



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 4 AND ISSUE 2 OF 2024

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 2 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-2-of-2024/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

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Maudhanda Kurichi, Srirangam,

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INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 2 OF 2024

APIS – 3920 – 0001 (and) ISSN – 2583-2344

Published by
Institute of Legal Education

<https://iledu.in>

NEED OF PATERNITY BENEFIT LAW IN INDIA – ANALYTICAL STUDY

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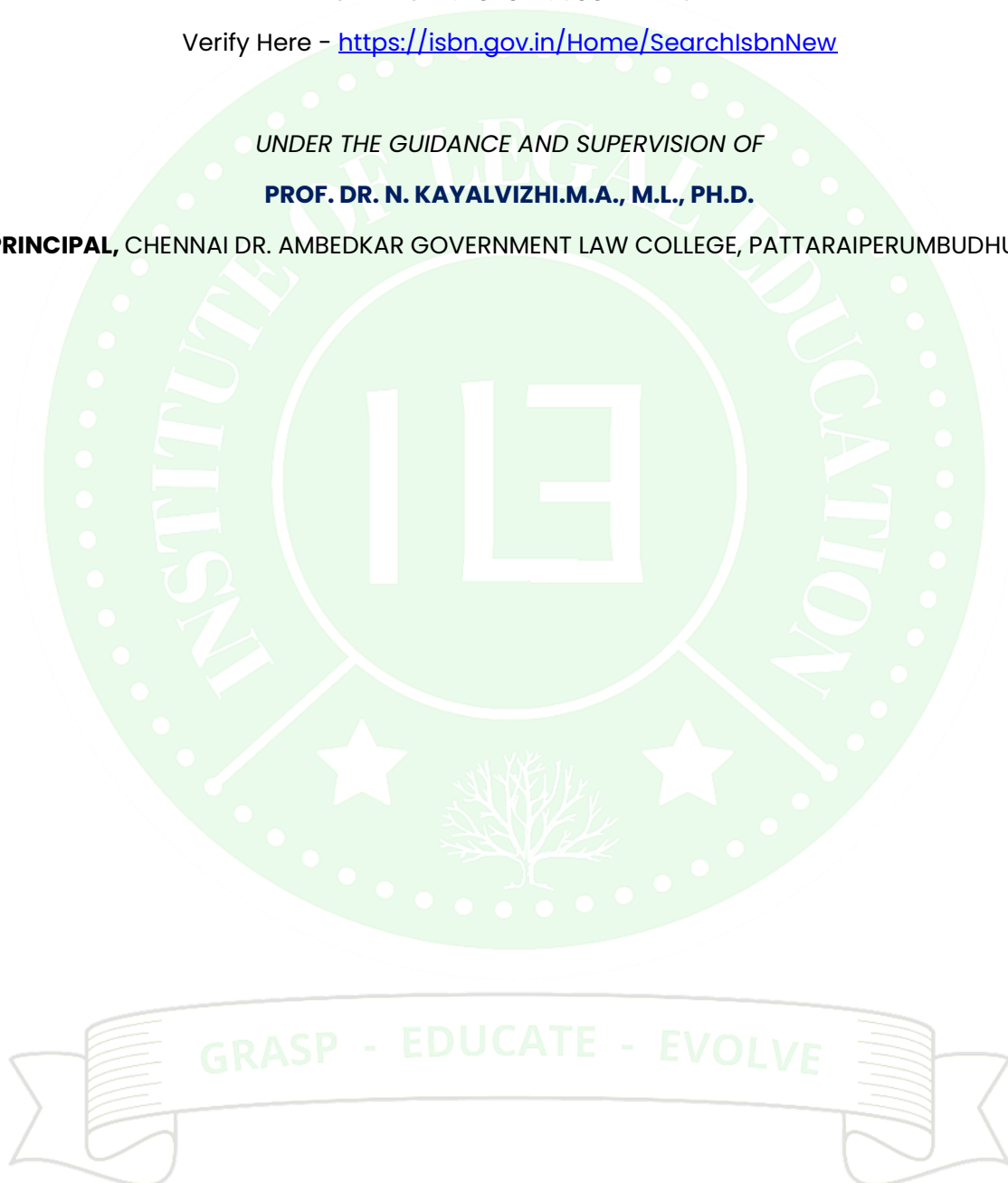
ISBN NO – 978-81-968842-5-3

Verify Here - <https://isbn.gov.in/Home/SearchIsbnNew>

UNDER THE GUIDANCE AND SUPERVISION OF

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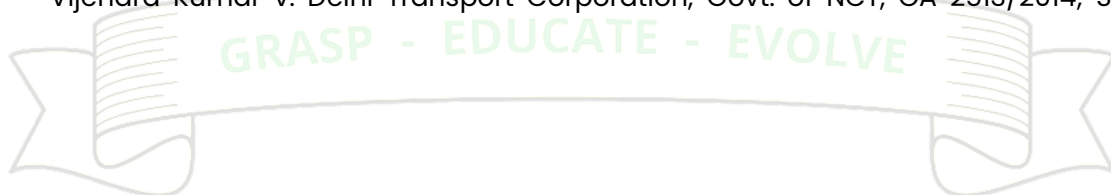
LIST OF ABBREVIATIONS

\$	Dollar
AH	Air Hostess
AI	Air India
AIR	All India Report
Anr	Another
C	Convention
C.W.P	Civil Writ Petition
CCL	Child Care Leave
CCS	Central Civil Services
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CFRA	California Family Rights Act
DPSP	Directive Principle of State Policy
DSEAR	Delhi School Education Act and Rules
DTC	Delhi Transport Corporation
edn.	Edition
ESI	Employees' State Insurance
EU	European Union
FMLA	Family and Medical Leave Act
http	Hypertext transfer protocol
ID	Industrial Dispute
ILO	International Labour Organizations
Int'l	International
IVF	In vitro fertilization
Ker	Kerala
MD	Madurai
No.	Number
OECD	The Organization for Economic Cooperation and Development
Org.	Organisation
Sec.	Section
Ors	Others
SCC	Supreme Court Cases
Soc. Sec	Social Security

UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNICEF	United National International Children Emergency Fund
vs.	Versus
WA	Writ Appeal
WP	Writ Petition

LIST OF CASES

1. Air India v. Nergesh Meerza & Ors., 1981 AIR 1829.
2. B. Saravan v. The Deputy Inspector General of Police & Ors., W.P. (MD) No. 19561 of 2023 and W.M.P (MD) Nos. 16159, 16160, 16161 of 2023.
3. B. Shah v. Presiding Officer, Labour Court, Coimbatore & Ors., 1978 AIR 12; (1977)4 SCC 384.
4. Baroda Borough Municipality v. Its Workmen, (1957) IILJ 8 SC.
5. Bombay Labour Union v. International Franchises Pot. Ltd., (1966) 2 SCR 493; (1966) 1 LLJ 417; 28 FJR 233.
6. Chander Mohan Jain v. N.K. Bagrodia Public School & Ors., W.P. (C) No. 8104 of 2009.
7. Dr. N. Siva Krishna v. National Board of Examination & Ors., W.P. (C) No. 4111 of 2015.
8. Hindustan Antibiotics Ltd. v. Workmen.
9. J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. Badri Mali, [1964] 3 SCR 724.
10. Malayalam Plantations Ltd. v. Inspector of Plantations, AIR 1975 Ker 86.
11. Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr., AIR 2000 SC 1274; Special Leave Petition (Civil) No. 12797 of 1998.
12. Punjab National Bank by Chairman & Anr. v. Astamija Dash, AIR 2008 SC 3182.
13. Rakesh Malik v. State of Haryana & Ors., CWP No. 3225 of 2013.
14. Rattan Lal & Ors. v. State of Haryana & Ors., 1987 AIR 478; 1985 Supp SCR.
15. Shreeama v. Krishnavenanama, 1957 A.P. 434.
16. Vijendra Kumar v. Delhi Transport Corporation, Govt. of NCT, OA 2513/2014; SCC Online CAT 3012.



CHAPTER 1 INTRODUCTION

1.1. THE PERSPECTIVE:

“One who gives birth, one who initiates, one who imparts knowledge, one who provides food and protects from fear – these five are considered as fathers”

– Neeti Sastra¹

Most people's biggest investments in life are their occupations and their families. Both of these realms, earning and caring, are characterized by their specific requirements and agendas. Each realm has a specific set of obligations, requirements, tasks, commitments, and positions that might compete for limited time and energy. Work-family relationships are bidirectional. In other words, both family and job can effect in each other, resulting in work-family conflict. Conflicting job and family duties can negatively impact both a man's family and career. Work-family divergent can lead to marital issues, diminished life satisfaction, increased stress, anxiety, depression and perceived lower quality of life. The birth or adoption of a child is an important adjustment for parents between their work and family life. When a child born, he or she needs extraordinary attention, care, nurturing and bonding from the parents. “Parents”², are the combination of both father and mother who raise their child or children.

Births are the “Emotional roller-coasters”. Parenting a newborn requires sleepless nights, midnight feedings, and long days, which may be exhausting for them. It is essential for parents to spend a plenty of time with the child in the initial stage for rearing it and take parental leave and being stress free from the work place. Nowadays many young mothers are affected in Postpartum-depression which may cause the psychological disorders. The mother needs to recover from any of the physical and mental duress after giving birth to child. Mothers are protected by the World through Maternity Benefits before and after the child birth. Maternity leave is pretty universally accepted and expected but it is unfortunate that the paternal leave has been not recognized effectively by many countries including India. Alike mothers, fathers also need to take some time off, after the child born. When fathers take extended leave, especially during the crucial early weeks after a child's birth, they have the opportunity to bond with their newborns and establish a strong attachment. This early bonding has been linked to improved emotional regulation and social skills in children. Additionally, fathers who are actively involved in their children's lives from the beginning are more likely to continue being engaged parents as their children grow older. Studies show that paternity leave can lead to good health benefits for the mother who increases breast feeding rates, higher women participation in their occupations, good environment for the infant growth. Additionally, paternity leave can help reduce the risk of postpartum illnesses for mothers. The presence of a supportive partner during the postpartum period can help alleviate stress and provide emotional support, which are important factors in preventing conditions such as postpartum depression.

By sharing the responsibilities of caring for the newborn, fathers can help mothers get the rest and support they need to recover from childbirth and adjust to their new role as parents. The impact of fathers' involvement in childcare and household responsibilities extends beyond the home and has implications for gender equality in the workplace. When fathers take on an active role in parenting, it challenges the notion that childcare is solely a mother's responsibility. This shift in perception can lead to more supportive workplace policies, such as paid paternity leave and flexible work

¹ Neeti Sastra, Chapter 1, Verse 13.

² Parent, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/parent> (last accessed Apr.2, 2024)

arrangements, which enable fathers to be more involved in their children's lives without sacrificing their careers. In most countries, the principles of equality and non-discrimination have been incorporated into national legislation, many governments have introduced active labour market policies to combat gender discrimination, and a growing number of employers' and workers' organizations have implemented measures to help ensure equality opportunities and treatments.

The national maternity and parental leave policy for organized or unorganized sectors eases the transition and allows both parents to be involved with the infant. By recognizing the importance of fathers in the early stages of parenthood, we can create a more supportive and healthy environment for both mothers and their newborns. Overall the Paternity leave is a form of leave granted to fathers following the birth or adoption of a child. By challenging traditional gender norms, fathers who actively participate in childcare and household chores set a positive example for their children, teaching them the importance of gender equality and respect for all family members. It allows fathers to take time off from work to bond with and care for their newborn or newly adopted child, as well as to support their partner during the transition to parenthood. Paternity leave can vary significantly in terms of duration, eligibility criteria, and whether it is paid or unpaid, depending on the country's laws, employer policies, and social norms.

India is a nation that embraces the Indian Constitution as a fusion of different constitutions from across the globe. It upholds the principles of equality and condemns any form of discrimination based on religion, race, caste, sex, place of birth, or any other factor. As a rapidly progressing country, it is crucial to ensure that both genders are granted equal opportunities, rights, authority, and fairness. Offering solely maternity relief benefits to women is an evident injustice towards men, as they equally contribute to the creation of their children. The primary purpose of paternity leave is to promote gender equality, support the well-being of families, and encourage fathers to actively participate in care giving responsibilities. Paternity leave allows fathers to bond with their child, support their partner during the postpartum period, and contribute to the overall health and development of the family unit.

1.2 AIM:

The primary aim of the study is to explore the "Need of paternity benefit law in India" for both organized and unorganized sector workers within Indian law, as a model for non-discrimination. The study also emphasizes the need to enact a Paternity Benefit law evolving from the Paternity Benefit Bill of 2017³ and examines the significant contributions of the judiciary in understanding the evolution of paternity leave over the past decade.

1.3 SCOPE & OBJECTIVE OF THE STUDY SCOPE:

The primary scope of this study is to identify and evaluate gender equality, particularly in light of Article 14 of the Indian Constitution, which guarantees equal protection under the law. The study specifically examines and contrasts the availability of paternity leave with the advantages of maternity leave for women. With an emphasis on the significance of the Paternity Benefit Bill, 2017, and its successful implementation in both the organized and unorganized sectors, the study aims to evaluate how paternity benefit laws and policies are presently being implemented. It seeks to identify the challenges encountered by male workers following childbirth, offering recommendations and findings to address these issues. Drawing insights from other countries' policies, initiatives, and amendments related to Paternity Benefits, the research tries to amplify the voices of male workers who tirelessly contribute to the workforce in India.

³ Paternity Benefit Bill, Bill No. 230 of 2017, Parliament of India (2017), Parliament.nic.in (last accessed Apr.4,2024)

Objective:

There are three objectives interconnected when utilizing paternal leave to promote fathers taking time off:

- (1) To enhance their participation in raising children and sharing domestic responsibilities,
- (2) To mitigate the career setbacks or labour market disadvantages faced by women who take extended breaks from work for childbirth and
- (3) To transform societal norms and attitudes in order to foster gender equality under the Art.14 of the Indian Constitution.

1.4 STATEMENT OF PROBLEM:

In India the major problem is the gender bias or inequality in work place and that solution for these problems are inaccurate and widely misused. This research in particular is to point out the problems, issues and gaps existing in the codification to male workers. The role played by Paternity leave gives an overall perspective towards the new job revolution booming in India. But still it could not codify and there is no clarity for male workers legally. It has brought to the debate on Pros and cons between industries and Male workers.

Paternity leave is a vital component in fostering a more equitable, healthy, and economically vibrant society in India. By promoting gender equality, supporting child development, and enhancing economic and social outcomes, paternity leave can have far-reaching positive impacts on Indian society. Therefore, it is crucial for policymakers and employers to prioritize and implement effective paternity leave policies.

Recognizing and implementing paternity leave through social security systems and official rules will greatly benefit Indian society. It promotes gender equality, fosters child development, and improves economic and social well-being. The government, employers, and civil society may work together to provide social security and statutory acknowledgment for paternity leave, resulting in positive change in India.

Although privacy in birth and family concerns is vital, it should not overshadow the considerable benefits of government support for childbirth and family formation. To safeguard individual privacy while providing financial help, the government can develop strong data security measures, provide informed permission, and make participation optional. A balanced strategy benefits families while simultaneously promoting social fairness, economic stability, and public health.

To ensure adequate support and protection for all individuals and family units, social welfare policies should take into account a diverse range of family and gender relationships. This includes legal recognition, non-discriminatory practices, financial support, health care and education, employment, and parental leave both maternity and paternity leave. By addressing varied family and gender connections, the government may create more inclusive and fair social welfare programs. These policies assist all families while simultaneously promoting social cohesion, gender equality, and individual well-being across all family forms.

The Central Civil Services (Leave) Rules, 1972 regarding paternity benefits need to be uniformed for several important reasons includes ensuring that paternity leave benefits are consistent across all central civil services prevents discrepancies and ensures that all male employees, regardless of their specific department or role, have access to the same benefits and also the discrepancies in leave policies can lead to unfair treatment and dissatisfaction among employees, which can affect morale and productivity in other sector employees. Uniform paternity benefits under the Central Civil Services

(Leave) Rules, 1972 are important for promoting gender equality, ensuring consistency across sectors, improving employee well-being, child development outcomes, encouraging a modern workforce, simplifying administration, and supporting diverse family structures. By doing so, the government may foster a more egalitarian, supportive, and progressive workplace for all employees.

1.5 HYPOTHESIS

The Constitution ensures gender equality and social security, yet paternity leave is only provided for central government employees under the Central Civil Services (Leave) Rules, 1972. There are no provisions for paternity leave for male employees in state governments, or in the organized or unorganized sectors. Therefore, India needs to develop and implement a comprehensive paternity benefit law that guarantees paternity leave for all male employees across all industries as a fundamental right upon the birth of a child.

1.6 RESEARCH METHODOLOGY:

The suggested study will adhere strictly to the Doctrinal Research Methodology. We will investigate theoretical constructs based on current literature and judicial viewpoints to better comprehend the situation and research outcome. This study will use primary sources (Constitution of India, Statutes, Textbooks, and Case Laws) and secondary sources (Statutes, commentaries on national and international legislation, articles, and journals, academic and media data) primarily available online. The study will involve a detailed legal interpretation and comparison. Data will be acquired from credible sources and appropriately credited.

1.7 REVIEW OF LITERATURE:

Research is a continuum, where you pick up the thread from previous works, known as extant literature. You relate your work to this existing body of knowledge, draw conclusions, and explore critical aspects, questions, angles, and insights derived from it. This entire process is known as a literature review⁴. To understand what has already been done in her research area, the researcher conducted an intense search through various sources, including books, legislations, journals, and the national and international reports. After a thorough examination, she extended the thread of her research from the following extant literature. To provide a clear understanding of the literature review, the researcher has categorized these sources into discrete primary, secondary, and tertiary sources, as follows:

PRIMARY SOURCES:

THE CONSTITUTION OF INDIA, 1950:

The Constitution of India establishes the framework for the country's legal and political system, ensuring democracy, equality, and justice for all citizens. It includes provisions that promote equality before the law, prohibit discrimination, and uphold the dignity and welfare of individuals. Additionally, the Directive Principles of State Policy guide the government in creating humane and equitable working conditions, indirectly supporting measures like paternity leave. Art.14 protects equality before the law, supporting fair treatment of fathers during paternal leave; art.15 outlaws sex-based discrimination and suggests that males should get paternity benefits; art.16 guarantees equitable job opportunities and advocates for paternity leave to avoid workplace discrimination; art.21 guarantees the right to live with dignity and promotes work-family balance. Art. 42 of the Directive Principles of State Policy calls for decent working conditions, including paternity leave and art.47 highlights the state's responsibility to enhance public health and living conditions, indirectly

⁴ Manoj Kumar Sinha & Deepa kharam(eds.), Legal Research Methodology, (Lexis Nexis, ILI, 2017)

supporting paternity benefits by acknowledging the value of parental engagement in early childhood development.

MATERNITY BENEFIT ACT, 1961 (ACT NO.53 OF 1961):

The Maternity Benefit Act of 1961 is a crucial component of Indian law that governs women's employment in specific organizations during predetermined periods before and after childbirth. It ensures that women receive maternity benefits, including as paid leave, to protect their health and the well-being of their children. Previously, maternity benefits were distributed across governments and enterprises. The Act standardized these benefits and aimed to foster gender equality in the workplace by recognizing working mothers' unique needs. The Maternity Benefit Act has had a significant impact on the lives of working mothers across India. It has contributed to the development of maternal and child health by ensuring that mothers may take the necessary time off work without incurring financial difficulty.

CENTRAL CIVIL SERVICES (LEAVE) RULES, 1972

The Central Civil Services (Leave) Rules offer provisions for paternity leave for male employees under the central government in India. Eligibility extends to all male employees, regardless of their employment status, whether temporary or permanent. Paternity leave can be taken for a maximum duration of 15 days, with the possibility of extension by an additional 15 days under exceptional circumstances.

THE PATERNITY BILL, 2017:

The Paternity Benefit Bill, 2017, was a proposed legislation aimed at providing paid paternity leave to male employees in India. The bill sought to grant eligible fathers up to 15 days of paid leave to care for their newborn child. Its purpose was to promote gender equality in caregiving responsibilities and support the well-being of families. However the bill had not been enacted into law and its status remained pending in the legislative process.

THE DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION,1958 (NO. 111):

This convention addresses discrimination in employment and occupation, emphasizing the importance of equal opportunities and treatment for all workers. It mandates that ratifying countries promote equality and eliminate discrimination based on various factors such as race, colour, sex, religion, and social origin. By requiring countries to incorporate its provisions into national laws and practices, the convention aims to create fair and inclusive workplaces worldwide. Through its implementation and monitoring mechanisms, Convention No. 111 plays a crucial role in shaping policies and practices to combat discrimination, promote diversity, and ensure equal opportunities for all in the realm of employment and occupation.

THE WORKERS WITH FAMILY DUTIES CONVENTION OF 1981 (NO. 156):

The international labour standard designed by the International Labour Organization (ILO) to address the challenges that workers with family duties, particularly fathers, face. This agreement acknowledges the need of aiding workers in balancing their work and family responsibilities, and it emphasizes the need for measures to satisfy their caring obligations. While the convention does not specifically address paternity leave, it does advocate for laws and practices that allow workers, particularly fathers, to fulfill their family responsibilities without facing discrimination or unjust treatment at work. Convention No. 156 encourages family-friendly policies and a supportive work environment, which contributes to greater gender equality, family well-being, and overall work-life harmony.

