives birth to the kid, investigations and research have revealed that both the mother and father have an equal role in the child's growth. As a result, Article 42 is deficient in that it does not erase the stigma associated with patriarchal gender roles.

### **Legal Provisions**

Article 42 of the directive principles of state policy in our constitution provides for maternity leave. Numerous laws and regulations have been enacted to protect the interests of working women during their maternity leave. Unfortunately, women's participation remains much below the global norm, and women in our country are still discriminated against or placed in disadvantaged positions at work.<sup>4</sup> This article should be amended to include paternity leave, emphasising the significance of a gender-neutral society and abolishing patriarchal gender norms in which women are solely responsible for their children. This amendment has the potential to modify society's attitudes, and the need for and benefits of such an amendment in today's fast-paced environment.

Creating a supportive atmosphere in which taking paternity leave is accepted and has no negative consequences for one's career is admirable. It would be great to create the conditions where leave does not have a detrimental impact on one's career or growth. Although there is no law forcing private enterprises to provide paternity leave to their employees, certain multinational corporations do. Businesses are also providing "parental bonding leave" and

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<sup>3</sup> India const. art. 42

<sup>4</sup> *Municipal Corporation of Delhi v. Female Workers* (2000) 3 SCC 224

"secondary caregiver leave" for LGBTQ+ and adoptive parents, recognising the significant advantages to individuals and families. However, like with paternity leave, the number of people who take use of these advantages is still in the minority.

Some of the multinational corporations (MNCs) that have similar policies are:

1. Zomato : 26 weeks parental leave
2. Microsoft : 12 weeks
3. Infosys : 5 days
4. TCS : 15 days
5. Oracle : 5 days
6. Starbucks : 12 weeks
7. Facebook : 17 weeks
8. Deloitte : 16 weeks
9. IKEA: 6 months of Parental Policy
10. Tata Steel : 10 days of Parental Leave
11. UNICEF : 16 weeks

The importance of amending article 42 under the DPSPs of the constitution is significant because maternity leave is only provided in article 42 of the entire constitution, which clearly demonstrates our constitution makers' desire to create a gender neutral society. As a result, the maternity act and other acts were passed to realise this dream, but it is now clear that a dream of a gender neutral society cannot be realised until all patriarchal gender role stigma is removed. Now, if a provision for paternity leave in Article 42 could be included, it will have an educational value and send a message for a more gender neutral society.

Furthermore, it has been demonstrated that institutional contexts or policies can impact attitudes, which will compel the government to develop a paternity leave policy and assist courts in interpreting this provision as a human and fundamental right. India, as the world's largest and oldest democracy, will send a statement to the world about its vision of a just and neutral society by including paternity and maternity leave in its constitution.

### **Indian Judiciary**

A request for paternity leave has been brought to the attention of the judiciary on multiple

occasions, but no unified policy has been developed.<sup>5</sup> In *Chander Mohan Jain v. N.K Bagrodia Public School*<sup>6</sup>, the petitioner challenged the defendant's denial of his paternity leave request and income reduction for caring for his wife and new-born kid. Despite the lack of restrictions, the New Delhi High Court determined that all male employees of unaided accredited private schools are entitled to paternity leave in this case. As a result, private-sector professors can take advantage of paid leave because they are under the Director of Education's control.

In *Rakesh Malik v. State of Haryana*<sup>7</sup>, the petitioner requested paternity leave, which was denied. In his challenge, he asked the Court to formulate such policy under the terms of Article 226. Furthermore, the DTC driver filed an original suit in *Vijendra Kumar V. DTC*<sup>8</sup>, but the Court dismissed the appeal, noting that the DTC had no paternity leave provisions and that the CCS Paternity Leave standards had not been adopted.

## Conclusion

Despite the fact that the constitution has many articles and provisions ensuring gender equality, various laws have been passed to implement the ideal of a just and gender-neutral society with various incentives and positive discrimination for women. The importance of maternity relief for women to provide them with reasonable and humane working circumstances, as noted in Article 42 of the Directive Principles of State Policy, cannot be overstated, since it obligated the state to pass different legislation for women, including the Maternity Benefit Act of 1961. As a result, it is advised that this article be amended to include paternity leave in addition to maternity relief, in light of the need for and relevance of paternity leave in today's Indian society. Men should be allowed, expected, and even required to care for their little child and the home for a few months, in order to create true gender equality. This should be done in the hope that such a meeting would enhance the child's and father's bond and that stereotyped gender stereotypes in the home, as well as sex stereotyping of men and women's duties, would be eradicated in the future. With equal men and women participating in household duties, both the women and men would be able to pursue a job and have greater independence, as well as participate in and dominate politics in the goal of a more equal society. Companies in India must consider their employees' work-life balance. The organisation must realise that taking

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<sup>5</sup> *Shah vs. Presiding Officer, Labour Court, Coimbatore and Others* (1977) 4 scc 384 *Anuradha Arya v. Principal Govt Girls Senior School* (2013), *Gangama v The Secretary* 2020, *State of Uttrakhand v Urmila Masih* 2019

<sup>6</sup> *Chander Mohan Jain v. N.K. Bagrodia Public School & Others*, Civil Writ Petition No. 8104 of 2009

<sup>7</sup> *Rakesh Malik v. State of Haryana*, CWP no.3225 of 2013.

<sup>8</sup> *Delhi Transport Corporation v. Virender Singh*, 116 (2005) DLT 266.

care of their employees will benefit them because more and more new employees will want to work with them, which will have a favourable impact on the company. This will not only impact internal mind-sets, but will also benefit the larger corporate ecosystem.