THE INTERNATIONAL LABOUR ORGANIZATION'S (ILO) SOCIAL SECURITY (MINIMUM STANDARDS) CONVENTION OF 1952 (NO. 102):

This convention defines basic criteria for ensuring people's social safety. It requires ratifying countries to establish comprehensive social security systems that offer benefits to workers and their families in the case of illness, disability, unemployment, or retirement. The treaty emphasizes social security as a fundamental human right and a crucial driver of social and economic progress. Convention No. 102 reduces poverty, strengthens social solidarity, and raises living standards across the world by supporting equitable access to social protection.

MATERNITY PROTECTION CONVENTION (REVISED), 2000 (NO. 183):

The International Labour Organization (ILO) created the Maternity Protection Convention (Revised), 2000 (No. 183) from the convention (No.3), which is an important global standard for protecting the rights and well-being of pregnant and nursing women in the workplace. This agreement includes substantial steps to ensure that female employees have enough maternity leave, maternity benefits, job protection, and access to medical care before to and following childbirth. It emphasizes the need of supporting women to maintain a healthy work-life balance, facilitating their return to work after childbirth, and opposing maternity discrimination. Convention No. 183 supports maternity protection as a fundamental human right and a crucial component of gender equality, so contributing to the creation of more inclusive and welcoming workplaces across the world.

M.P. Jain, *"Indian Constitutional Law"*, (2003) – is a book renowned for its comprehensive analysis of Indian constitutional principles and their interpretation by the judiciary. The book serves as a valuable resource, providing insights into changes in legislation, case law, and societal trends, thus offering a deeper understanding of the fundamental aspects of Indian constitutional law.

S. C. Srivastava, *Industrial Relations and Labour Laws*, (2022) – the book is a comprehensive resource on the subject. It offers an exhaustive, analytical, and critical examination of labour legislation, including recent case laws and legal developments and covers various aspects such as industrial relations, wages, social security, and minimum standards of employment. It also includes discussions on the four labour codes: Industrial Relations Code, 2020; Code on Social Security, 2020; Code on Wages, 2019; and Occupational Safety, Health and Working Conditions Code, 2020.

C.N. Shankar Rao, *"Sociology of Indian Society"*, 2d Ed., (2004) – is a comprehensive text book that explores the various aspects of Indian society through a sociological lens. It is widely used in academic courses to understand the complexities and dynamics of social structures, processes, and issues in India.

Kanaiyalal Motilal Kapadia, *"Marriage and Family in India"*, (1966) – The book provides an in-depth analysis of traditional practices, cultural norms, and the evolution of family structures in India. The author also deals the comprehensive study of the institution of marriage and family in the Indian context and Discusses potential reforms and their implications for Indian society.

Joanne Conaghan and Kerry Rittich, *Labour law, work and family*, (2005) – is a book that investigates the relationship between work and family amid the current debate over labour laws and regulations. The author investigates the situation of male and female workers, paid and unpaid, as well as government initiatives to establish more family-friendly work settings.

SECONDARY SOURCES:

The ILO publication, *"Maternity and Paternity at Work: Law and Practices Across the World"*, published in Geneva, (2014) – This article explores global maternity and paternity policies and practices.

Recognizing both men and women's need for motherhood is crucial for achieving equality of opportunity and treatment. This includes a review of current maternity and paternity leave policies at work. This means that women and men do not have to sacrifice their life, well-being, or family care to earn an income.

Dr. Shashi Bala, *Implementation of Maternity Benefit Act*, V.V. Giri National Labour Institute, (2012) – This article looks at the relevance of maternity leave in India. It reveals the flaws, ambiguities, and reasons for the lack of willingness to efficiently develop a strong maternity protection system. Furthermore, it makes recommendations that may be useful, taking into consideration both the study's findings and worldwide maternity protection experiences.

Laura Addati, *Extending maternity protection to all women: Trends, challenges and opportunities* (2015) – This article demonstrates how national legislation on paid maternity leave has improved and now aligns with international norms. Despite advancements, many female workers still do not have adequate maternity leave. This essay analyzes patterns of exclusion from maternity protection in legal and practical contexts. The article finishes with a discussion of social protection efforts that might increase maternity coverage and help disadvantaged persons, with a focus on gender transformative methods.

Elisabeth Håkansson, *"Paternity Leave as a Human Right"*, (2005) – This book examines paternity leave via a human rights lens, advocating for its recognition as a fundamental human right that promotes gender equality, child development, and family well-being. The study analyzes paternity leave laws, regulations, and societal attitudes across nations, finding best practices and areas for development. The author's conceptualization of paternity leave as a human right highlights the importance of inclusive and supportive policies that enable all parents to engage equitably in care-giving.

Ananya Dhanuka and Kashish Banthia, *Paternity Benefit Leaves in India: Need, Cost and Gender Reform*, International Journal of Policy Sciences and Law Volume 1, (2021) – This book examines paternity leave via a human rights lens, advocating for its recognition as a fundamental human right that promotes gender equality, child development, and family well-being. The study analyzes paternity leave laws, regulations, and societal attitudes across nations, finding best practices and areas for development. The author's definition of paternity leave as a human right highlights the importance of inclusive and supportive policies that enable all parents to equitably engage in care-giving tasks.

Dr. Karan Jawanda and Sanya Singh, *"Socio-Legal Framework of Paternity Leave in India: A Critical Analysis"*, vol. 30, (2022) – this article delves into the complex intersection of social and legal factors surrounding paternity leave in India. Through a critical lens, the authors examine the existing socio-legal framework governing paternity leave, analyzing its effectiveness, shortcomings, and implications for gender equality, family dynamics, and workplace policies. Drawing on legal principles, case studies, and socio-cultural perspectives, the paper provides insights into the challenges and opportunities for advancing paternity leave rights in India's legal and social landscape.

Katharine, *"Paternity and Parental Leave: Towards a New International Labour Standard"*, (2021) – The article discusses the need and possible impact of developing a new worldwide standard for paternity and parental leave. The research examines the worldwide landscape of leave regulations, identifying differences in access and length across nations. Booth advocates for gender-neutral leave policies that acknowledge dads' care-giving responsibilities and promote gender equality in the workplace and society. The author advocates for a new international labor norm to promote parental rights and foster more inclusive workplaces globally.

Srishti Jain and Dr. Puneet Bafna, "*Paternity Leave and Article 42*", (2022)⁵- This article investigates the link between paternity leave and Article 42 of the Indian Constitution, which establishes the fundamental concept of providing reasonable and humane working conditions and maternity leave. The article examines the legal, social, and economic ramifications of establishing paternity leave in India under Article 42. The authors provide a detailed study of the existing state of paternity leave regulations in India, examine their compatibility with constitutional principles, and make recommendations for improving paternity leave policy to support gender equality and family well-being.

Rishi Saraf, "*Paternity Leave Policy in India*"⁶, (2022) - This report examines the present paternity leave policies in India. The author explores legislative arrangements for paternity leave in several industries, including public and private employment. This paper examines existing regulations, including the Central Civil Services (Leave) Rules, 1972, and the proposed Paternity Benefit Bill, 2017, to identify their merits and drawbacks. The study examines the social and economic impact of comprehensive paternity leave legislation, highlighting possible advantages for gender equality, family dynamics, and labor participation. The author also recommends policy reforms to create a more inclusive and supportive paternity leave framework in India, based on a comparative analysis of international norms and best practices.

Mehrotra, Soni, Sharma, Khan, and Chaturvedi, "*The prevalence of paternity leave among office-going personnel*", the International Journal of Law Management & Humanities, Vol. 5, (2022)⁷ - The research highlights significant gaps in paternity leave policies, emphasizing the need for such policies to support gender equality and family welfare in India. It points out that while central government employees have some paternity leave provisions, private sector policies vary greatly. The study advocates for legislative reforms to standardize paternity leave across all sectors, suggesting that such measures could help balance parental responsibilities and promote a more gender-neutral society.

1.8 SCHEME OF STUDY

The research work has been divided into nine chapters comprising of the following:

Chapter 1 entitled "*Introduction*" deals with the perspective about Paternal Leave, Aim, Scope and Objective of The Study, Statement of Problem, Hypothesis and Research Methodology.

Chapter 2 entitled "*Historical Background*" deals with background of Indian society, Evolution of Paternal leave, Social security and its definition, constitutional mandate of social security, characteristics, benefits of social security on paternity leave, work/ family nexus in contemporary labour market and welfare conclude with scholarly opinions on PaternityLeave.

Chapter 3 entitled "*Analysis of Maternity Benefit Act*" this study delves into the historical context of the Maternity Benefit Act, 1961 in India, examining it in light of relevant ILO Conventions and Recommendations. It conducts a comparative analysis of maternity benefits on a global scale, provides an in-depth examination of the Maternity Benefit Act, 1961, including judicial responses, and explores its implications within the framework of the second five-year plans, as well as its impacts and advantages.

Chapter 4 entitled "*Analysis of the Paternity Benefit*" initially explores the role of the ILO in shaping paternity benefits. It then conducts a comprehensive analysis of the concept of paternity in India, examining various Acts related to paternal leave, such as the Central Civil Services (Leave) Rules, 1972,

⁵ <https://heinonline.org>, (last accessed . Apr.8,2024)

⁶ <https://ijlmh.com/paper/>, (last accessed . Apr.8,2024)

⁷ <https://www.ijlmh.com/wp-content/uploads/Analysis-of-%E2%80%98Paternity-Leave-in-India.pdf>, (last accessed . Apr.4, 2024)

and the Paternity Benefit Bill, 2017. It also discusses the importance, effects, benefits challenges associated with implementing paternity leave and pointing out the findings from the research..

Chapter 5 entitled "*Role of Indian Judiciary*" focuses on significant legal decisions in India concerning paternity leave

Chapter 6 entitled "*International Perspective of Paternal Leave*" addresses the perspectives of the UDHR and UNICEF on paternity leave and provides a comparative analysis of paternity leave policies in different countries.

Chapter 7 entitled "*Conclusion*" provides a comprehensive summary, detailed suggestions and recommendations to the government on how to enhance and implement effective paternity leave policies.



CHAPTER 2

CHAPTER 2 HISTORICAL BACKGROUND

2.1 BACKGROUND OF INDIAN SOCIETY:

Indian society has traditionally been hierarchical, structured around the “Chaturvarn System”,⁸ which consisted of four vertically arranged varnas.⁹ As one of the oldest and most complex societies in the world, it has evolved over a span of five thousand years since its first known civilization. Throughout this extensive period, various waves of immigrants, representing different ethnic groups and linguistic families, have merged into its population, enriching its diversity and vitality.¹⁰ The influence of numerous generations over time has resulted in a society that is both traditional and conservative in nature.

Marriage is one of the predominant social institutions and is also regarded as a religious sacrament. It was traditionally seen as a social duty towards the family and community, with little emphasis on individual interests.¹¹ The eldest male member of the family, known as the Karta,¹² holds a unique position as the head and acts on behalf of all members, maintaining a fiduciary relationship with them. In contrast, women were viewed as the weaker sex, with their primary role being to care for the family and manage household chores, often without a voice in decision-making. India's patriarchal society has historically upheld these practices.

MODERN INDIAN SOCIETY

Following British imperialism, India experienced numerous changes, including the elevation of women's valor and dignity. The Indian freedom struggle saw significant participation from women, which impacted the socio-cultural environment. Legislation began to influence family structures by loosening the tight grip of patriarchal values over joint families, providing women with equal opportunities, privileges, rights, and facilities. The government enacted many laws to improve the status of women, ensuring their legal recognition and protection.

2.2 EVOLUTION OF PATERNAL LEAVE:

During the 19th century, marriage and family were regarded as pillars of private life. Specifically, the husband's rights as the protector of his wife and children were seen as needing safeguarding from interference by the government. Several significant inquiries concerning social welfare emerged during this initial era.

Unlike the recognized social risks of old age and illness dating back to the 19th century, the societal responsibility for natural risks related to birth and family was a subject of debate until the mid-20th century. Men have predominantly shouldered the burdens linked to these risks, such as unpaid labour or decreased income. Meanwhile, family-focused social support and protection measures have been influenced by a middle-class family model since the 1800s, with the aim of extending to lower socioeconomic groups.

The role of worker's rights in the globalizing economy of the early part of the 21st century is much contested, both in theory and in practice. In recent years, gender has emerged as an increasingly important focus of attention in discourse in and around labour law gradually moving from the

⁸ D.N. Majumdar, *Races and Culture in India* (Oxford University Press 1958), P.5

⁹ C.N.Shankar Rao, *Sociology Of Indian Society*, (2d Ed. 2013), P 36.

¹⁰ Shyama Charan Dube, *Indian Society*, 01 (2d Ed. 1992).

¹¹ Kanaiyalal Motilal Kapadia, *Marriage And Family In India*, 168 (2d Ed. 1958)

¹² *Shreema v. Krishnavenama*, 1957 A.P 434

margin to the mainstream of labour law debate. A number of reasons account for gender's increased prominence in legal and political discourse around work. As labour force has been „feminized“, woman got privilege in Maternity benefits around the world. But the male norm in labour law has become problematic.

As a consequence, analysis of gender inequality have become progressively more sophisticated, implicating core aspects of traditional labour law frameworks in creation of adverse distribution effects for men. The application of gender lens to the world of work has served simultaneously to highlight and problematic the structural and discursive boundaries between the work and family, production and reproduction, paid and unpaid work. The rise in demand for contingent labour combine with legal policy initiatives to promote „family- friendly“ working practices in developed economics have brought into focus the dependence of current workplace norms on particular social paradigm.

In all mammals includes humans only the female gives birth to their offspring that is the male and female are the biological parents of their young ones. Indeed, in humans giving birth to a Child and growing them is not simply the responsibility of woman and it's a collective responsibility for the man also. Paid maternity leave is an essential component of the health and economic security of female workers and their children throughout the pre and post natal period. The fact that the vast majority of countries have implemented statutory provisions for paid maternity leave demonstrates that this role is universally acknowledged and firmly entrenched. This entitlement is related with excellent health outcomes for women and their children, as well as establishing and maintaining breastfeeding.

The **“daddy quota”** in Norway, also known as the father's quota, was established in 1993 by the labour government, and later adopted by Sweden in 1995.¹³ This policy reserves a portion of parental leave specifically for fathers to take as paternity leave, ensuring their involvement in childcare responsibilities. It is designed in a way that if the father does not utilize the allocated leave period, the family forfeits that specific portion of leave. Therefore, the essence of the father's quota lies in the principle that a designated part of the parental leave can only be availed by the father, emphasizing shared parental responsibilities.

Over the years, the Norwegian **“father's quota”** has undergone several revisions, with the current allocation standing at 15 weeks for both mothers and fathers. This adjustment reflects the ongoing efforts to promote gender equality in parental leave uptake and encourage fathers to actively participate in care-giving duties. The Norwegian Association for Women's Rights has found limited evidence to substantiate a connection between the father's quota and gender equality. The existing studies on this matter have yielded conflicting results, making it difficult to draw a definitive conclusion. However those fathers who choose to stay at home and assist their spouses with childcare responsibilities not only provide support but also alleviate the burden of household chores for their partners. This, in turn, enables women to resume their paid work with less stress and more ease. The provision of paternal leave ensures that both parents have sufficient time to fulfill their childcare duties effectively.¹⁴

Parental leave provides sufficient time off for both mothers and fathers to share child care responsibilities. Research indicates that fathers who have access to leave are 19% more inclined to engage in tasks like feeding and comforting a crying infant.¹⁵ Businesses that offer paid paternal leave to new fathers have observed improvements in employee productivity and overall satisfaction, without

¹³ Haas, Linda, Rostgaard and Tine, "Fathers' rights to paid parental leave in the Nordic countries: consequences for the gendered division of leave". *Community, Work & Family*, 14 (2): 177–195.

¹⁴ United States Department of Labour, <https://www.dol.gov> (last accessed May 8, 2024)

¹⁵ Lauren Holter, The U.S. Is Sorely Behind When It Comes To This, <https://www.care.com> (last accessed May 8, 2024).

significant financial consequences. The decision to take paternity leave can be influenced by concerns about reduced income and the possibility of facing disciplinary measures or career setbacks, affecting both fathers and their families.¹⁶ But unfortunately there is no ILO standard for paternity leave.

However, the resolution on gender equality at the heart of decent work,¹⁷ recognizes that work–family reconciliation measures concern both men and women. The father's quota policy is having a significant positive impact on the well-being of families, surpassing what economic, political, or medical experts can accurately measure. The National Bureau of Economic Research has been conducting ongoing research on this matter, with their latest update in 2022,¹⁸ confirming that the father's quota has resulted in a reduction of maternal health crises and maternal mental health problems among women in Sweden. This highlights the crucial role that the father's quota plays in Norway, Sweden, and Iceland emphasizing its importance in these countries.

The resolution calls on governments to develop appropriate measures to achieve a better balance between work and family responsibilities, including paternity and/or parental leave, with incentives for men to take them up.¹⁹ Many countries now implement maternity leave that exceeds the International Labour Organization's 14 week norm.²⁰ In tandem, more countries have enacted legislation granting fathers a specific amount of paid leave following the birth of a child. But the Paternity leave has risen to the top of the list of popular family policies in recent decades.

2.3 SOCIAL SECURITY ON PATERNAL LEAVE:

*"Social security as a scheme that connotes particularly measures of income maintenance is income security."*²¹ This definition stresses on income security and maintenance or income through social security measures. Social security is critical to the development of both individuals and societies.

It is a fundamental necessity for all individuals, regardless of their employment sector or location. It serves as a vital form of social protection that begins at birth and should continue throughout one's lifetime. Essentially, social security entails the assistance provided by society and the Effective social security systems guarantee economic sustainability and health protection, so preventing and reducing poverty and inequality while also promoting social inclusion and human dignity.²² It is recognized as one of the fundamental human rights and offers a protective cover for individuals during unfavorable circumstances. Protecting such rights will aid in the achievement of the nation's many formative aims.²³ social security as *"the security of an income to take the place of earning when they are interrupted by unemployment, etc., and to meet exceptional expenditure connected with birth, death or marriage...the purpose of social security is to provide an income upon a minimum and also medical treatment to bring the interruption of earnings to amend as soon as possible"*.²⁴ Social security is now an integral part of the lives of millions of individual men in worldwide. These measures have brought a sense of security and stability amidst life's challenges and uncertainties. Benefits are disbursed as a matter of entitlement and have been transformed into a fundamental

¹⁶ Lauren Holter, *"The importance of paternity leave"*, <https://www.care.com> (last accessed Apr.8,2024)

¹⁷ INTERNATIONAL LABOUR CONFERENCE, 2009

¹⁸ Persson, Petra, Rossin-Slater and Maya *"When Dad Can Stay Home: Fathers' Workplace Flexibility and Maternal Health"*, *"Community, Work & Family"* Cambridge, MA: w25902. (Apr.8 2024).

¹⁹ International Labour Conference, Resolution Concerning Gender Equality at the Heart of Decent Work, at 6,42 (2024).

²⁰ ILO Maternity Protection Convention, 2000 (No. 183), art.4

²¹ Sen. Cassidy Bill, U.S. Senate, <https://www.cassidy.senate.gov/newsroom/press-releases/icymi-state-affairs-highlights-cassidys-plan-to-save-social-security>. (last accessed Apr.8,2024)

²² Employee and Employment Injury Under the Employees State, <https://pingpdf.com/pdf-employee-and-employment-injury-under-the-employees-state.html>. (last accessed Apr.10,2024)

²³ Government of India, Report of the Working Group on Social Security for Twelfth Five Year Plan (2012-2017) Planning Commission,P.45

²⁴ W.H. Watkinson, *How Welfare Began? Welfare in Industry*, (Blaney Thomas ed. 1949), P.19.

human right known as social security.²⁵

Additionally, social security measures also seek to promote social inclusion and reduce inequality by ensuring that all members of society have access to essential services and resources. By providing a safety net for individuals and families during times of need, these measures help to create a more stable and equitable society. According to Prof. Hasan N., *"It is convenient to regard as social security services only as such schemes as provide a citizen with benefit designed to prevent or cure disease, to support him when unable to earn and to restore him to gainful activity"*.²⁶

Furthermore, social security measures play a crucial role in promoting economic stability and growth by reducing the impact of social risks on individuals and the economy as a whole. By providing support to those in need, these measures help to maintain consumer spending, reduce poverty, and stimulate economic activity.

Overall, the primary objective of social security measures is to create a more resilient and inclusive society where all individuals have the opportunity to thrive and contribute to the overall well-being of their communities²⁷.

2.3.1 DEFINITION OF SOCIAL SECURITY:

"By social security we undertake a Programme of protection provided by society against those contingencies against which the individual of small means cannot effectively provided by his own ability and foresight." – International Labour Organization²⁸.

According to Sir William Beveridge, the economist and social reformer, his 1942 Report famously known as Beveridge Report, states that *"Social security is an attack on five giants namely want, disease, Ignorance, Squalor and illness"*.²⁹

As per National Commission on Labour 'Social- Security' deals in providing safeguards to the individual at the time of enforceable event. According to Friedlander Social security is a security which is to be provided to the society in individual in order to deal with various event and occurrence in life.³⁰

According to the *Code on Social Security, 2020*³¹, *"the measures of protection afforded to employees, inclusive of unorganized workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed"*.

2.3.2 CONSTITUTIONAL MANDATE OF SOCIAL SECURITY BASED ON PATERNITY LEAVE IN INDIA:

The labour laws in our nation are derived from either the constitutional provisions concerning fundamental rights (Part III) or the directive principles of state policy (Part IV). While the term "social security" is not explicitly stated in the Indian Constitution, the framers of the constitution undoubtedly expressed concern for the rights of citizens to enjoy social security through the provisions of Fundamental Rights and Directive Principles of State Policy.³² Therefore, while not directly named, the

²⁵ P.C. Srivatsava, *Social Security in India*, (1964), P.13.

²⁶ Hasan N., *Social Security System of India*, (1972), P.3.

²⁷ M. Velusamy, *Labour Welfare (Legislation and Social Security)*, (2014), P.56

²⁸ The Equality of Treatment (Social Security) Convention, 1962 (No. 118).

²⁹ William Beveridge defined social security as, "Social security means the securing of an income to take the place of earnings when they are interrupted by unemployment, sickness or accident; to provide against loss of support by the death of the husband or parent; to provide for retirement through age; to provide against extraordinary expenses in the event of birth, death, or marriage" (William H. Beveridge, *Social Insurance and Allied Services* 6 (1942)).

³⁰ Friedlander, Social security as "a programme of protection provided by society against the contingencies of modern life- sickness, unemployment, old age, dependency, industrial accidents and invalidism against which the individual cannot be expected to protect himself and his family by his own ability or foresight".

³¹ Dr. Otojit Kshetrimayum, *Code on social security, 2020*, <https://vvnli.gov.in/sites/default/files/Social%20Security%20Code.pdf> (last accessed . May 2, 2024)

³² The Constitution of India, 1950, "To implement the ideals in the Directive Principles of State Policy both the Central as well as State Government are empowered

concept of social security is implicit in the Constitution of India. These laws take into consideration the relevant entries in the Concurrent List, and below are some of the constitutional provisions that pertain to social security:

1. PREAMBLE OF INDIAN CONSTITUTION:

The Indian Constitution's Preamble lays the foundation for a Socialist State that strives to eradicate income disparity, social inequality, and differences in living standards. It is committed to ensuring equal status and opportunities for every citizen.

2. FUNDAMENTAL RIGHTS:

Articles 14, 15, and 16 of the Indian Constitution explicitly support equality as a basic right. The aforementioned Articles provide equal rights and protection under the law³³, forbid discrimination on the basis of gender, etc.³⁴, and advance equal opportunities in public employment³⁵. Nevertheless, the Constitution's guarantee of equality also gives the State the power to implement policies that, under some conditions, may be viewed as discriminatory.

The Constitution's Article 21 focuses on safeguarding the fundamental rights of life and personal liberty, encompassing all the necessary entitlements for individuals in a civilized society. Consequently, it advocates for the provision of social security to Indian citizens, a concept that has been extensively elucidated by the court through its diverse rulings, emphasizing the significance of leading a life with human dignity³⁶.

3. DIRECTIVE PRINCIPLES OF STATE POLICY :

The Directive Principles of State Policy contain several provisions aimed at ensuring social security for Indians. Articles 38³⁷, 39³⁸, 41³⁹, 43⁴⁰ and 47⁴¹ of Part IV of the Indian Constitution require the State to make legislation that promotes social security and socioeconomic fairness for its inhabitants. For example, Article 38 highlights the state's obligation to maintain a social order that promotes the welfare of its citizens. Furthermore, Article 38(1) emphasizes the necessity of achieving social, economic, and political fairness in all spheres of national life in order to improve the well-being of citizens. Article 38(2) aims for the state to reduce income disparities and strive to eradicate status inequalities. Article 39 guarantees equal access to sufficient means of livelihood for all citizens.

Article 41 protects the right to work, education, and public help during times of unemployment. Article 42 stresses fair and humane working conditions, maternity benefits, and paternity leave through social security measures based on equality principles.

2.3.3 CHARACTERISTICS OF SOCIAL SECURITY ON PATERNAL LEAVE:

Social security primarily aims to offer financial assistance to specific individuals based on specific criteria.

Firstly, for starters, social security benefits are just intended to offer support. They provide

to enact legislation in relation to „labour“ as embodied in list III” (the concurrent list of seventh schedule)

³³ "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The Constitution of India, art.14.

³⁴ "Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth", The Constitution of India, art.15

³⁵ "Equality of opportunity in matters of public employment", The Constitution of India, art.16

³⁶ "No person shall be deprived of his life or personal liberty except according to procedure established by law", The Indian Constitution, art.21

³⁷ "The state should strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice-social, economic and political shall inform all the institutions of the national life", The Indian Constitution, art.38

³⁸ "The state should in particular direct its policy towards securing, inter alia, that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength", The Indian Constitution, art.39

³⁹ "The state shall make provision for securing just and humane conditions of work and for maternity relief", The Indian Constitution, art.41

⁴⁰ "The state should endeavor to secure to all workers work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, The Indian Constitution, art.43

⁴¹ "The state should regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties", The Indian Constitution, art.47

beneficiaries with a stream of income to support their daily needs, alleviating temporary or permanent financial stress.⁴²

Secondly, efficient administrative oversight ensures the successful implementation of welfare programs to fulfill their objectives. Furthermore, financial assistance is granted to guarantee the program's advantages are realized. In advanced countries, the importance of financial contribution is widely recognized. The United States and Great Britain both integrate this concept into most of their programs. Additionally, this principle is also integrated into labour regulations in India.⁴³

In India, labour laws and social security programs typically offer benefits such as medical care, sickness pay, accident compensation, maternity leave, unemployment benefits, and support for old age and disability.⁴⁴ However, unlike some Western nations, India has not yet acknowledged the concept of family benefits, where the state assists families in raising children.

2.3.4 SOCIAL SECURITY BENEFITS MAY INCLUDE:

Paternity Pay:

Many countries offer paternity pay as part of their social security system or parental leave policies. Paternity pay is typically a percentage of the father's average earnings, often capped at a certain amount. This pay helps offset the financial burden of taking time off work and ensures that fathers can support their families during the leave period.

Job Protection:

Social security provisions may also include job protection for fathers taking paternity leave. This means that employers are prohibited from terminating or discriminating against employees who take paternity leave. Job protection ensures that fathers can return to their jobs with the same or equivalent position and employment benefits after their leave period ends.

Access to Healthcare Benefits:

Social security systems may provide continued access to healthcare benefits, such as medical insurance coverage, for fathers during their paternity leave period. This ensures that fathers and their families maintain access to essential healthcare services during the transition to parenthood.

Parental Leave Allowance:

In some countries, social security systems offer parental leave allowances that can be shared between parents, including fathers. This allows for greater flexibility in care-giving responsibilities and promotes gender equality in parental leave uptake.

Other Support Services:

Social security systems may also offer additional support services to fathers and families, such as counseling, parenting classes, or assistance with childcare arrangements. These services aim to support fathers in their care-giving role and promote positive parent-child relationships.

Overall, social security provisions in paternity law play a crucial role in ensuring that fathers have the financial stability and support they need to take time off work and actively participate in care-giving responsibilities during the early stages of parenthood. These benefits contribute to gender equality, family well-being, and child development.

⁴² Prof. N. Hasan, Loc Cit, 4

⁴³ Employees Provident Funds Act, 1952

⁴⁴ ESI ACT, 1948

2.4 THE WORK / FAMILY NEXUS:

The varieties of international institutions have discovered that women are the focal point in the transformation of the economy and one of the keys to enhanced growth. Managing the relationship between work and family is not only the problem of care concerns with women indeed men also. The World Bank has issued the analysis of the integration of gender equality into development efforts, *Engendering Development: Through gender equality in rights, resources and voices*,⁴⁵ which makes the integration of women into market the engine of both enhanced development and greater gender equality.

A deep consciousness of the conflicting demands of work and family pervades the comprehensive report of the European Commission on the challenge of regulating labour markets in the new economy.⁴⁶ Work family issues have now overflowed their designate international channels. The new and important development is that the work/ family nexus have entered the consciousness of the international financial and the economic organizations.

2.4.1 THE WORK/ FAMILY NEXUS IN CONTEMPORARY LABOUR MARKET AND WELFARE:

It has become unavoidably clear that household issues particularly obligations of care to development of dependent household members and the divisions of unpaid labour between men and women, figure increasingly central ways in debates over the transformation of work reforms to labour and employment regulations and the future of the welfare state, all issues that the regard as key „structural“ concerns in the new economy.⁴⁷ Employee welfare entails the endeavors to enhance the quality of life for employees. Employee welfare covers a broad spectrum of offerings, such as services, facilities, and perks that are designed to improve the lives of employees.

The work-family nexus in contemporary labour markets and welfare systems represents the intersection between employment dynamics and family responsibilities, highlighting the challenges and opportunities faced by individuals in balancing work and personal life. This concept recognizes the interconnections of work and family roles and emphasizes the need for policies and practices that support individuals in managing their competing demands. In contemporary labour markets, where dual-income households are increasingly common and care-giving responsibilities are shared among family members, the work-family nexus has become a central concern for policymakers, employers, and workers alike. Key elements of the work-family nexus include:

1. Work-life balance:

Achieving a harmonious balance between work and personal life is essential for employee well-being and productivity. Policies such as flexible working arrangements, telecommuting, and paid time off for care-giving help individuals manage their work and family responsibilities more effectively.

2. Gender equality:

Gender norms and stereotypes often shape expectations around work and family roles, leading to disparities in employment opportunities, earnings, and care-giving responsibilities between men and women. Addressing gender inequalities in the labour market and promoting shared care-giving responsibilities are critical for achieving gender equality.

3. Childcare and eldercare support:

Access to affordable and high-quality childcare and eldercare services is essential for working

⁴⁵ World Bank, *Engendering Development: Through Gender Equality in Rights, Resources and Voices*, (2001).

⁴⁶ Alain Supiot, *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (Oxford University Press 2001)

⁴⁷ IMF, World Economic Outlook: Advancing Structural Reforms, Ch. III (2004), <https://www.imf.org>

parents and caregivers. Government subsidies, employer-sponsored childcare programs, and community-based support services can help alleviate the burden of care-giving responsibilities and enable individuals to remain engaged in the workforce.

4. Parental leave policies:

Paid parental leave policies, including maternity, paternity, and parental leave, provide essential support to new parents during the transition to parenthood. These policies promote bonding with newborns, support breastfeeding, and facilitate the return to work while ensuring job security and income replacement.

5. Social protection systems:

Welfare systems play a crucial role in providing social protection and support to individuals and families during periods of unemployment, illness, or care-giving responsibilities. Access to unemployment benefits, healthcare services, and social assistance programs helps mitigate financial insecurity and promotes social inclusion.

In navigating the work-family nexus, policymakers, employers, and civil society organizations must collaborate to develop holistic approaches that address the diverse needs and circumstances of individuals and families. By promoting work-family balance, gender equality, and social protection, societies can create more inclusive, resilient, and sustainable labour markets and welfare systems that support the well-being of all members.

2.5 SCHOLARLY OPINIONS ON PATERNITY LEAVE:

Paternity leave is a period of time that a father is legally allowed to be away from his job so that he can spend time with his new baby.⁴⁸ Paternity leave is a form of paid or unpaid leave granted to fathers or partners following the birth or adoption of a child. It allows fathers or partners to take time off from work to bond with and care for their newborn or newly adopted child, as well as to support their partner during the transition to parenthood. Paternity leave may be provided by employers or mandated by government regulations, and its duration and eligibility criteria vary widely across different countries and organizations. The primary purpose of paternity leave is to promote gender equality, encourage father involvement in care-giving responsibilities, and support the overall well-being of families.

A male Government servant (including an apprentice) with less than two surviving children may be granted Paternity Leave by an authority competent to grant leave for a period of 15 days.⁴⁹ This leave can be taken during the confinement of his wife for childbirth, i.e., up to 15 days before or up to six months from the date of delivery of the child. During this 15-day period, he shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.⁵⁰ The Paternity Leave may be combined with any other kind of leave. The Paternity Leave shall not be debited against the leave account.⁵¹ The allowance of time off to a father to care for his child after adoption or birth, paid or unpaid, as defined by the company.⁵² An employment policy that allows a father to take paid or unpaid time off to care for his parental responsibilities following the birth or adoption of a child, to establish paternity in the court system, or to care for a child who is sick or needs additional care.

(A) Paternity leave is a designated period of time, whether compensated or uncompensated,

⁴⁸ Paternity Leave, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/paternity-leave>. (last accessed Apr.8,2024)

⁴⁹ Rule.43-A. Paternity Leave: (1) A male Government servant (including an apprentice) with less than two surviving children, may be granted Paternity Leave by an authority competent to grant leave for a period of 15 days, during the confinement of his wife for childbirth, i.e., up to 15 days before, or up to six months from the date of delivery of the child.

⁵⁰ *id.*, to 45 ((2) during such period of 15 days, he shall be paid leave salary equal to the pay drawn immediately before proceeding on leave).

⁵¹ *id.*, to 45 ((3) the paternity Leave may be combined with leave of any other kind).

⁵² Family and Medical Leave Act of 1993, U.S.C. §§ 2601-2654, P. 29.

specifically set aside for fathers in connection to the birth of a child or leave that is exclusively available for fathers as paternity leave. This does not encompass parental leave options that can be utilized by either parent, nor does it involve portions of maternity leave benefits that the mother can allocate to the father. It encompasses "special leave" options, beyond the regular annual leave that fathers can take during the birth of a child, although these are not technically classified as paternity leave.⁵³

(B) This is the right of fathers to take leave as the primary caregiver for their new born or newly adopted child.⁵⁴

Overall, paternity leave plays a crucial role in fostering a supportive and equitable work environment, promoting work-life balance, and facilitating positive parent-child relationships. It recognizes the importance of fatherhood and the valuable role that fathers play in the care and upbringing of their children.

2.6 ORGANIZED AND UNORGANIZED SECTORS:

Manpower is essential for a country's economic development, and nations are continually working to enhance their workforce to strengthen their economies. Almost all countries have both organized and unorganized labor sectors. India is making significant efforts to address the complexities of these sectors by offering various social benefits to workers. Furthermore, India is revamping its labour laws to keep pace with the changing economic landscape.

Organized workers under the Industrial Dispute Act refer to employees who are part of establishments or sectors that are formally recognized and regulated by the government. These workers typically have structured employment terms, rights, and protections under various labour laws. They are often represented by trade unions or other collective bargaining units. The Industrial Dispute Act provides mechanisms for resolving conflicts and disputes between organized workers and their employers, ensuring fair treatment and promoting harmonious industrial relations.

*"Organized sector means an enterprise which is not an unorganized sector".*⁵⁵ It refers to businesses and entities that are registered with the government. In this sector, employees receive guaranteed work with fixed and regular employment terms. Various laws and regulations apply to enterprises, schools, and hospitals within the organized sector.

Entering to this sector is challenging due to the necessity of properly registering the entity. Additionally, the organized sector is subject to government regulation and taxation.

The unorganized sector contrasts with the organized sector which is characterized by the absence of government registration and irregular employment terms. In this sector, no government rules or regulations govern operations, and entry is relatively straightforward as it does not demand affiliation or registration. Due to the lack of government regulation, taxes are not imposed on this sector. It encompasses small-scale enterprises and workshops with low-skill and unproductive employment.

According to Social Security code, 2020, *"Unorganized Sector means an enterprise which is engaged in the production or sale of the food or in providing services of any kind owned by individuals or self-employed workers and where the number of workers is less than 10 in number".*⁵⁶ It also includes *"home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947".*⁵⁷

⁵³ Laura Addati, Naomi Cassirer & Katherine Gilchrist, *Maternity and Paternity at Work: Law and Practice Across the World*, (2014).P.20.

⁵⁴ Paternity Leave, LexisNexis, <https://www.lexisnexis.co.uk/legal/glossary/paternity-leave>, (last accessed .May.7,2024).

⁵⁵ The code on Social Security, 2020, sec. 2(54)

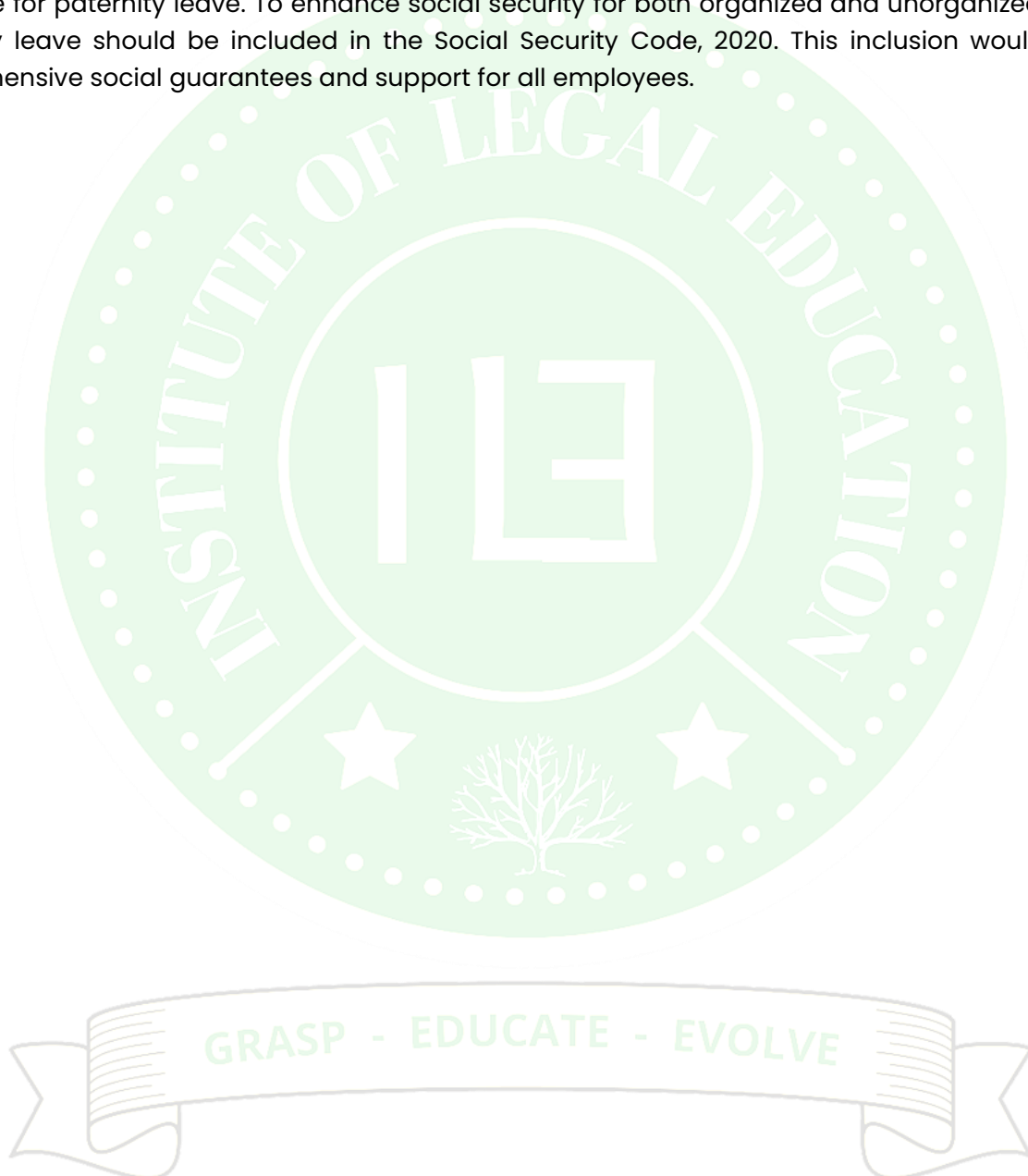
⁵⁶ id., sec. 2(85)

⁵⁷ Industrial Disputes Act, 1947, "workman" or "worker," which encompasses organized workers. Sec. 2(s).



The primary aim of the Code on Social Security, 2020, is to revise and unify existing labour laws concerning social security, with the overarching objective of providing social security benefits to all employees and workers, regardless of whether they belong to the organized or unorganized sector. It also encompasses self-employed individuals, home workers, wage earners, migrant workers, unorganized sector workers, gig workers, and platform workers for the provision of social security schemes. These schemes include life insurance, disability insurance, health and maternity benefits, and provident fund.

Although various laws and regulations apply to the organized sector, there are no specific legislations available for paternity leave. To enhance social security for both organized and unorganized workers, paternity leave should be included in the Social Security Code, 2020. This inclusion would provide comprehensive social guarantees and support for all employees.



CHAPTER 3

ANALYSIS OF MATERNITY BENEFIT ACT

3.1 BACKGROUND OF MATERNITY BENEFIT IN INDIA:

Throughout history, maternity has often been viewed as a form of disability for women workers, preventing them from carrying out their duties in the weeks surrounding childbirth. As wage labour became prevalent in industrial settings, many employers would dismiss female employees upon realizing that pregnancy affected their ability to perform their job responsibilities. Consequently, numerous women had to take unpaid leave during this period to secure their employment. Others faced immense pressure to maintain their productivity during pregnancy, resulting in adverse effects on both their own health and that of their child.

To address these challenges faced by women workers, the concept of maternity benefits was introduced. According to the journalist Mary Johnson⁵⁸⁸, ***“Maternity care has significant implications for both maternal and child health, necessitating a comprehensive approach to ensure positive outcomes.”*** The concept of maternity benefits originated in late nineteenth-century Germany, where maternity allowances were incorporated into the insurance system. Following Germany's lead, other developed nations such as the United Kingdom and Australia implemented similar schemes. In Great Britain, maternity allowances became part of the health insurance scheme in 1912, while Australia introduced the Maternity Allowance Act the same year. However, it was the International Labour Organization that played a crucial role in achieving international recognition for maternity benefits⁵⁹.

ILO aimed to support women in fulfilling their social role of childbearing and child-rearing without compromising their health or losing wages. At the core of women's rights and gender equality lies the provision of maternity protection, a fundamental requirement acknowledged in various international human rights instruments such as the International Covenant on Economic, Social, and Cultural Rights of 1996, as well as several international labour conventions (numbers 3, 102, 103, and 183).

In 1975, the International Labour Organization (ILO) adopted the Declaration on Equality of Opportunity for Women Workers, emphasizing the importance of addressing discrimination related to maternity. Subsequently, during the 92nd International Labour Conference in 2004, ILO member states passed resolutions aimed at expanding access to maternity protection and promoting a better work-life balance. It was recognized on both occasions that discrimination based on maternity status undermines equality of opportunity and fair treatment for women.

Pre-Independence:

Given the increasing participation of women in the labour market, there is a growing need for workplaces to become more accommodating to women's needs, fostering a more woman-friendly environment that supports their overall well-being. It is crucial to have a deep understanding of the labour market situation in India, both existing and emerging, in order to address issues related to women workers effectively. When the Maternity Protection Convention was adopted by the ILO in 1919, it was recommended that the participating countries conduct inquiries into the matter of maternity benefits for women workers. Consequently, the conference adopted a resolution requesting the Indian Government to investigate the issue of maternity benefits and submit a report at the next conference.

In response, the Government of India consulted with provincial governments, employers, and other

⁵⁸ Mary Johnson, Comprehensive Maternity Care: Implications for Health Policy, 32 Health Pol'y Rev. 215, 220(2019).

⁵⁹ Anne Marie (1990) Women and Social Security, Geneva, ILO Publications, P.19.

relevant parties, and subsequently submitted a report to the International Labour Conference in 1921. The report outlined that “legislation upon the subject would be premature, but an attempt would be made to induce the principal organized industries to start voluntary benefit scheme by assisting them financially”.⁶⁰ Therefore, the Government of India stated it was unable to adopt the Convention. The reasons provided were: (a) the difficulty in enforcing mandatory leave for pregnant women workers, (b) a shortage of female medical professionals to issue medical certificates, (c) the impracticality of implementing compulsory contribution schemes to provide benefits, and (d) the lack of necessity for provisions regarding nursing periods and protecting women from job loss during pregnancy.⁶¹

However, the provincial governments continued to encourage employers to unilaterally adopt the ILO Conventions. Meanwhile, Mr. N.M. Joshi, a trade union leader and general secretary of the All India Trade Union Congress, who had attended the International Labour Conference where the Maternity Protection Convention was adopted, introduced a Maternity Bill in the Central Legislature. The bill aimed to establish statutory provisions for maternity benefits for women employed in factories and mines, including cash benefits during confinement. However, the bill failed to pass due to lack of public support, challenges in supervising the scheme, a shortage of female doctors, and the migratory nature of women workers.⁶²

The foundations of maternity benefit legislation were established with the passage of the Bombay Maternity Benefit Act of 1929. According to this Act, every female worker who had been employed in a factory for nine months was entitled to maternity benefits upon presenting a medical certificate. She was granted four weeks of leave and received maternity benefits at the rate of 8 annas per day (equivalent to 50 paise today). This was the first maternity benefit legislation in India, and it was followed by a similar law enacted by the Central Provinces in 1930.

Another significant milestone in the field of maternity benefits was achieved with the appointment of the Royal Commission on Labour in 1929. Among other recommendations, the Commission suggested that other provinces enact maternity benefit legislation similar to the Bombay Maternity Benefit Act of 1929. The Commission also recommended that maternity benefits should be non-contributory. Following these recommendations, several provinces enacted their own maternity benefit laws. However, the Central Government also took initiative, drawing inspiration from the provincial governments to pass maternity benefit legislation. The first central enactment in this area was the Mines Maternity Benefit Act of 1941. This Act had a very limited scope as it applied solely to mines.⁶³

However, despite these steps, the commitment to providing maternity protection remained low. The Bhore Committee Report⁶⁴ highlighted the inadequate availability of creche facilities in several industries and the poor implementation of Maternity Benefit provisions by various Union Provinces in pre-independent India. This progression highlights the increasing awareness of the administration, largely influenced by the active Trade Union movement during that era. These efforts led to the establishment of protective laws for women workers, which continued to evolve and improve over the years in favor of women employees.

Post-Independence:

Understanding the gender dimension of the labour force is essential, despite the low labour force participation rate of women, which has shown improvement in recent years. Legislative policies and measures are necessary to address these challenges, as recognized in the Constitution of India and

⁶⁰ International Labour Code, Vol.II, 1952, P.743

⁶¹ ILO. Labour Legislation in India, 1952, p.98.

⁶² Srivastava, S.C. social Security and Labour Laws. Lucknow, Eastern Book Co., 1985, p.262.

⁶³ <https://vvgnli.gov.in/sites/default/files/2012-099.pdf>, (last accessed . May.10,2024).

⁶⁴ The Health Survey and Development Committee (1946), Vol. I - Survey, New Delhi, Government of India Press, P.42

various laws passed to promote gender equality. The Maternity Benefit Act, 1961, is a significant legislation aimed at the welfare of working women in India. The increasing participation of women in the labour market, especially in urban areas, highlights the importance of such initiatives.

The current Maternity Benefit Act of 1961 is now a Central Act applicable to all states. However, variations exist in the rules of different states, resulting in disparities compared to the Central Act. An amendment to the Maternity Benefit Act of 1961 was passed in 1973 to address some of the inconsistencies present in the original Act. Additionally, the Employees State Insurance Act provides benefits for women workers. Unfortunately, there are still many women employees who do not fall under the protection of these laws, missing out on welfare benefits.

3.2 ILO AND MATERNITY BENEFIT:

“Working women around the globe often encounter the daunting prospect of losing their jobs, experiencing a decline in earnings, and facing heightened health risks during pregnancy, all due to insufficient measures in place to protect their employment”⁶⁵. Women’s employment income is crucial for the financial stability of families in numerous nations. The International Labour Organization (ILO) established the initial worldwide guideline in 1919 to safeguard the rights of female workers during pregnancy and postpartum.

The ILO’s efforts to enhance maternity protection have been instrumental in promoting gender equality and women’s empowerment in the workplace. By ensuring that women are able to balance their work and family responsibilities without facing

discrimination or health risks, the ILO is helping to create a more just and sustainable future for all workers.

The “Hours of Work (Industry) Convention, 1919”⁶⁶, is a pivotal international agreement that holds the official title of the International Labour Organization (ILO). This convention, adopted in the nascent years of the ILO’s formation, holds immense significance as it primarily focuses on the regulation of working hours within industrial settings. Its core objective is to ensure that employees are provided with favorable working conditions, thereby underscoring the crucial importance of decent work.

The convention recognizes the fundamental rights of workers and seeks to establish a framework that safeguards their well-being. It acknowledges that excessive working hours can lead to physical and mental exhaustion, negatively impacting the health and productivity of employees. By setting limits on the duration of work, the convention aims to prevent exploitation and promote a healthy work-life balance.

The 1919 *Maternity Protection Convention (No.3)* applied solely to women working in public or private industrial or commercial settings. It granted fundamental safeguards such as a 12-week maternity leave with financial assistance to maintain income, breaks for nursing mothers, and safeguards against termination while on leave. The Convention also required employers to provide suitable facilities for nursing mothers to breastfeed or express milk during working hours, as well as access to medical care before and after childbirth. Additionally, it prohibited employers from assigning pregnant or nursing women to work that could endanger their health or the health of their child.

The Convention was a landmark achievement in recognizing the unique needs of pregnant and nursing women in the workforce and ensuring their rights to maternity leave and protection from discrimination. It set a precedent for future international labour standards and paved the way for further advancements in women’s rights in the workplace. Subsequent to this Convention, two

⁶⁵ F. J. Dy-Hammar, Chief, ILO Conditions of Work Branch report, *Maternity Protection at Work*. Available at: <https://www.ilo.org> (last accessed . May11,2024)
⁶⁶ Hours of Work (Industry) Convention, 1919 (Convention No.1)

additional Maternity Protection Conventions were adopted in 1952⁶⁷ and in 2000⁶⁸. The ILO also includes the "provision for child welfare and maternity protection" as one of its fundamental objectives and goals.⁶⁹

Up to this point, a total of 66 member States of the International Labour Organization (ILO) have officially approved at least one of the Conventions related to maternity protection. Additionally, 43 member States have ratified Convention No. 156.⁷⁰ It is worth noting that the influence of these Conventions extends beyond ratification, as almost every country has implemented legislation to safeguard the rights of working mothers. In the past two decades, significant advancements have been made, including longer periods of rest during childbirth and a shift away from employer-funded maternity leave.

The standards have continuously broadened the coverage and benefits associated with maternity protection in the workplace, reflecting the changing status and acknowledgment of women's rights in the labour force. Throughout time, the primary focus of the ILO has been to guarantee that women's work, regardless of its nature or circumstances, does not endanger the health of the woman and her child, and to safeguard women's economic and job security from being compromised by their reproductive role or subjected to unfair discrimination.

The ILO Centenary Initiative on Women at Work was introduced by the ILO Director General. The primary objective of this initiative is to examine the position and circumstances of men and women in the workforce and actively involve ILO constituents, including governments, workers' organizations, and employers' organizations, in implementing tangible measures to achieve equal opportunities and fair treatment.

Maternity protection is a core labour entitlement outlined in major international human rights agreements. The Universal Declaration of Human Rights (UDHR) from 1948 affirms that mothers and children have the right to receive special support and social security. Moreover, the International Covenant on Economic, Social and Cultural Rights (ICESCR) from 1966 guarantees specific safeguards for mothers during a reasonable time frame surrounding childbirth, such as paid time off or leave with sufficient social security coverage.

The recognition of maternity leave and cash benefits as one of the nine branches of social security was officially established in 1952 by the Social Security (Minimum Standards) Convention.⁷¹ The 2012 ILO Recommendation on national floors of social protection⁷² emphasizes the importance of including maternity benefits in the basic social security guarantees. This includes access to essential maternity care and basic income security for individuals of working age who are unable to earn enough income due to maternity, among other reasons.

Maternity protection should be seen within the larger context of rights and safeguards outlined in the ILO international labour standards on equality and non-discrimination. These standards include the Equal Remuneration Convention, 1951,⁷³ the Discrimination (Employment and Occupation) Convention, 1958⁷⁴ and the Workers with Family Responsibilities Convention, 1981.⁷⁵ The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) emphasized the significance of Convention No. 183 in their 2012 General Survey on the Fundamental Conventions. They recognized

⁶⁷ Maternity Protection Conventions, 1952 (No. 103)

⁶⁸ Maternity Protection Conventions, 2000 (No. 183)

⁶⁹ Article III, Declaration of Philadelphia, 1944

⁷⁰ Workers with Family Responsibilities Convention, 1981 (No. 156)

⁷¹ Social Security (Minimum Standards) Convention (No. 102)

⁷² Recommendation on National Floors of Social protection (No. 202)

⁷³ Equal Remuneration Convention, 1951 (No. 100)

⁷⁴ Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

⁷⁵ Workers with Family Responsibilities Convention, 1981 (No 156)

that maternity protection is essential for achieving gender equality and non-discrimination in employment and occupation. Furthermore, they stated that ratifying this Convention is a significant step towards the broader goal of gender equality in employment and occupation, as outlined in Convention No. 111.⁷⁶ The impact of the ILO maternity protection instruments goes far beyond mere ratification numbers. Nearly every nation globally has implemented some form of maternity protection laws, with an increasing number of measures being introduced to support workers with family obligations, including fathers.

The ILO has been gathering data on maternity protection laws since 1994. In 2004, they created the ILO Working Conditions Laws Database – Maternity Protection⁷⁷, containing comprehensive details on maternity protection and work–family legislation in 170 countries, categorized according to the key elements of Convention No. 183 and Convention No. 156 namely:

- Scope;
- Eligibility Criteria;
- Maternity Benefit;
- Paternity Leave;
- Parental Leave;
- Time Off For Pregnancy– Or Childbirth–Related Health Issues;
- Monetary Allowances, Including Amount and Funding Origin;
- Medical Benefits⁷⁸;
- Job Security and Equal Treatment;
- Workplace Health and Safety;
- Nursing Mothers.

Drawing from the legal insights presented and the progress made in the work–family domain as discussed earlier, this worldwide publication, consistent with the 2005 and 2010 versions, offers an extensive analysis of domestic laws concerning maternity rights across the globe. The report specifically examines the alignment of various countries' regulations with the ILO Maternity Protection Convention, 2000 (No.183), and its corresponding Recommendation⁷⁹ (No.191). These conventions emphasize the importance of social security schemes to ensure women have access to maternity benefits, including cash benefits and medical care, regardless of their employment status or sector.

3.2.1 ROLE OF ILO IN MATERNITY LEAVE:

The International Labour Organization (ILO) plays a crucial role in advocating for maternity leave policies worldwide and ensuring that they align with international labour standards. Here's a more detailed explanation of the ILO's involvement in maternity leave:

Setting International Standards:

The ILO develops and promotes international labour standards through conventions,

⁷⁶ Discrimination (Employment and Occupation) Convention, 1958.

⁷⁷ The ILO Working Conditions Laws Database – Maternity Protection, <http://www.ilo.org/travdatabase>, (last accessed . May.8,2024)

⁷⁸ (With regard to medical benefits, in many cases these are regulated by legislative and regulatory provisions on health protection. Usually, these laws and regulations have a broader scope of application and cover categories of beneficiaries that go beyond those persons in employment relationships, as required by Convention No. 183, extending protection to all residents. Therefore, the analysis of the compliance of countries with the medical benefits provisions of ILO Conventions requires a comprehensive review of national health protection systems, which would only be possible in a dedicated report. For detailed information on medical benefits in different countries), see, for example, the work of the International Social Security Association (ISSA), <http://www.issa.int> (last accessed . May.11,2024)

⁷⁹ Maternity Protection Recommendation, 2000

recommendations, and protocols. Convention No. 183 on Maternity Protection is one such instrument that provides comprehensive guidelines for maternity leave and related benefits. By setting these standards, the ILO provides a framework for member states to develop and implement their maternity leave policies.

Advocacy and Awareness:

The ILO advocates for the adoption of maternity leave policies that prioritize the health and well-being of mothers and their children. Through research, publications, and campaigns, the ILO raises awareness about the importance of maternity protection in the workplace and encourages governments and employers to take action.

Technical Assistance:

The ILO provides technical assistance to member states to support the development and implementation of maternity leave policies. This assistance may include capacity building, policy advice, and sharing best practices from around the world. By offering support tailored to the specific needs of each country, the ILO helps ensure that maternity leave policies are effective and sustainable.

Monitoring and Compliance:

The ILO monitors the implementation of maternity protection measures in member states to ensure compliance with international labour standards. This may involve conducting assessments, collecting data, and providing recommendations for improvement. By holding governments and employers accountable, the ILO helps safeguard the rights of working mothers and promotes gender equality in the workplace.

Promoting Gender Equality:

Maternity leave is not just about providing time off for new mothers; it is also about promoting gender equality in the workplace. By advocating for maternity leave policies that support women's participation in the labour force and protect their rights during pregnancy and childbirth, the ILO contributes to advancing gender equality and women's empowerment globally.

Overall, the ILO's role in maternity leave extends beyond setting standards; it involves advocacy, technical assistance, monitoring, and promoting gender equality. By working collaboratively with governments, employers, workers' organizations, and other stakeholders, the ILO helps ensure that maternity leave policies meet the needs of working mothers and contribute to a more inclusive and equitable society.

3.2.2 DURATION OF MATERNITY LEAVE:

The International Labour Organization (ILO) does not mandate specific duration for maternity leave through a single universal standard. Instead, it establishes principles and guidelines for member states to develop comprehensive maternity protection policies tailored to their specific contexts. The duration of maternity leave can vary widely between countries and is influenced by factors such as national laws, social security systems, and cultural norms. However, the Maternity Protection Convention, 2000 (No. 183), and its accompanying Maternity Protection Recommendation, 2000 (No. 191), provide guidance on key aspects of maternity leave, including its duration.

According to these instruments the *Maternity Protection Convention* establishes a minimum standard for maternity leave duration by recommending at least 14 weeks of leave.⁸⁰ This duration is intended

⁸⁰ "Women to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks." Convention (No. 183) Concerning the Revision of the Maternity Protection Convention (Revised), art. 4(1)

to provide mothers with adequate time to recover from childbirth, bond with their newborn, and establish breastfeeding, which is crucial for the health and well-being of both mother and child it also emphasizes the importance of both pre and post natal leave periods. It recommends that maternity leave includes a period of leave before childbirth to allow pregnant women to attend prenatal appointments, prepare for childbirth, and manage any pregnancy-related health issues. Additionally, the convention stipulates that at least six weeks of leave should be allocated after childbirth to ensure mothers have sufficient time to recover physically and emotionally and to care for their newborn.

While this sets a minimum standard for maternity leave duration, the accompanying *Maternity Protection Recommendation, 2000 (No. 191)*, encourages member states to extend maternity leave⁸¹ beyond the minimum duration based on various factors. These factors may include the health needs of the mother and child, the nature of the woman's work, and social security benefits provided during the leave period. This recommendation reflects the recognition that some women may require additional time off work due to medical complications during pregnancy, childbirth, or postpartum recovery.

The latest ILO standard regarding the length of paid maternity leave, sets a minimum leave duration of 14 weeks. This represents an increase from the previous Conventions, which mandated a 12-week leave period. In addition to Convention No. 183, Recommendation No. 191 suggests that ILO member states aim to increase maternity leave to at least 18 weeks.

3.2.3 CASH BENEFIT:

Cash benefits during maternity leave are an essential part of maternity protection. According to Convention No. 183, monetary aid should be sufficient to maintain both the lady and her child's well-being and level of living. Women should get help equal to at least two-thirds of their prior wages through social insurance, public funding, or national legislation and customs. Providing help through social insurance or public money prevents prejudice against women in the workplace, which can arise when employers cover maternity expenditures directly. To improve protection, the Convention further requires member states to guarantee that the qualifying conditions for monetary benefits are satisfied by a considerable majority of working women. Women who do not fulfill the qualifying requirements for monetary benefits should be able to adequate help from social assistance programmes.

Furthermore, it emphasizes the fundamental principle outlined in Article 52 of Social Security Convention No. 152, which states that the monetary benefit must be ongoing throughout maternity leave. It is worth noting that the Convention does not include a thorough explanation for the phrases "previous earnings"⁸² or "earnings considered for benefit calculation", therefore various countries interpret and define these terms differently.⁸³

3.3 MATERNITY BENEFIT AROUND THE WORLD:

Paid maternity leave is critical to ensuring the health and financial well-being of female employees and their children throughout the perinatal period. The general approval and execution of statutory laws for paid maternity leave in most countries demonstrate the universal acknowledgment of its value, and they adhere to the principles stated in Convention No. 183 governing the length of maternity

⁸¹ Recommendation (No. 191) Concerning the Revision of the Maternity Protection Recommendation, Art.4, para. 1(1), at 18 weeks, Int'l Lab. Conf., 88th Sess. (June 15, 2000).

⁸² The Convention (No. 183) Concerning the Revision of the Maternity Protection Convention (Revised), stipulates that "Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave [both in respect of maternity leave and leave in case of complication or illness]", Art.6(1).

⁸³ Where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits." Convention (No.183) Concerning the Revision of the Maternity Protection Convention (Revised), Art.6(3).

leave. The majority of the nations under consideration provide maternity benefits to women who work in both the private and governmental sectors. Although 40.6 percent of working women have the right to statutory maternity leave, only 34.4 percent are eligible for financial benefits to supplement their income during their maternity leave, as required by law.⁸⁴

On a worldwide scale, 98 of the 185 nations and territories analyzed provide at least 14 weeks of maternity leave, accounting for 53%. Among these countries, 42 exceed or satisfy the 18-week leave criteria, while 60 offer 12 to 13 weeks of maternity leave. Only 27 nations, or 15 percent, provide fewer than 12 weeks of maternity leave. Figure 2.1 depicts the percentage of nations in each area that provide maternity leave by statutory duration.

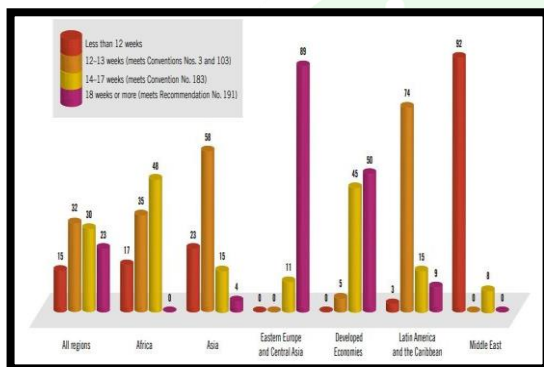


Figure 2.1:⁸⁵ Statutory duration of maternity leave by area, 2013 (185 nations and territories) (%)

(Source: ILO Working Conditions Laws Database – Maternity Protection, 2013)⁸⁶

In Eastern Europe and Central Asia, as well as in Developed Economies, the majority of countries adhere to the established standard of providing 90 to 95 percent of previous earnings during maternity leave. In the Eastern European and Central Asian region, 89 percent of countries meet the 18-week maternity leave requirement. These regions boast the highest average statutory duration of maternity leave, with Eastern Europe and Central Asia averaging nearly 27 weeks and Developed Economies averaging 21 weeks.

In an analysis of 52 African countries, nearly half (48 percent) offer a minimum of 14 weeks of leave, while 35 percent provide 12 to 13 weeks. Approximately 17 percent of African countries offer less than 12 weeks of leave. Among the 12 Middle Eastern countries examined, only Syria meets the 14-week minimum with 17 weeks of leave, as established by Convention No. 183. The remaining 11 Middle Eastern countries (92 percent) provide less than 12 weeks of leave, with the region's average being 9.2 weeks.

The report shows that among the 34 Latin American and Caribbean countries and territories, eight countries offer a minimum of 14 weeks of leave. These countries include Belize, Brazil, Chile, Colombia, Costa Rica, Cuba, Panama, and the Bolivarian Republic of Venezuela. Among these, Chile, Cuba, and the Bolivarian Republic of Venezuela exceed the requirements of Convention No. 183, providing a minimum of 18 weeks of leave as recommended by Recommendation No. 191. Approximately 74 percent of the countries in this region provide 12–13 weeks of maternity leave, with Puerto Rico, USA, offering the shortest duration of eight weeks. On average, the duration of maternity leave in this region is

⁸⁴ According to the International Labour Organization, Coverage in Law and in Practice of Paid Maternity Leave: Global and Regional Estimates (forthcoming 2014), various regions exhibit different levels of compliance with international maternity leave standards.

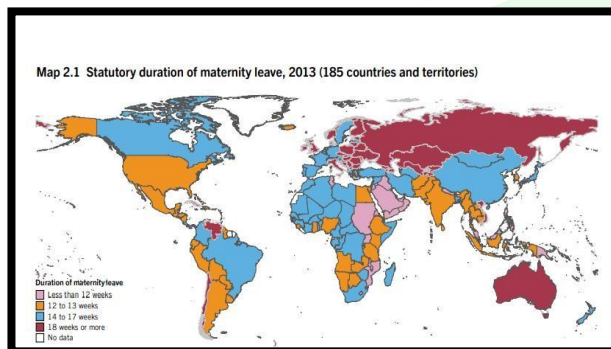
⁸⁵ International Labour Organization, Coverage in Law and in Practice of Paid Maternity Leave: Global and Regional Estimates (forthcoming 2014), <http://www.ilo.org/travdatabase> (last accessed . May.10,2024)

⁸⁶ <http://www.ilo.org/travdatabase> (last accessed . May.10,2024)

13.4 weeks, just below the standard set by Convention No. 183⁸⁷

In the Asia region, about one-quarter of the 26 countries and territories meet the standards outlined in Convention No. 183, with an average duration of 12.7 weeks. Five countries in this region provide a minimum of 14 weeks of leave, including Vietnam (six months), Mongolia (120 days), Bangladesh (16 weeks), Singapore (16 weeks), and China (14 weeks). Additionally, 15 countries offer 12-13 weeks of leave, while six countries have unspecified duration.

Refer to Map 2.1 for an illustration of the distribution of statutory maternity leave durations across 185 countries and territories⁸⁸



(Source: ILO Working Conditions Laws Database – Maternity Protection, 2013).⁸⁹

3.4 MATERNITY BENEFIT IN INDIA:

The International Labour Organization (ILO) has played a crucial role in establishing a global framework that guides the development, expansion, and sustainability of social security systems worldwide. The ILO's primary objective is to advocate for social security and improve the quality of life and working conditions for workers, particularly women in the labor market. The organization is committed to protecting workers from illnesses, diseases, and injuries related to their employment, safeguarding the rights of children, young individuals, and women, and ensuring provisions for old age. Since 1919, India has maintained a longstanding relationship with the ILO, a specialized agency of the United Nations dedicated to promoting social justice and internationally recognized labor rights. India has made significant progress in aligning its maternity benefit policies with the international standards set by the ILO.

3.4.1 RELATIONSHIP BETWEEN INDIA AND ILO:

The Indian Constitution is the supreme law of the land, outlining the structure and defining the powers, roles, and responsibilities of various governmental bodies. Enacted in 1950, it guarantees essential human rights to all individuals. The preamble encapsulates the fundamental values of the Constitution, declaring India to be a sovereign, socialist, secular, democratic republic committed to ensuring justice, equality, and freedom for its citizens. The primary aim of the Indian Constitution regarding labor laws is to guarantee social equality, freedom, individual dignity, and social justice for workers. It is the responsibility of the State to ensure political stability and the welfare of its citizens.

India has been a member of the International Labour Organization (ILO) since its inception in 1919 and is one of its founding members. As a member and ratifier of various ILO agreements, India has played a crucial role in shaping its labor laws. The principles and ideas embedded in the Indian Constitution draw inspiration from the ILO's constitution, and the fundamental philosophy of the ILO is clearly

⁸⁷ International Labour Organization, Conditions of Work Digest: Maternity and Work, Vol. 13 (1994).

⁸⁸ ILO Working Conditions Laws Database – Maternity Protection, <http://www.ilo.org/travdatabase> (last accessed . May.10,2024)

⁸⁹ <http://www.ilo.org/travdatabase>

reflected in the Indian constitutional philosophy. Essentially, Indian labor law serves as the practical implementation of the Constitution of India. The influence of ILO standards on Indian labor legislation is immensely important and has a far-reaching impact.

Ratification of Conventions:

Men are traditionally expected to be the major breadwinners, while women are responsible for care-giving. Promoting dads taking time off work to care for their children may encounter push-back.

India has ratified many ILO treaties, proving its commitment to maintaining global labor standards. These treaties address several issues, including the freedom of association, bargaining collectively, child labor, forced labor, discrimination, and the workplace safety and health.

Technical Assistance and Cooperation:

India collaborates with the International Labour Organization (ILO) on various technical assistance and cooperation programs designed to promote decent work, social justice, and inclusive economic growth. The ILO provides technical expertise, capacity-building support, and policy advice to India on labour-related issues such as labour market governance, social protection, skills development, and labour migration.

Implementation of International labour Standards:

India cooperates with the ILO to implement and enforce international labour standards within its national legal and regulatory framework. This involves incorporating provisions of ILO conventions into domestic laws, policies, and programs, as well as monitoring compliance with labour standards through national mechanisms.

Partnerships and Projects:

India engages with the ILO through partnerships and projects aimed at addressing particular labour challenges and promoting sustainable development. These projects often focus on priority areas such as decent work, gender equality, youth employment, labour market governance, social protection, and informal economy.

Tripartite Dialogue:

India fascinates in tripartite dialogue within the ILO, which brings together governments, employers, and workers to discuss labour issues, negotiate agreements, and develop consensus-based solutions. This dialogue fosters cooperation and collaboration among stakeholders, addressing labour challenges and promoting social dialogue and collective bargaining.

3.4.2 ARTICLE 42 OF INDIAN CONSTITUTION AND THE MATERNITY PROTECTION CONVENTION:

The Directive Principles State Policy (DPSP) is enumerated in *Part IV* of the Indian Constitution and provides guidance to the state in matters of governance. They are non-justiciable, meaning they are not enforceable by courts but are fundamental to the governance of the country. The DPSP aims to establish social and economic justice ensures the welfare of the people, promote equality, and foster a just and humane society. Article 42⁹⁰, is one of the Directive Principles of State Policy and specifically addresses the issue of labour welfare, particularly the welfare of women workers. It emphasizes the duty of the state to ensure just and humane conditions of work for all citizens, with a particular focus on providing maternity relief for women workers. It highlights the importance of maternity relief as part of labour welfare measures. It reflects the commitment of the Indian state to protect the health, well-being, and dignity of working women during pregnancy and childbirth and also underscore the

⁹⁰ ("The State shall make provision for securing just and humane conditions of work and for maternity relief"), The Indian Constitution, art.42

social and economic importance of maternity protection and the need for state intervention to address the specific needs of women workers in this regard.

Articles 42 of the Indian Constitution with the Maternity Protection Convention⁹¹, of the International Labour Organization (ILO) emphasize the importance of ensuring maternity protection and support for women in the workforce. Both have the common goals of promoting maternity protection and support for women in the workforce. These instruments recognize the importance of ensuring that women have access to maternity leave, cash benefits, and other necessary support services during pregnancy and childbirth.

While Article 42 provides a constitutional mandate for the state to make provisions for maternity relief, the Maternity Protection Convention of the ILO sets international standards and guidelines for achieving comprehensive maternity protection in line with principles of social justice and human rights. India's maternity benefit policies, including the Maternity Benefit Act, 1961, and subsequent amendments, reflect its commitment to fulfilling the objectives of Article 42 and aligning with international standards set by the ILO's Maternity Protection Convention.

Overall, Article 42 of the Indian Constitution and the Maternity Protection Convention of the ILO complement each other in promoting maternity protection and advancing the rights and well-being of working women in India and around the world.

3.4.3 MATERNITY BENEFIT ACT, 1961:

The Maternity Benefit Act, 1961⁹², is a key piece of legislation enacted by the Indian Parliament to regulate and provide for maternity benefits for women workers in certain establishments. The primary objective of the Act is to promote the health, welfare, and job security of women employees during maternity to ensure gender equality in the workforce and enabling them to balance their work and family responsibilities. The Maternity Benefit Act, 1961, reflects the principles enshrined in Article 42 and aims to fulfill the objectives of ensuring just and humane conditions of work and providing maternity relief for women workers in India.

The purpose of the Act was to standardize maternity benefits by reducing disparities among existing laws. It replaced several previous Acts, including *the Mines Maternity Benefit Act, 1941*⁹³, *the Bombay Maternity Benefit Act, 1929*⁹⁴, and provisions under the *Plantations Labour Act, 1951*⁹⁵. However, it does not apply to establishments covered by the *Employee's State Insurance Act, 1948*, except as specified in Sections 5A⁹⁶ and 5B⁹⁷.

Social security systems play a vital role in providing maternity benefits to women during pregnancy and childbirth. Social security systems, which may be administered by governments or other entities, are funded through various sources such as contributions from employers, employees, and the government itself. The contributions collected through social security programs are pooled to create a fund from which benefits, including maternity benefits, are paid out to eligible recipients. Maternity benefits provided through social security systems typically include financial assistance during maternity leave, as well as access to healthcare services. In addition to cash benefits, social security

⁹¹ Convention No. 183

⁹² Act No.53 of 1961

⁹³ Act no.19 of 1941

⁹⁴ Bom. Act VII of 1929

⁹⁵ Act no.69 of 1951

⁹⁶ ESI Act, 1948, Sec.5A, ("an insured woman shall be entitled to receive maternity benefit at the standard or enhanced rate for the period of her actual absence from work due to maternity, from such date preceding the expected date of her confinement as may be prescribed by rules made in this behalf or from the day of her actual delivery, whichever may be later, subject to the conditions specified in this Act").

⁹⁷ Id., Sec 5A, ("in the case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of a child or miscarriage, an insured woman shall be entitled to the payment of maternity benefit at the rate of the standard benefit for the period of her actual absence from work on account of such confinement or miscarriage or sickness, subject to the conditions specified in this Act").

systems may also cover the costs of medical care related to pregnancy, childbirth, and postnatal care, ensuring that women have access to necessary healthcare services without financial burden.

The Maternity Benefit Act, 1961 extends its applicability to a range of establishments, including factories, mines, plantations, and government entities involved in acrobatic equestrian performances. Additionally, any organization with more than 10 employees on any given day over the past 12 months, as well as shops and establishments in specific states of India, fall under the purview of this Act. Various other plants and organizations are also covered by its provisions, all aimed at safeguarding the welfare of employees. It is imperative for every company to adhere to this Act and provide the prescribed benefits to its employees. This ensures the maintenance of employees' health and ensures they receive adequate support in return for their services. As employees are the backbone of any company, prioritizing their well-being is essential for the overall growth and success of the organization. To be eligible for the benefits offered under this legislation, female workers must have been engaged by the organization for a minimum of 80 days during the previous twelve-month time frame.

As per the Maternity Benefit Act of 1961, women were entitled to 12⁹⁸ weeks of maternity leave. However, with the Maternity Benefit (Amendment) Act of 2017, the duration of leave has been extended to 26 weeks.⁹⁹ This 26-week period can be divided to allow for up to 8 weeks of leave before the expected delivery date and the remaining weeks after childbirth. The maximum 26-week maternity leave can be taken for up to two children¹⁰⁰. For women with more than two children, the leave period remains at 12 weeks. The Act also states that a woman is not required to work for six weeks after a miscarriage¹⁰¹, unless the miscarriage is due to a medical termination of pregnancy. Furthermore, surrogate mothers and mothers who have adopted a child under three months old are eligible for 12 weeks of leave.

Furthermore, the Act specifies that a pregnant woman has the choice to engage in work from home while availing her maternity benefits. This aspect is significant for women as it allows them to nurture a bond with their newborns and offer them necessary care. However, the terms and conditions of work from home must be agreed upon mutually by both the employer and the employee.

3.4.4 INDIAN JUDICIARY ON MATERNITY BENEFIT:

An examination of the judicial responses regarding maternity benefits reveals that despite being in effect for over forty years, there are relatively few case laws. This scarcity may suggest a lack of strong enforcement and understanding of the Maternity Benefit Act and Employees' Social Insurance Act. However, it is important to note that the legal process involved in these cases, from local labour Courts/Industrial Tribunals to the country's highest court, the Supreme Court, has taken more than ten years in many instances. It is likely that numerous cases never made it to the reporting stage due to being withdrawn, abandoned, or settled. Several significant cases have been briefly mentioned.

In the case of *Malayalam Plantations Ltd. vs. Inspector of Plantations*¹⁰², the entire bench of the Court, aligning with the perspective that maternity benefits should be computed based solely on working days, concluded that the Act did not specify that the duration of maternity benefits would encompass non-working wage-less days. Therefore, the days of the week for which a female worker was entitled to benefits were to be multiplied by 6, not by 7.

⁹⁸ The Maternity Benefit Act, 1961, Sec. 5

⁹⁹ The Maternity Benefit (Amendment) Act, 2017, Sec. 5

¹⁰⁰ The Maternity Benefit Act, 2017, Sec. 5(3)

¹⁰¹ Id., Sec. 9

¹⁰² AIR (1975) Ker.86

The view was overruled by the Supreme court in *B. Shah vs. Presiding Officer, Labour Court, Coimbatore and others*¹⁰³, in determining the calculation of maternity benefits for the designated period, the Supreme Court addressed the question of whether Sundays, which are considered non-working days, should be excluded. The Apex Court, in its decision, applied the principle of construction that favors the woman worker and concluded that Sundays should be included. The Court emphasized that the Act, when interpreted in light of Article 42 of the Constitution, intends to not only ensure the woman worker's subsistence during this period but also support her in recuperating her energy, caring for her child, preserving her work efficiency, and maintaining her previous level of productivity.

In the famous case of *Municipal Corporation of Delhi vs. Female Workers (Muster Roll) & Anr*¹⁰⁴, the Municipal Corporation of Delhi, also known as the 'Corporation', provided Maternity Leave exclusively to its permanent female employees, while withholding it from female workers (on muster roll) who were hired without regularization of their services. The Honorable Court delivered its verdict after considering the provisions of Article 14, 15, 38, 42, 43, as well as those outlined in the Maternity Benefit Act and the Industrial Disputes Act. In interpreting the scope of Article 14 within the realm of labour Laws, the Court emphasized that workers, regardless of the sector or industry they belong to in a specific region, should be treated equally.¹⁰⁵

Upon careful examination of the various provisions of the Act, the court reached the conclusion that there is no provision within the Act that restricts the entitlement of maternity leave solely to regular women employees. This benefit extends to women engaged on a casual basis or on the muster roll on a daily wage basis as well. The provisions outlined in the Act align perfectly with the Directive Principles of State Policy, particularly Article 39 and Article 42, demonstrating their complete harmony. It is crucial to acknowledge that a woman employee in the advanced stages of pregnancy should not be compelled to engage in strenuous labour, as it would be detrimental to both her health and the health of the fetus. Hence, the Act ensures that she is entitled to maternity leave for specific periods before and after delivery.

The importance and applicability of the Doctrine of Social Justice have been highlighted in various rulings, such as in the case of *J. K. Cotton Spinning and Weaving Mills Co. Ltd. v. Badri Mali*.¹⁰⁶ Additionally, the Municipal Corporations or Boards have previously been determined to fall under the definition of "industry" as outlined in the "Industrial Disputes Act".¹⁰⁷

In the case of *Rattan Lal & Ors. vs. State Of Haryana & Ors*¹⁰⁸, it raised the issue whether is it permissible for the State Government to hire teachers on an ad-hoc basis at the start of an academic year, terminate their services before the next summer vacation, reappoint them on an ad-hoc basis at the beginning of the following academic year, and repeat this cycle annually?

The Supreme Court determined that the State Government's practice of "ad-hocism" in teacher appointments over an extended period has resulted in violations of Articles 14 and 16 of the Constitution. This situation cannot be allowed to continue. The State Government is required to function as a model employer.

Furthermore, it highlights that a significant number of teachers in the State are appointed on an ad-hoc basis. If these teachers had been appointed through regular procedures, they would have been

¹⁰³ 1978 AIR 12; (1977) 4 SCC 384

¹⁰⁴ AIR (2000) SC 1274

¹⁰⁵ ("labour to whichever sector it may belong in a particular region and in a particular industry will be treated on equal basis"), (*Hindustan Antibiotics Ltd. v. Workmen* (1967) ILLJ114SC)

¹⁰⁶ [1964]3 SCR 724

¹⁰⁷ *Baroda Borough Municipality vs. Its Workmen* (1957), ILLJ8SC

¹⁰⁸ 1987 AIR 478, 1985 SCR SUPL. (2) 569

entitled to various benefits, including summer vacation benefits, salary, allowances, casual leave, medical leave, maternity leave, and other privileges available to government servants. However, due to the State Government's adoption of this flawed appointment system, these benefits are unreasonably denied to ad-hoc teachers.

In the case of *AIR India vs. Nergesh Meerza and Ors*¹⁰⁹, Air hostesses at Air India were governed by Regulations 46 and 47, which mandated retirement at 35 years, upon marriage within four years of service, or upon the first pregnancy. The retirement age could be extended up to 10 years at the discretion of the Managing Director. For Indian Air Lines, air hostesses had similar conditions but could retire at 40 years.

The argument presented on behalf of the air hostesses (AHs) was that discrimination between AHs employed by different corporations performing similar duties was a violation of Article 14. Additionally, there was claimed to be discrimination between AHs posted in the United Kingdom and those serving in other Air India flights. Furthermore, AHs alleged discrimination based on sex or disabilities arising from sex, violating Articles 15(1) and 16(4). The termination of AHs' services due to pregnancy or marriage within four years was deemed arbitrary and violate of Article 14(5). Moreover, AHs were argued to be deprived of promotional opportunities available to male members of the cabin crew.

The Hon^{ble} Supreme Court held that, the challenged provisions seem to represent clear official arbitrariness. Since the problematic part of the regulation can be separated from the rest, there's no need to invalidate the entire regulation. The part of Regulation 47 allowing the Managing Director to extend the service of an air hostess (AH) is invalidated. Consequently, AHs will retire at 45 years unless the provision is amended to comply with Article 14. The Managing Director must grant yearly extensions automatically for up to ten years if the AH is medically fit, eliminating discrimination between AHs.

Similar observation were made by The U.S. Supreme Court, in *City of Los Angeles, Department of Water & Power vs. Maris Manhart*¹¹⁰, emphasized that employment decisions should not be based on stereotypical notions about the abilities of men or women. Myths and habitual assumptions about a woman's capability to perform certain types of work are no longer valid reasons for refusing employment or paying unequal wages. The focus should be on fairness to individuals rather than treating entire classes differently based on characteristics like religion, race, or sex. Such practices perpetuate traditional stereotypes rather than promoting fair assessment of individuals. The court ruled that, the final part of Regulation 46(i)(c) is unconstitutional and void. The provision stating "or on first pregnancy whichever occurs earlier" is in violation of Article 14 of the Constitution and is thus removed.

In *Bombay Labour Union vs. International Franchises Pot. Ltd.*¹¹¹, the respondent company had a policy in its packing and labeling department that automatically terminated the service of a female employee upon her marriage. The appellant union raised an industrial dispute on this matter, which was referred to the Industrial Tribunal in Maharashtra. The Tribunal justified the rule, leading the appellant to approach the Court via special leave.

The respondent justified the rule by stating that the particular department required teamwork, for which regular attendance was essential. They argued that married women, for obvious reasons, might not be able to maintain regular attendance. Additionally, the respondent contended that

¹⁰⁹ (1981) AIR 1829

¹¹⁰ 55 L Ed 2d 657 : 435 US 702 (1978) (last accessed . May.11, 2024)

¹¹¹ (1966) 2SCR 493: (1966) 1 LLJ 417: 28 FJR 233

industrial adjudication should not intervene with the employer's right to set conditions for employment when hiring new workers. They cited Rule 5(3) of the Indian Administrative Service (Recruitment) Rules, 1964, which carries a similar condition.

The Supreme Court held that, there was no evidence to suggest that married women would be more likely to be absent from work compared to unmarried women or widows. The only distinction was that married women might request maternity leave. The mere existence of a similar rule in other companies was not a valid justification if the rule itself could not be justified on its own merits. Therefore, the rule had to be abolished.

In *Punjab National Bank by Chairman and Anr. vs. Astamija Dash and Astamija Dash vs. Punjab National Bank and Anr*¹¹², the petitioner was unable to adequately prepare for the second test due to a miscarriage. According to the Maternity Benefit Act 1961, a woman is not allowed to work in an establishment for six weeks following the day of her delivery, miscarriage, or medical termination of pregnancy. Section 9 of the Act specifies that in the case of a miscarriage or medical termination of pregnancy, a woman is entitled to maternity leave with wages for six weeks following the event. It is a well-established principle that subordinate legislation must align with the Parliamentary Act. However, the regulations set by the Bank's board of directors did not include provisions for granting maternity leave and other benefits as per the Maternity Benefit Act 1961. Even though the issue of the Act's applicability was not raised in court, it was emphasized that the State must act reasonably when exercising its discretion. Therefore, a woman who has experienced a miscarriage should receive special treatment in line with the concept of equality under Article 14 of the Constitution. It was held that Article 14 does not operate in isolation, and while individuals in similar situations should be treated equally, providing equal treatment to those in different circumstances would violate Art. 14.

3.5 MAJOR TRENDS IN JUDICIAL RESPONSE:

It has been previously observed that there are limited case laws pertaining to the Maternity Benefit Act 1961. However, a careful examination of the judicial response to these cases clearly indicates that the courts have made every effort to uphold this important welfare legislation in its true essence. The highest court of the land has consistently emphasized, in its judgments, that the Maternity Benefit Act is a crucial piece of legislation aimed at safeguarding the health of pregnant mothers and their unborn children. Therefore, it must be interpreted liberally in favor of female workers by applying the principle of beneficent construction. This approach aligns with the Constitutional guarantees provided under Article 14, 15, 21, and 42, which uphold principles of equality, non-discrimination, the right to life, and the directive principles of state policy.

The Apex court has made it clear in several judgments that female employees should not be denied maternity benefits based on their mode of payment, type of appointment, or nature of service, whether contractual, regular, or non-regular, permanent or temporary. The court has recognized the importance of women's reproductive role and their freedom of choice, ruling against gender stereotypes used by employers to discriminate against female employees regarding maternity benefits.

Multiple case laws have stressed the importance of not allowing technicalities to undermine the intent of the Maternity Benefit Act, which aims to enable women to effectively manage their reproductive and productive responsibilities. Hence, the provisions of the Maternity Benefit Act should be interpreted in alignment with the broader principles outlined in our Constitution, the Universal Declaration of Human Rights, and international conventions such as CEDAW (Convention on the Elimination of All Forms of Discrimination against Women).

¹¹² AIR (2008) SC 3182

The Supreme Court has instilled considerable optimism in this matter and has consistently adopted a forward-thinking approach, asserting that factors such as a woman's marital status or living arrangements cannot justify withholding maternity benefits. Employers are not required to consider such aspects. The court has actively sought to broaden the interpretation of terms like 'establishment,' 'employee,' 'working day,' etc., to encompass as many working women as possible under the protective scope of the Act.

No such action by the employer or interpretation of the legislation should be upheld that serves to curtail the personal freedom of the woman who chooses to have a child. The State must recognize the social role of motherhood and extend as much assistance as possible in aiding a woman, who chooses to do both simultaneously– be a mother and work.

3.6 THE SECOND FIVE-YEAR PLAN AND THE ENACTMENT OF THE MATERNITY BENEFIT ACT:

The second five-year plan for maternity benefits in India could build upon the progress and lesson learned from the initial phase, with a continued focus on strengthening support for expectant and new mothers. Here's a suggested outline for the second five-year plan.

Policy Consolidation and Expansion:

Review and consolidate the amendments made to maternity benefit policies during the first five-year plan, ensuring coherence and effectiveness.

Expand the scope of maternity benefits to cover additional categories of workers, such as informal sector workers, self-employed women, and gig economy workers.

Introduce targeted interventions for specific vulnerable groups, including adolescent mothers, single mothers, and women from marginalized communities.

Accessibility and Affordability:

Enhance accessibility to maternity benefits by simplifying application procedures, reducing bureaucratic barriers, and increasing awareness about entitlements.

Explore options for financing maternity benefits, including public-private partnerships, employer contributions, and social insurance schemes, to ensure affordability and sustainability.

Advocate for universal access to maternity care services, including antenatal care, delivery services, postnatal care, and newborn care, particularly in underserved rural and remote areas.

Work-Life Balance and Gender Equality:

Promote a culture of work-life balance by encouraging flexible work arrangements, parental leave policies, and supportive workplace environments for both men and women.

Address gender stereotypes and discrimination in the workplace through awareness campaigns, diversity training, and gender-sensitive policies and practices.

Invest in initiatives to promote women's economic empowerment, entrepreneurship, and leadership opportunities, including access to vocational training, microfinance, and mentor-ship programs.

Maternal Health and Well-being:

Strengthen maternal health services, including skilled birth attendance, emergency obstetric care, and access to family planning services, to reduce maternal morbidity and mortality.

Prioritize maternal nutrition, mental health, and psychosocial support during pregnancy and postpartum, including screening and treatment for maternal depression and other mental health

disorders.

Foster collaboration between health systems, community organizations, and non-governmental organizations to improve maternal and child health outcomes through integrated, holistic approaches.

Monitoring and Evaluation:

Establish robust monitoring and evaluation mechanisms to track the implementation and impact of maternity benefit programs, including coverage, utilization, and outcomes for mothers and infants. Conduct regular assessments of program effectiveness, efficiency, and equity, using data-driven insights to inform evidence-based policy decisions and programmatic adjustments.

Foster knowledge sharing and exchange among stakeholders, including government agencies, civil society organizations, and international partners, to leverage best practices and innovations in maternity benefits and social protection.

By prioritizing these areas over the course of the second five-year plan, India can further advance its efforts to support maternal health and well-being, promote gender equality, and ensure that every mother and child has access to the care and support they need to thrive.

3.7 IMPACTS OF MATERNITY LEAVE:

The impact of maternity benefits can be profound and far-reaching, benefiting not only mothers and children but also families, communities, and economies as a whole. Here are some key impacts of maternity benefits:

Improved maternal health:

Maternity benefits enable pregnant women to access essential healthcare services, including prenatal care, skilled birth attendance, and postnatal care. This leads to improved maternal health outcomes, reduced maternal mortality rates, and better overall well-being for mothers.

Reduced healthcare costs:

Maternity leave promotes maternal and infant health, leading to lower healthcare costs associated with pregnancy-related complications, preterm births, and neonatal intensive care. Healthy mothers and babies require fewer medical interventions, resulting in cost savings for healthcare systems.

Workforce diversity and inclusion:

Maternity leave policies promote workforce diversity and inclusion by accommodating the needs of female employees who choose to become mothers. This helps to create a more equitable and supportive work environment, fostering greater representation of women in the labour force.

Enhanced child health and development:

Maternity benefits support breastfeeding, which is critical for infant health and development. Breastfeeding provides infants with essential nutrients, boosts their immune systems, and reduces their risk of infections and chronic diseases later in life.

Increased workforce participation:

Maternity benefits allow women to take time off from work to recover from childbirth, bond with their newborns, and adjust to their new roles as mothers. This helps to retain female employees in the workforce and promotes gender equality in employment opportunities.

Economic empowerment of women:

By providing financial support during maternity leave, maternity benefits help to mitigate the economic burden associated with childbirth and childcare. This enables women to maintain financial stability, pursue career advancement opportunities.

Social cohesion:

Maternity leave policies reflect societal values and priorities related to family, care-giving and gender equality. By supporting mothers in their role as caregivers, these policies contribute to social cohesion and solidarity, fostering a sense of shared responsibility for the well-being of families and communities.

Long-term economic growth:

Investing in maternity leave can have positive economic implications in the long term. By supporting women workforce participation and productivity, maternity leave policies contribute to economic growth, innovation and competitiveness, helping to build a more resilient and prosperous society.

3.8 BENEFITS OF MATERNITY LEAVE:

Maternity leave offers numerous benefits to both mothers and their families, as well as to employers and society as a whole. Here are some key benefits:

Healthier pregnancies and childbirth:

Maternity leave allows pregnant women to take time off from work to attend prenatal appointments, rest, and prepare for childbirth, leading to healthier pregnancies and safer deliveries.

Bonding with the newborn:

Maternity leave enables mothers to spend quality time bonding with their newborn babies, establishing crucial emotional connections that contribute to the child's well-being and development.

Breastfeeding support:

Maternity leave facilitates breastfeeding initiation and continuation by providing mothers with the time and flexibility needed to breastfeed their infants on demand. Breastfeeding offers numerous health benefits to both the mother and the baby.

Improved maternal mental health:

Maternity leave reduces stress and anxiety associated with balancing work and motherhood, promoting better mental health outcomes for mothers during the critical postpartum period.

Gender equality:

Maternity leave policies promote gender equality by acknowledging the unique biological role of women in childbirth and providing them with necessary support to balance work and family responsibilities.

Employee retention and loyalty:

Offering maternity leave demonstrates an employer's commitment to supporting employees during significant life events, fostering loyalty and satisfaction among staff members. Enhanced productivity and morale: Maternity leave policies contribute to a positive work environment by promoting employee well-being, reducing absenteeism, and boosting morale among workers.



Economic benefits:

Maternity leave leads to healthier babies, reduced healthcare costs, and increased workforce participation among women, contributing to overall economic growth and development.



CHAPTER 4

ANALYSIS OF THE PATERNITY BENEFIT

4.1 ILO ON PATERNITY LEAVE:

“Gender equality, and the social transformation it implies, is most likely to be achieved when men recognize that the lives of men and women are interdependent and that the empowerment of women benefits everyone”.¹¹³

Studies indicate a correlation between fathers taking leave, men sharing family responsibilities, and child development. Fathers, who take extended leave, particularly in the first two weeks after a child's birth, tend to be more engaged with their children. This increased involvement is believed to promote gender equality within the household ultimately contributing to gender equality in the workplace. The ILO has also recognized the importance of paternity leave and parental leave in promoting gender equality in the workplace.

While the ILO does not mandate specific paternity leave policies, it advocates for the adoption of comprehensive maternity and paternity leave provisions as part of national labour and social security frameworks. By expanding the scope of maternity protection to include provisions for fathers and other caregivers, the ILO aims to create a more equitable and supportive work environment for all employees, regardless of gender.

The ILO now seeks to gain acceptance of the view that certain labour rights identified as basic or core in the Declaration on Fundamental Principles and Right at Work¹¹⁴ must be recognized as human rights and form part of the constitutive framework of the global economy¹¹⁵. Human rights scholars and UN treaty bodies for their part make the case for recognition of a still broader list of workers' entitlements including many which have historically been supported by the ILO.

Gender disparities and inequalities in the workplace between men and women are widely acknowledged and extensively documented.¹¹⁶ The unequal distribution of unpaid work between men and women is identified by the International Labour Organization (ILO) as the main cause for these disparities.¹¹⁷ In both developed and developing economies, women bear a disproportionate burden of unpaid work, such as care giving and household chores¹¹⁸. This imbalance results in women having less time than men for paid employment. Recognizing this challenge, the International Labour Organization (ILO) highlights the unequal balance between women's personal and professional lives as a significant obstacle for working women worldwide.¹¹⁹

Due to their greater responsibility for unpaid work, women face limited availability and opportunities to advance their careers and increase their earnings compared to men. To address these inequalities, the ILO emphasizes the importance of shifting the responsibility for unpaid work from mothers to both parents equally.¹²⁰ Paternity and parental leave entitlements for fathers are identified as key policies

¹¹³ L. Haas and P. Hwang, 'Parental Leave in Sweden', and B. Cohen 'Parental Leave in Europe: Policy Implications', both in P. Moss and F. Deven (eds.), *Parental Leave: Progress or Pitfall? Research and Policy Issues in Europe* (IDI/CBGS Publications, Brussels, 1999) pp. 13, 55, 62, and 297; and L. Carlson, *Searching for Equality, Sex Discrimination, Parental Leave and the Swedish Model with Comparisons to EU, UK and US Law* (Iustus Förlag, Uppsala, 2007) p. 20.

¹¹⁴ ILO, *Declaration on Fundamental Principles and Rights at Work*, (1998), <https://www.ilo.org>, (last accessed May 13, 2024)

¹¹⁵ UN, *Report of the World Summit for Social Development: Copenhagen Declaration and Programme of Action*, U.N. Doc. A/CONF.166/9 (1995).

¹¹⁶ International Labour Office, *A Quantum Leap for Gender Equality: For a Better Future of Work for All* (2019); Organisation for Economic Co-operation and Development [OECD], *The Pursuit of Gender Equality: An Uphill Battle*, at 3 (2017); World Economic Forum, *The Global Gender Gap Report 2018*, at vii (2018).

¹¹⁷ *Id.*, at 110

¹¹⁸ *Women at Work*, supra note 2, at 103

¹¹⁹ *The Pursuit of Gender Equality: An Uphill Battle*, supra note 1, 189

¹²⁰ Gallup Inc. & ILO, *Towards a Better Future for Women and Work: Voices of Women and Men*, (2017).

by the ILO to encourage their involvement in unpaid work and care giving responsibilities.¹²¹

These policies are particularly impact as they coincide with pivotal moments in parents' lives when care giving patterns are established.¹²² By focusing on equalizing unpaid work between parents, family leave entitlements have the potential to challenge gender stereotypes and norms, where women are primarily caregivers and men are primary breadwinners.¹²³ They can also help rectify the current unequal distribution of unpaid responsibilities between parents.

4.1 ILO GENDER EQUALITY FRAMEWORK:

Gender equality has been a fundamental goal of the International Labour Organization (ILO) since its inception.¹²⁴ The organization's Constitution and Declaration on Social Justice for a Fair Globalization (2008) underscore the significance of gender equality and non-discrimination.¹²⁵ The ILO acknowledges that equality is a fundamental human right crucial for achieving social justice, promoting economic efficiency, and fostering economic growth and development.¹²⁶ It also recognized the necessity of equally shared parental responsibilities in its Resolution concerning *Gender Equality at the Heart of Decent Work (2009)*, although this resolution is non-binding. It emphasized the importance of men changing their behavior, as shared parental responsibilities are essential for breaking down gender-stereotyped barriers. Adjusting the division of labour within households to achieve a more equitable distribution of tasks offers significant benefits for both genders. Approaching the reconciliation of work and family responsibilities holistically enables the introduction of family-friendly policies, making paid work and care giving compatible.¹²⁷

This Resolution underscores the significance of family leave in encouraging more working fathers to share family responsibilities.¹²⁸ The idea of fathers taking on greater responsibility for household tasks and care giving is not novel to the International Labour Organization (ILO). The ILO acknowledges that the shared responsibility for family duties has alleviated pressure on women in many countries where they juggle work and home life, thus promoting their economic empowerment.¹²⁹ The introduction of family leave provisions and entitlements, along with a more equitable distribution of family responsibilities, reflects a gradual societal shift towards recognizing "paternity" as both a social value and responsibility. This shift also contributes to the dismantling of gender stereotypes.

Even after more than a century since its inception, the International Labour Organization (ILO) continues to prioritize equality between working women and men. The Decent Work Agenda, aligned with the UN Sustainable Development Goals, underscores the significance of gender equality.¹³⁰ It emphasizes that to foster decent work for all, including achieving full and productive employment and equal pay for work of equal value, governments must enact policies that support a balance between work and family life. Additionally, the Agenda urges governments to address economic, social, and cultural barriers to gender equality.

4.1.2 INTERNATIONAL LABOUR STANDARD:

Four International Labour Standards (Standards) have addressed equality between working women and men.

¹²¹ The Pursuit of Gender Equality: An Uphill Battle, supra note 1, 190

¹²² The Pursuit of Gender Equality: An Uphill Battle, supra note 1, 190

¹²³ Maria C. Huerta et al., Fathers' Leave and Fathers' Involvement: Evidence from Four OECD Countries, 16 *Eur. J. Soc. Sec.* 308, 309 (2014).

¹²⁴ ILO, Resolution Concerning Gender Equality at the Heart of Decent Work, (2009), p.9.

¹²⁵ International Labour Organization Constitution, (1919), Part II(a).

¹²⁶ Supra note 118, p.9.

¹²⁷ Supra note 118, p.14.

¹²⁸ Supra note 118, p.47

¹²⁹ Id., p.48.

¹³⁰ Int'l Labour Org., *Decent Work and the 2030 Agenda for Sustainable Development* (2015), p.11.

1. The Equal Remuneration Convention (1951):

It explicitly mandates states to ensure equal pay for women and men performing work of equal value¹³¹. Countries that ratify the convention agree to take measures to promote and ensure the application of the principle of equal remuneration for men and women workers for work of equal value. This includes enacting legislation, encouraging collective agreements, and promoting objective job evaluation methods. Ratifying countries must report on the measures they have taken to implement the convention. The ILO monitors compliance and provides technical assistance to help countries achieve the convention's goals.

2. The Discrimination (Employment and Occupation) Convention, 1958:

The Discrimination (Employment and Occupation) Convention, 1958 mandates states to implement policies aimed at fostering equal opportunity and treatment to minimize any form of discrimination, including sex discrimination, in the workplace. Both Conventions have been widely ratified by ILO Member States, with 173 and 175 ratification, respectively.¹³²

3. The Workers with Family Responsibilities Convention, 1981:

The Workers with Family Responsibilities Convention (1981) introduced provisions for paternity and parental leave entitlements for working fathers.¹³³ This Convention strives to establish effective equality of opportunity and treatment for all workers with family responsibilities, ensuring they are not disadvantaged compared to those without such responsibilities. It encompasses workers with obligations for dependent children that limit their ability to engage in economic activity.¹³⁴ Signatory states are required to integrate the objective of enabling workers to balance their work and family responsibilities into their national laws, facilitating their participation and advancement in economic activities without conflict.¹³⁵

The 1951, 1958, and 1981 Conventions were all aimed at advancing gender equality.¹³⁶ Furthermore, the Workers with Family Responsibilities Convention echoes many aspects of international instruments concerning gender equality, particularly aligning with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which calls for the modification of traditional gender roles and social norms.¹³⁷

States are encouraged to revise social and cultural norms between women and men to eliminate biases, stereotypes, and practices rooted in gender superiority or inferiority. Notably, the Workers with Family Responsibilities Recommendation (1981) propose that governments introduce employment-protected parental leave for both parents immediately following maternity leave. States have the flexibility to determine the duration and terms of parental leave, with the Recommendation suggesting a phased introduction of such leave.

4. The Maternity Protection Conventions (1919 and 2000):

The Maternity Protection Conventions (1919 and 2000) acknowledge women's entitlement to at least 14 weeks of paid maternity leave, including a compulsory six-month period following childbirth. The Maternity Protection Recommendation (2000) urges governments to extend the minimum maternity leave to 18 weeks and ensure that women receive full cash benefits equivalent to their previous

¹³¹ Int'l Labour Org, C100 - Equal Remuneration Convention, 1951 (No. 100), Art. 2(1)

¹³² Int'l Labour Org, C111 - Discrimination (Employment and Occupation) Convention, Art.1, 2 (June 4, 1958).

¹³³ Int'l Labour Org., Ratifications of C100 - Equal Remuneration Convention, 1951 (No. 100), (Feb. 26, 2019), <https://www.ilo.org>, (last accessed . May12,2024)

¹³⁴ ILO, C100 - Equal Remuneration Convention, 1951 (No. 100), Art. 2(1)

¹³⁵ ILO, C156 - Workers with Family Responsibilities Convention, 1981 (No. 156), Art.1(1)

¹³⁶ Id., Art. 3(1).

¹³⁷ ILO, C111 - Discrimination (Employment and Occupation) Convention, Arts. 1-2.

earnings.¹³⁸ Additionally, it suggests limited provisions for paternity and parental leave.¹³⁹

In cases where the mother passes away during maternity leave, the father should be granted leave for the remaining duration. Similarly, if the mother falls ill or is hospitalized after childbirth and cannot care for the child for the remainder of the maternity leave, the father should be entitled to leave for the remaining period.¹⁴⁰ As for parental leave, either working parent should be eligible following the conclusion of maternity leave, with the duration and terms determined by national laws or regulations.¹⁴¹

The ILO consistently emphasizes the significance of providing family leave to fathers as a means of promoting gender equality. While both the Maternity Protection and Workers with Family Responsibilities Recommendations advocate for the integration of family leave entitlements into national laws, they do not impose legally binding obligations. Instead, they encourage governments to enhance protections for parents. However, the scope of paternity and parental leave rights is limited. Paternity leave is typically reserved for exceptional circumstances, and neither Recommendation offers specific guidelines on the structure of parental leave. Consequently, states have considerable discretion in designing parental leave policies. This lack of guidance also means there are no measurable targets for progress towards gender equality in the workplace

Moreover, the *Workers with Family Responsibilities Recommendation* suggests offering parental leave to either parent on a gender-neutral basis, which may not effectively address the disproportionate burden of unpaid work on mothers. While maternity protections play a crucial role in advancing equality between women and men in the workplace, simply extending maternity leave periods may not be the most effective solution to address gender inequalities. Lengthy absences from the workforce can lead to decreased employment opportunities and entitlements for women, along with an increased risk of experiencing discrimination.¹⁴²

As a result of these entitlements, new mothers may receive more support to enter or reenter the labour market after childbirth and achieve a better balance between their personal and professional lives.¹⁴³ This contributes positively to gender equality within the household, which the International Labour Organization (ILO) acknowledges as fundamental to achieving workplace gender equality.¹⁴⁴

5. ILO Centenary Report:

The ILO Centenary Initiative on Women at Work was introduced by the ILO Director General. The primary objective of this initiative is to examine the position and circumstances of men and women in the workforce and actively involve ILO constituents, including governments, workers' organizations, and employers' organizations, in implementing tangible measures to achieve equal opportunities and fair treatment. The report,¹⁴⁵ reviews the global analysis examines the legislation and implementation of maternity and paternity rights in various countries. Acknowledging the essential role and duty of both genders in parenthood, the rights and practices that support this notion are vital for ensuring equal opportunities and fair treatment.

The report further states that the last 20 years, there have been noticeable improvements in terms of

¹³⁸ Id. at art. 22(2),(3).

¹³⁹ ILO, C003 - Maternity Protection Convention, Art. 3(c)

¹⁴⁰ ILO R191 - Maternity Protection Recommendation, art. 1(1), 2

¹⁴¹ id., Art. 10(1).

¹⁴² Yusuf Emre Akgündüz & Janneke Plantenga, *Labour Market Effects of Parental Leave: A European Perspective* 5, 7 (Utrecht Sch. of Econ., Tjalling C. Koopmans Research Inst., 2011)

¹⁴³ ILO, *Maternity, Paternity at Work: Baby Steps Towards Achieving Big Results*, at 4, 6.

¹⁴⁴ Id. at 112; *Women at Work*, supra note 2, at 84; Andreas Kotsadam & Henning Finseraas, *The State Intervenes in the Battle of the Sexes: Causal Effects of Paternity Leave*, 40 Soc. Sci. Res. 1611, 1611-22 (2011)

¹⁴⁵ Int'l Labour Org. [ILO], *Report of the Director-General: Towards the Centenary: Realities, Renewal and Tripartite Commitment*, Report I(A), International Labour Conference, 102nd Session (2013)

longer rest periods at the time of childbirth, and movement away from employer liability systems of financing paid maternity leave. An increasing number of countries are also implementing measures to support both mothers' and fathers' care responsibilities, such as paternity, parental and adoption leave, as well as services and facilities to enable nursing and childcare. Assisting employees with maternity and paternity responsibilities in the workplace continues to encounter various obstacles.

This report presents a current overview of our current position and the knowledge we have gained thus far regarding maternity and paternity in the workplace. It also indicates our aspiration to create a world, prior to the ILO Centenary, where both women and men are not required to compromise their lives, well-being, and family responsibilities in order to earn a living.¹⁴⁶ We anticipate that this report will serve as a guiding document for the ILO tripartite constituents and the Organization's technical assistance, enabling them to make a significant impact on the lives of working mothers and fathers. Furthermore, it aims to ensure that the longstanding principles of international labour standards become a reality for everyone, regardless of their location.¹⁴⁷

While gender equality is undeniably a cornerstone of the ILO legal framework, merely acknowledging its importance, along with that of paternity and parental leave, is not enough to guarantee their effective implementation by states. Concrete international standards are needed to ensure that this recognition translates into meaningful action and realization.

4.1.3 REASONS FOR ACTION BY THE ILO:

The ILO is ideally positioned to implement a legally binding instrument on family leave for several reasons.

Firstly, such an initiative closely aligns with the ILO mission, which is dedicated to addressing labour issues and safeguarding human and labour rights.¹⁴⁸

Secondly, family leave is intricately linked to the ILO strategic goals, which include establishing and promoting labour standards and fundamental rights, enhancing opportunities for decent employment and income, and improving social protection coverage and effectiveness. Standardizing paternity and parental leave through the ILO would contribute significantly to advancing these objectives.¹⁴⁹

Between 1994 and 2015, the number of countries legally recognizing paternity leave rose from 40 out of 141 to 94 out of 170, according to available data. Notably, this trend isn't confined to Western nations alone.¹⁵⁰ Despite this progress, the ILO remains concerned about the persistent gender gaps and urges governments to take decisive action to promote gender equality. The ILO recommends that nations establish a comprehensive legal framework encompassing paid maternity leave alongside paid, mandatory, non-transferable paternity and parental leave. Such measures are deemed essential for enhancing women's participation and advancement in the labour market.

The ILO 2019 report, "A Quantum Leap for Gender Equality," noted that while considerable progress has been made for women in the workplace over the past century, there is still much work to be done. The ILO must take its own advice and implement the proposed standards on paternity and parental leave.¹⁵¹

¹⁴⁶ Laura Addati, Naomi Cassirer & Katherine Gilchrist, *Maternity and Paternity at Work: Law and Practice Across the World*, (2014), p.9

¹⁴⁷ Addati, Cassirer & Gilchrist, *supra* note, p.9

¹⁴⁸ JOHN BLACK ET AL., *INTERNATIONAL LABOUR ORGANIZATION* (Oxford University Press 2012).

¹⁴⁹ Int'l Labour Org., Mission and Impact of the ILO, <https://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm> (last accessed . May11, 2024).

Int'l Labour Org., The U.N. Agency for the World of Work (2019), p.2

¹⁵⁰ Id., p.12.

¹⁵¹ Id., p.12.

4.2 NEED OF PATERNITY LEAVE:

Gender roles dictate how society expects individuals to present themselves based on their assigned sex. Historically, women were expected to be docile and soft-spoken, while men were expected to be strong, aggressive, and bold. These stereotypical norms foster widely accepted judgments or biases toward certain groups or communities, often in an overly simplified and inaccurate manner. These norms frequently result in direct oppression and systemic inequality. The concept that "these gender norms do not represent innate truth" is widely recognized. Society often distinguishes the identities of men and women based on intellectual, cultural, physical, and behavioral traits, which are social constructs rather than reflections of individual capabilities. Even biologically, there is no inherent evidence that child-rearing should be solely a mother's responsibility or that men should be the primary breadwinners.

The need for paternity leave arises from several important factors, including:

Gender equality:

Paternity leave promotes gender equality by recognizing and supporting the shared responsibility of both parents in care giving and child-rearing. It challenges traditional gender roles and stereotypes that often assign primary care giving responsibilities to women, while encouraging men to take an active role in parenting.

Bonding with the child:

Paternity leave allows fathers the opportunity to bond with their newborn child during the crucial early weeks or months of life. This bonding experience is not only beneficial for the father-child relationship but also contributes to the child's emotional and psychological development.

Support for working parents:

In dual-income households, paternity leave provides essential support for working parents by enabling fathers to take time off work to assist with childcare responsibilities. This helps to alleviate the burden on mothers and promotes a more equitable distribution of care giving duties within the family.

Health and well-being:

Paternity leave contributes to the overall health and well-being of fathers by allowing them to actively participate in the care of their child and support their partner during the postpartum period. It can reduce stress, promote mental health, and strengthen family relationships.

Workplace culture and productivity:

Offering paternity leave demonstrates an employer's commitment to supporting work life balance and family-friendly policies. It can improve employee morale, loyalty, and retention, leading to higher levels of productivity and job satisfaction.

Legal and social recognition:

Providing paternity leave ensures that fathers have legal and social recognition of their role as caregivers and parents. It acknowledges the importance of fatherhood and the valuable contributions that fathers make to their families and society as a whole.

Therefore, gender-neutral parenting laws are needed to incentive male partners to share childcare responsibilities and actively contribute to the holistic development of newborns. While India acknowledges the importance of maternity leave benefits, it is high time to recognize and effectively implement paternity benefits. This would help women achieve equal economic status with men by

alleviating the additional burden of unpaid labour and childcare, thereby breaking existing societal stereotypes.

4.3 BENEFITS OF PATERNITY LEAVE:

Women Empowerment:

Paid paternity leave helps to alleviate the double burden phenomenon. This refers to the expectation that women should not only fulfill unpaid household responsibilities, but also excel in their paid work at their organization. By supporting equal paid leave for both parents, organizations can protect mothers from discrimination in terms of hiring, promotions, and salary. This discrimination, commonly known as the motherhood penalty, is a consequence of the absence of fair paternity leave.

A study conducted by the journalist Akgunduz and Plantenga at 2012, examines the impact of varying duration of total parental leave entitlements on women's employment using aggregated macro-level data from 16 European countries between 1970 and 2010. The findings indicate that longer leave duration have a positive effect on women's employment participation, as evidenced by increased female employment-to-population rates.

However, this effect diminishes as the duration of leave becomes either very short or very long, suggesting an inverted U-shaped relationship between leave length and female employment participation. Therefore, both very short and very long duration of leave negatively impact women's employment participation, while a moderate duration has a positive effect. The analysis suggests that an optimal paternity leave length of 28 weeks maximizes women's labour force employment.

It is crucial to comprehend this research as it establishes a measurable connection between the ideal duration of paternity leave and the greatest advantage for women. A study conducted in Canada has determined that as fathers take more paternity leave, there is a direct correlation with an increase in the number of work hours by mothers. This, in turn, enables women to enhance their economic involvement by alleviating the burden of household chores. Additionally, it motivates men to take on greater responsibility in caring for their children.

Cost-Benefit Analysis:

Many believe that while big corporations can absorb the costs of enhanced paternity benefits, small businesses struggle to cover these expenses due to financial constraints. While employee morale may improve, overall productivity could suffer from resource reallocation and training disruptions, potentially impacting economic growth.

It is a common argument that while large established companies can cover the costs associated with increased paternity benefits, small businesses or companies may struggle due to financial constraints. Although employee morale may improve, overall productivity could suffer from resource reallocation and training disruptions. Despite these challenges, there is a symbiotic relationship between labour rights and economic growth. While some companies may view it as a trade-off, the introduction of paternity benefits can help break patriarchal norms and empower women to reach their full potential without gender bias. This policy lays the groundwork for equality, allowing married women and mothers to thrive and contribute to long-term growth.

Although there may be short-term losses in human resources, the long-term benefits of increased female employment will enhance company productivity and attract diverse talent through progressive policies. Ultimately, the initial costs of implementing this policy will yield lasting advantages for companies. By promoting gender equality in the workplace, economic growth can be achieved as women are no longer burdened with domestic responsibilities and can work in a

supportive and inclusive environment.

4.4 CONCEPT OF PATERNITY LEAVE IN INDIA:

Law exists to serve the needs of society as a whole, ensuring that every member is treated fairly. The ultimate goal of a just society is to establish equality at its core, preventing any form of injustice from taking root. The primary objective of any law is to ensure fairness and justice for all individuals. In the 21st century, India has experienced a significant shift in its approach to gender equality, with lawmakers and the judiciary taking proactive measures to protect the rights of women that have long been overdue.

To safeguard the rights of working women during pregnancy and after childbirth, the law now mandates that institutions and workplaces provide maternity benefits to their female employees. These maternity benefits in India are primarily governed by the Maternity Benefit Act of 1961, which applies to establishments with ten or more employees.¹⁵²

The legislation stipulates that a female employee will receive maternity benefits based on her average daily wage earned in the three months leading up to her maternity leave. Initially, the Maternity Benefit Act granted twelve weeks of maternity leave, with up to six weeks allowed before the delivery. However, in 2017, the Act was revised to increase the maternity leave period to twenty-six weeks,¹⁵³ instead of twelve. Now, out of the twenty-six weeks, up to eight weeks can be taken before the delivery.

The presence of both parents during a child's early days is crucial. A father who works long hours and comes home exhausted may struggle to give his full attention to his newborn. This period is essential for building a strong bond between parent and child, and the father should also be given paternity leave to ensure he can be present during this important time. The term paternity leave signifies 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".¹⁵⁴ Paternity leave is a key family-friendly benefit offered in many workplaces. The main goal of providing fathers with leave is to advance gender equality in society. It is important to recognize that caring for a newborn is not solely the mother's duty, but also the father's responsibility. By encouraging shared domestic duties, paternity leave contributes to promoting gender equality both at home and in the workplace.

4.4.1 CONSTITUTIONAL PERSPECTIVE OF PATERNITY UNDER ART. 42:

The government has implemented various policies and provisions aimed at safeguarding the interests of women and fostering a gender-neutral society. These measures aim to ensure that women enjoy equal rights as men and work towards eliminating stereotypes and other forms of discrimination prevalent in Indian society.

While Directive Principles of State Policy (DPSP) may not be legally enforceable in court, these principles play an important role in national government, particularly in lawmaking. Specific principles, such as Article 42¹⁵⁵, which emphasizes the necessity of guaranteeing fair and humane working conditions and providing maternity benefits, may have an indirect influence on talks on paternity leave and family welfare policy.

The DPSP strive to establish the social and economic democracy that was pledged in the Preamble.¹⁵⁶ It has the goal to create a 'socialist framework within society' without aligning with either extreme of

¹⁵² Flavia Agnes; *Law and Gender Inequality: The Politics of Women's Rights in India*; (Oxford University Press, London, 2001)

¹⁵³ CS Nishvitha; *"An overview on the Maternity Benefit (Amendment) Act, 2017"*; <https://www.icsi.pdf>, (last accessed . May13, 2024)

¹⁵⁴ Mari Rege & Ingeborg F. Solli, *The Impact of Paternity Leave on Fathers' Future Earnings, Demography*, https://www.researchgate.net/publication/258055635_The_Impact_of_Paternity_Leave_on_Fathers'_Future_Earnings, (last accessed . May13, 0224)

¹⁵⁵ Id., 84

¹⁵⁶ Durga Das Basu, *Introduction to the Constitution of India*, (22nd ed., 2015), p. 163

Individualism or Socialism.¹⁵⁷ Revising article 42 within the DPSP of the constitution holds significance as it exclusively addresses maternity leave in the entire constitution. This underscores the vision of our constitution framers to establish a gender-neutral society. Subsequently, the enactment of the Maternity Act and other legislation aimed to realize this vision. However, it is now evident that achieving a gender-neutral society is unattainable unless the patriarchal gender role stereotypes are eradicated from our society.

Modifying article 42 in the DPSP of the constitution is crucial since it solely addresses maternity leave in the entire constitution. This reflects the aspiration of our constitution makers to create a gender-neutral society. Subsequent legislation such as the Maternity Act was enacted to fulfill this vision. Nevertheless, it is now apparent that achieving a gender-neutral society is impossible without eliminating the patriarchal gender role stigma from our society.

Including paternity leave in Article 42 would carry significant educational value, promoting a more gender-neutral society. Such a provision could influence societal attitudes and compel the state to implement paternity leave policies. This, in turn, would help courts interpret paternity leave as a fundamental human right. As the world's largest and oldest democracy, India enshrining paternity and maternity leave in its constitution would send a powerful message about its commitment to a just and equitable world.¹⁵⁸

The report by the Centre for Social Research for the National Commission for Women in 2014¹⁵⁹, examines various issues, particularly focusing on violence against women in politics in South Asia. The study revealed that inadequate implementation of laws, lack of support from police and judiciary, and socio-economic divides contribute significantly to this violence. It was conducted across India, Nepal, and Pakistan, involving interviews with around 800 respondents. The findings indicate that fear of violence is a major deterrent to women's political participation, with over 60% of women avoiding politics for this reason.

Without parental leave, the burden of child care falls entirely on mothers. However, implementing a paternity leave program can contribute to a gradual shift in attitudes and the dismantling of gender roles. In 2014, the International Labour Organization (ILO) released a report stating that fathers who take leave, especially paternity leave, are more likely to actively engage with their children. This shift in behavior can lead to changes in marital dynamics, parental role expectations, and societal norms, ultimately promoting gender equality both at home and in the workplace.¹⁶⁰

The November 2015 report by the McKinsey Global Institute (MGI) is titled "The Power of Parity: Advancing Women's Equality in India." This report highlights the significant economic potential of achieving gender parity. Specifically, it estimates that advancing women's equality in India could add \$700 billion to the country's GDP by 2025. This impact stems primarily from increasing women's labour force participation by ten percentage points, which would bring 68 million more women into the workforce.

The report also discusses the broader global economic implications of gender parity. If all countries matched the progress of the fastest-improving nations in their regions, the global GDP could see an additional \$12 trillion annually by 2025. Achieving these goals would require targeted actions to bridge both economic and social gender gaps, such as improving education and skills, creating job opportunities in key sectors, and promoting corporate policies that support diversity. The labour force

¹⁵⁷ id.,

¹⁵⁸ U. Unterhofer & K. Wrohlich, *Fathers, Parental Leave and Gender Norms*, *IZA Discussion Papers* (2017), <http://ncw.nic.in/reports/publications/reports-published-by-the-commission> (last accessed . May.13, 2024)

¹⁵⁹ National Commission for Women, *Reports Published by the Commission*, <http://ncw.nic.in/reports/publications/reports-published-by-the-commission> (last accessed . May13, 2024)

¹⁶⁰ Johansson, E.A., *The Effect of Own and Spousal Parental Leave on Earnings*, No. 2010:4 (2010) (workingpaper), P.15

participation rate for women in India stands at a mere 24 percent and this figure falls significantly short of the global average participation rate of 40 percent.¹⁶¹

The significance of amending article 42 within the DPSP of the constitution cannot be overstated. Currently, maternity leave is only provided for in article 42, which clearly reflects the intention of our constitution makers to establish a society that is unbiased towards gender. *“Gender relationships are key to whether a society orients to domination or partnership in all its relations”*.¹⁶² In order to truly achieve this goal, it is imperative that we eliminate all patriarchal gender role stigmas. One way to do this is by including a provision for paternity leave in Article 42. This would not only have educational value, but also send a powerful message advocating for a more gender neutral society.

Moreover, it has been proven that institutional contexts and policies can influence attitudes. By developing a paternity leave policy, the government would not only be fulfilling its duty to interpret this provision as a fundamental human right, but also encouraging a shift in societal attitudes. As the world's largest and oldest democracy, India would make a profound statement about its vision of a just and neutral society by incorporating both paternity and maternity leave into its constitution. Adding a paternity leave provision to Article 42 would contribute to the establishment of a fair and equal society by promoting gender equality, supporting the well-being of families, and challenging traditional gender roles.

4.4.2 CENTRAL CIVIL SERVICES (LEAVE) RULES, 1972:

The importance of paternity leave is recognized as it helps address gender dynamics at both workplace and home, providing fathers with an opportunity to bond with their newborns and support the mother. However, there is currently no national legislation mandating paternity leave for private sector employees, although some companies do offer such benefits voluntarily.¹⁶³

In India, the Central Government has established provisions for paternity leave for male employees through the Central Civil Services (Leave) Rules of 1972. These rules, specifically Section 43A and Section 43AA, play a significant role in reshaping societal perspectives. Section 43A¹⁶⁴, grants paternity leave to male Central Government employees, including apprentices and probationers, who have two or fewer children. This leave allows them to take care of their wife and newborn child for a total of fifteen days. It can be availed within fifteen days before or six months after the child's delivery. Failure to take this leave within the specified time frame results in its forfeiture. Additionally, during paternity leave, the male employee receives a salary equivalent to the amount deducted prior to their leave. Therefore, paternity leave is a paid benefit. Furthermore, Section 43AA¹⁶⁵, of the 1972 rules ensures that these provisions also apply in cases of adoption.

Through the Amendment Act of 2009, it is evident that the regulations set by the central government do not differentiate between an adopted child and a naturally born child when granting paternity leave to fathers. This demonstrates the government's commitment to treating adopted children as equal to naturally born children in all aspects.¹⁶⁶ This inclusive is a significant aspect of the paternity leave policy provided by the central government for its male employees. Additionally, one notable

¹⁶¹ J.J. Endendijk et al., Gender Differences in Child Aggression: Relations with Gender-Differentiated Parenting and Parents' Gender-Role Stereotypes, *Child Development* (2017), p.88, 299-316.

¹⁶² Riane Eisler, *The Chalice and the Blade: Our History, Our Future* (1987), P.23

¹⁶³ Paternity Leave in India, *Civildaily* (Jan. 13, 2021), <https://www.civildaily.com/news/paternity-leave-in-india/> (last visited May 6, 2024)

¹⁶⁴ *Supra* note, 26.

¹⁶⁵ Rule.43-AA. Paternity Leave for Child Adoption, ((1) A male Government servant (including an apprentice) with less than two surviving children, on valid adoption of a child below the age of one year, may be granted Paternity Leave for a period of 15 days within a period of six months from the date of valid adoption, (2) During such period of 15 days, he shall be paid leave salary equal to the pay drawn immediately before proceeding on leave, (3) The paternity leave may be combined with leave of any other kind, (4) The Paternity Leave shall not be debited against the leave account, (5) If Paternity leave is not availed of within the period specified in sub- rule (1) such leave shall be treated as lapse).

¹⁶⁶ Dr. S. Ramachandran and Mandeep Kaur, *“Rules of Maternity and Paternity Leave”*; (MMUJMP, Vol 10(1))

feature of this policy is that paternity leave can be combined with other types of leave, allowing new fathers to have additional days off.

However, the Indian law on paternity leave is not only limited in terms of who can benefit from it but also seems to operate under the assumption that the primary responsibility of caring for a child lies with the mother. This perspective portrays the role of fathers in raising children as a last resort rather than an integral part of everyday gender dynamics within the household. Consequently, it reinforces and emphasizes stereotypical gender norms that the law should aim to eliminate.¹⁶⁷

A national paternity leave policy should be implemented, similar to the Maternity Benefit Act, to encompass all sectors, including the unorganized sector. Currently, the paternity leave policy in India is fragmented, with clear guidelines for central government employees but not for the broader workforce. Uniform paternity leave for all male workers in India, regardless of sector, is a significant step towards promoting gender equality and supporting family welfare. The absence of a compulsory national policy for paternity leave in the private sector necessitates the voluntary adoption of progressive policies by certain companies.

By introducing incentives and recognition programs, companies can be motivated to embrace or improve their paternity leave policies, thereby raising awareness about the significance of paternity leave for the well-being of families and society. To ensure adherence to paternity leave policies across all sectors, it is crucial to establish a regulatory framework. Additionally, implementing regular monitoring and reporting mechanisms will enable tracking of the implementation and impact of these policies.

4.4.3 PATERNITY LEAVE IN PRIVATE SECTOR:

Paternity leave is granted to central and state government employees, but there is no legislation that compels the private sector to adopt the same practice. As a result, the provision of paternity leave in private companies is subject to individual interpretation and discretion¹⁶⁸. Private entities have the freedom to establish their own policies, rules, and regulations concerning paternity leave, as it is not obligatory for them¹⁶⁹. In the absence of an official policy for employees in this industry, it may appear discouraging for new fathers. However, there is a silver lining as not everything is as bleak as it seems. Numerous modern companies, as well as their long-standing counterparts, have implemented forward-thinking policies regarding paternity leave.

Numerous technology firms have consistently led the way in providing generous paternity leave for new fathers. With the intensifying competition to attract and retain top tech professionals, organizations are placing greater emphasis on offering perks and benefits, such as paternity leave, to create a more appealing work environment for modern employees.

This demonstrates a noticeable cultural change that has taken place in workplaces in recent years. However, the duration and conditions can differ considerably. Certain companies may grant the same 15-day leave as the central government, while others may offer a longer or shorter duration. Moreover, specific eligibility criteria or restrictions might be in place for certain companies. The table below shows that foreign companies/multinational corporations pay superior paternity benefits in India.¹⁷⁰

¹⁶⁷ Id., p.9

¹⁶⁸ Gayathri and P. Karthikeyan; "Work Life Balance in India - A Social Responsibility or a Competitive Tool"; (IRJBM, August, 2013, Vol 1); <http://irjbm.org/irjbm2013/August/Paper10.pdf>, (last accessed . May 7, 2024)

¹⁶⁹ Lack of Paternity Leave is Negating the Purpose of Maternity Leave," Live Law India, <https://www.livelaw.in>, (last accessed . May 7, 2024)

¹⁷⁰ "Analysis of the Current Legal Framework for Paternity Leaves in India", <https://blog.ipleaders.in/analysis-current-legal-framework-paternity-leaves-india/>, (last accessed . May 7, 2024)

Table: 1

Companies	Paternity/ Parental leave
NetFlix	The parental leave policy at Netflix encourages four to eight months off. Moreover, the company ¹⁷¹ provides family formation and reproductive assistance for employees undergoing fertility treatments, surrogacy, or adoption.
SAS India	2 weeks paternity leave
Meesho	Meesho is not just stopping at fathers”, this e-commerce platform has instituted a 30-week gender-neutral parental leave policy.
Inter Globe Enterprises	5 days paternity leave, to be availed within 30 days of childbirth
Volvo Group	3 calendar weeks paternity leave
Facebook	2 months paternity leave
Microsoft India	6 weeks
Salesforce India	3 months leave for secondary caregivers
Goldman Sachs	6 weeks
Jupiter Networks’ India Excellence Centre	8-9 days to 16 weeks, which can be availed within the first 2 years of childbirth
Tesco	2 weeks, extendable up to 26 weeks in case the male employee is the primary caregiver
Sapient India	10 days

¹⁷¹ Netflix Chief Talent Officer Tawni Cranz, “We want employees to have the flexibility and confidence to balance the needs of their growing families without worrying about work or finances. We’ll just keep paying them normally, eliminating the headache of switching to state or disability pay”, 2015

TVS Motors	6 days which can be availed any-time before or after childbirth
Cummins India	1 month
Schneider Electric	2 weeks, extendable up to 4 weeks
IBM India	5 days to be availed within 120 days of childbirth or adoption
Mondelez India	10 days paternity leave. 6 months leave may be availed if the father is the primary caregiver
Wipro	8 weeks paternity leave
Infosys	5 days paternity leave
PepsiCo India	12 weeks paternity leave
Policybazaar.com	15 days; but exception is made in special cases
Flipkart, Razorpay, and Okcredit	Offering an impressive up to 30 weeks of paid paternity leave.
Accenture	8 weeks of paid leave for new fathers
Diageo	parental leave policy in 2023, granting up to 26 weeks of paid leave to parents of any gender ¹⁷²
Novartis	26 weeks Parental leave ¹⁷³
Cure.fit	26 weeks Parental leave ¹⁷⁴

¹⁷² A Diageo, “By making our policy comprehensive and flexible, the company wants to ensure that caregivers are able to focus on spending quality time to bond with their children and their responsibilities can be equally shared.” <https://www.remofirst.com/post/paternity-leave-in-india>, (last accessed . May7, 2024)

¹⁷³ Sanjay Murdeshwar, “Becoming a parent is a life-changing event and we want our people to cherish the experience. We believe that this move will enrich the workplace and foster a more inclusive culture in the organization,” <https://www.remofirst.com/post/paternity-leave-in-india>, (last accessed . May7, 2024)

¹⁷⁴ Ankit Gupta, Head of Product and Engineering at Cure.fit said, “The program empowers our employees to design a life best suited to their aspirations and eliminates bias”, <https://www.remofirst.com/post/paternity-leave-in-india>, (last accessed . May7, 2024)

(Source: "Analysis of the Current Legal Framework for Paternity Leaves in India")¹⁷⁵

Implementing a uniform paternity leave policy in India would significantly contribute to gender equality, improve family health and well-being, and enhance overall employee satisfaction and productivity. Such a policy would represent a progressive step towards a more balanced and inclusive society.

4.4.4 PATERNITY BENEFIT BILL, 2017:

"Some dads liken the impending birth of a child to the beginning of a great journey."

-- Marcus Jacob Goldman¹⁷⁶

India is one of the 90 countries out of the 187 worldwide that lack national policies to guarantee sufficient paid leave for new fathers to spend time with their babies. This is a matter that India should not take pride in.¹⁷⁷ Paternity leave has a significant influence on society, beyond its legal definition. It has an impact on the child's development, on concepts of family, fatherhood, motherhood, experience, and expectations. It highlights issues and problems around gender equality and parenting. Studies have connected fathers taking leave with higher income for mothers, decreased instances of mothers being absent due to illness, and increased female employment in private companies.¹⁷⁸

The International Labour Organization's Maternity and Paternity at Work Report 2014 quoted researcher *Erin Rehel on role of the father*.¹⁷⁹ The 2014 report,¹⁸⁰ by ILO mentioned the absence of a specific standard for paternity leave, but the 2009 International Labour Conference Resolution on gender equality acknowledged that work-life balance initiatives impact both women and men.

Efforts have been made to introduce paternity leave legislation in India. In September 2017, following the *Maternity Benefit (Amendment) Act, 2017*, the *Paternity Benefit Bill, 2018*, was introduced in the *Lok Sabha* by *MP Rajiv Satav*. This bill proposed granting new fathers 15 days of paternity leave, extendable up to three months, to recognize their role in child upbringing and allow them to bond with their newborns without sacrificing their ability to provide for their families. However, as of the time of writing, this bill has not been enacted into law, and India still lacks specific paternity leave legislation.

One of the appealing aspects of the proposed Paternity Benefit Bill is its inclusive coverage, which extends to male workers across all sectors. This includes the organized sector, government sector, unorganized sector, private sector, and self-employed individuals. By encompassing such a wide range of employment categories, the bill aims to provide substantial comfort and support to a broad spectrum of male workers, allowing them to partake in child-rearing responsibilities without financial or professional repercussions.¹⁸¹

The law will apply uniformly to all employees. Additionally, male employees who have worked at least 80 days in an establishment will qualify for paternity benefits. These benefits will be calculated based on the average daily wage earned by the employee for the days worked. Furthermore, the bill proposes the creation of the Parental Benefit Scheme Fund. This fund will require contributions from

¹⁷⁵ <https://blog.ipleaders.in/analysis-current-legal-framework-paternity-leaves>, (last accessed . May.7, 2024)

¹⁷⁶ Marcus Jacob Goldman, *The Joys of Fatherhood*.

¹⁷⁷ Rianna, "India Paternity Benefit Bill", <https://www.mondaq.com/india/employee-rights/labour-relations/877518/paternity-benefit-bill>, (last accessed . May7, 2024)

¹⁷⁸ Amin, M., Islam, A. and Sakhonchik, *Does paternity leave matter for female employment in developing economies? evidence* The World Bank, 2016, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/124221468196762078/does-paternity-leave-matter-for-female-employment-in-developing-economies-evidence-from-firm-data>, (last accessed . May7, 2024)

¹⁷⁹ Erin Rehel, 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", P.7. ¹⁸⁰ Aaliya Waziri; "Acknowledging unpaid care work and the need for a Paternity Benefit Act"; Bar and Bench, <https://www.barandbench.com>, (last accessed . May7, 2024)

¹⁸⁰ Abhishek Yadav; "Relevance Of The Paternity Bill In India"; (Research Gate, January 2019); <https://www.researchgate.net/publication/331648974>, (last accessed . May7, 2024)

employers, employees, and potentially the Central Government. Its purpose is to cover expenses related to paternal benefits outlined in the bill. In the event that an employer neglects to fulfill their obligation of providing paternity benefits to an eligible man as mandated by this Act, they shall face a minimum imprisonment term of three months and a maximum term of one year. Additionally, they will be subject to a fine ranging from 20,000 rupees to 50,000 rupees. Moreover, the Central Government retains the authority to issue guidelines, referred to as the Parental Benefit Scheme, to ensure the effective provision of benefits to new fathers under the legislation.

Below, we have listed several key provisions outlined in the bill:¹⁸¹

Salaries and Payments:

Each male employee seeking paternity leave is entitled to receive a paternity benefit at the rate of the average daily wage he earned on the days he worked, or at the minimum wage rate set or revised under the Minimum Wages Act, 1948, or at the rate of 10 rupees, whichever is higher, for the duration of his paternity leave.¹⁸²

Total Duration of Leave:

Any employee with fewer than two living children is eligible for paternity benefits for a period of fifteen days, with no more than seven days taken before the expected delivery date of the child. This leave can be used within three months from the child's birth. The bill also recognizes certain exceptional circumstances:

- A) If the employee dies immediately after the child's birth, for which he is entitled to paternity benefits, and leaves the child behind, the employer must provide the benefits for the entire paternity leave duration to the designated beneficiary of the deceased.
- B) If the child dies during the paternity leave period, the employer is responsible for providing paternity benefits, including the date of death, for the days up to the child's death.

Requisite Work Duration:

A man is entitled to paternity benefits only if he has worked for the employer for at least eighty days in the twelve months immediately preceding the anticipated delivery date. This eighty-day qualification period does not apply to men who recently immigrated to the state and whose wives were pregnant at the time of immigration.

Parental Benefit Scheme:

The Union Government will introduce a scheme called the Parental Benefit Scheme under this Act, aimed at providing paternity benefits to every man following appropriate guidelines.

Paternal Scheme Benefit Fund:

The government will create a fund named the Parental Benefit Scheme Fund to support paternity benefits. Contributions to this Fund will come from workers of all genders, employers, and the central government in specified proportions. The Fund will be used to cover the costs associated with paternity benefits under this Act.

Advance Payment of Salary:

Employers must pay the paternity benefit upfront to employees who provide proof that their wife is expecting a child. This advance payment should cover the period before the expected delivery date,

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¹⁸² Priyanshi Pandey, "Paternity Leave Policies in India", <https://blog.ipleaders.in> (last accessed . May7, 2024)

and the amount due must be paid within forty-eight hours of receiving the proof.

No Dismissal Clause:

Employers are prohibited from discharging or dismissing an employee during or because of his paternity leave taken in accordance with this Act. It is also unlawful to issue a notice of leave or dismissal that expires during the paternity leave period.

Inspecting Officer:

The appropriate government may appoint officers as inspectors through a notification in the Official Gazette to enforce the Act's objectives. The jurisdiction of these inspectors will be defined by the relevant authority. Under Section 21, inspectors appointed under this Act are considered public servants.

Miscarriage:

In the event of a pregnancy loss, the bill entitles a worker to paternity benefits at the regular rate for a period of seven days immediately following the pregnancy loss, upon providing the necessary proof.

Adoption:

Under this bill, any man who legally adopts a child under three months of age, or the legal husband of a commissioning mother, is entitled to paternity benefits for fifteen days from the date the newborn is transferred to him.

4.4.5 PATERNITY LEAVE PROVISIONS IN DIFFERENT STATES OF INDIA:

There are a few states in India which have formulated specific provisions regarding paternity leave.¹⁸³

The state of Maharashtra has recently introduced a new policy that allows male employees who are widowers or whose spouses are bedridden and unable to care for their children to take a special 180-day leave until the child reaches the age of 18. This leave can be taken in two-month intervals, up to three times a year. It is important to note that this provision only applies to the public sector.

In contrast, the state of Kerala provides its government male employees with a paternity leave of 10 days for each of their two children, to be taken at the time of their wife's delivery. Similarly, according to section 103a of the Rajasthan service rules, 1951, male government employees are eligible for a paternity leave of 15 days, which can be taken a maximum of two times. In Delhi, the rules for paternity leave for government employees are generally consistent with the central government guidelines.

Other states in India have also implemented paternity leave policies. In July 2023, the chief minister of Sikkim announced a one-month paternity leave for male government employees, while the state of West Bengal implemented similar provisions in 2016. Additionally, in June 2023, the Karnataka government made single male parents eligible for a six-month paternity leave. However, it is important to note that if the male employee gets married during this leave, their leave will automatically end from that day.

Furthermore, in September 2023, the Uttarakhand government announced that single male employees who adopt a male child under one year old will be granted 180 days of child adoption leave. The state has also extended a 15-day paternity leave to contractual and outsourced employees, aligning with government employees.

¹⁸³ Lack of Paternity Leave is Negating the Purpose of Maternity Leave," Live Law India (May 14, 2022), <https://www.livelaw.in/lawschoolcolumn/lack-of-paternity-leave-is-negating-the-purpose-of-maternity-leave-243528#>, (last accessed . May7, 2024)

4.5 IMPORTANCE OF PATERNITY LEAVE:

Paternity leave plays a vital role in promoting family well-being, gender equality, and a supportive work environment, making it an essential component of modern workplace policies.

Paternity Leave and Gender Dynamics:

First and foremost, paternity leave is a legal equality concern. Paternity leave addresses gender inequalities that exist both at work and at home.¹⁸⁴ Gender equality represents a fundamental principle, a cherished value, and a paramount objective within democratic societies.¹⁸⁵ Moreover, it serves as a comprehensive notion that permeates all aspects of social existence. The disproportionate burden of childcare on women at home inevitably affects their professional lives.

This often results in career obstacles for women, hindering their job growth and, in some cases, leading them to quit their jobs altogether. As there is a greater emphasis on shared parenting and a stronger paternal role, the father's capacity to be there throughout the child's early years is critical. It boils down to providing fathers the same rights as mothers. While maternity leave is important for practical reasons, paternity leave is also important for the father's emotional attachment with the child and to help the mother throughout the physical trauma of childbirth. Thus, the law should regard paternity and maternity leave to be in the best interests of the kid, rather than only for physical recuperation.

Gender equality is now embedded in major human rights instruments and is an independent goal of sustainable development. One objective of gender equality in sustainable development is to recognize and value unpaid care and domestic work by providing social services, infrastructure, and social protection policies, and by promoting shared family responsibilities nationwide.¹⁸⁶ According to statistics from the International Labour Organization (ILO), Indian women dedicate an average of 297 minutes per day to unpaid work, primarily focused on caring for children or elderly family members. In contrast, men contribute only 31 minutes on average to these responsibilities.¹⁸⁷

It is not surprising that India is deviating from the global trend of improved gender parity in labour force participation. In India, the female labour force participation rate is only 27%, compared to 79.9% for men.¹⁸⁸ Therefore, as the practice of equally shared parenting is rapidly gaining ground in the West, India must also pave the way for attitudinal change by implementing legislative reforms.

Prevention of discrimination against women at workplace:

As previously mentioned, women's participation in the labour force in India is significantly lower than men's. Employers often hesitate to hire women because they are expected to manage both professional responsibilities and homemaking. Paternity leave can address professional inequities by emphasizing men's role in balancing work and family. Paternity leave also helps lessen the stigma associated with men prioritizing their families. Maternity leave was made mandatory to decrease company pressure on female employees to decline it. Men face similar pressures, making forced paternity leave a viable option.¹⁸⁹

Paternal leave can help reduce workplace discrimination against women, particularly during the hiring process. If both men and women can equally take leave, employers will be less reluctant to hire women of childbearing age. Additionally, women who take the full term of maternity leave often return

¹⁸⁴ "Parental Leave Systems"; (OECD Family Databases); https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf, (last accessed . May7, 2024)

¹⁸⁵ Miriam Rocha; "Promoting gender equality through regulation: the case of parental leave"; (ITPL, Volume 9,2021);

<https://www.tandfonline.com/doi/full/10.1080/20508840.2020.1830565>, (last accessed . May,9, 2024)

¹⁸⁶ Francine D. Blau and Ronald C. Ehrenberg; "Gender and Family Issues in Workplace"; (Russel SageFoundation, New York, 1997),p.34

¹⁸⁷ "Maternity and paternity at work Law and practice across the world"; (International Labour Office, Geneva,2014), <https://www.ilo.org>. (last accessed . May7, 2024)

¹⁸⁸ Ibid.,

¹⁸⁹ Altson, P., "Core Labour Standards" and the Transformation of the international Labour Rights Regime',EJIL, 15(2004), p.457

to reduced responsibilities or lower pay. Making paternity leave mandatory could foster a culture where women are not penalized for taking maternity leave and are not discriminated against during recruitment.

From the employer's perspective, work would not be significantly impacted if both men and women equally share responsibilities at home while managing their professional duties.¹⁹⁰ Additionally, paternity leave helps improve the health of new mothers¹⁹¹ by allowing them time to care for themselves without worrying about their child's needs, knowing the father is taking care of the child. This support enables women to work outside the home more effectively, focus better on their jobs, and potentially increase their income.

It's important to recognize that while society has undergone significant changes, certain stereotypes and beliefs remain deeply ingrained in public consciousness. Only concrete steps will propel us closer to achieving gender equality, and implementing a policy for paternity leave is one such step.

4.6 CHALLENGES TO IMPLEMENT PATERNITY LEAVE IN INDIA: Implementing paternity leave in India faces several challenges, including: **Cultural Norms and Gender Roles:**

Men are traditionally expected to be the major breadwinners, while women are responsible for care-giving. Promoting dads taking time off work to care for their children may encounter push-back.

Absence of Awareness:

Many employees and companies may be unaware of paternity leave policy or its advantages. A lack of understanding might lead to under utilization of available leave and unwillingness to advocate for its introduction.

Workplace Culture:

In many workplaces, there is a culture of long hours and a focus on productivity over work-life balance. Employers may be hesitant to implement paternity leave policies due to concerns about disruptions to workflow or increased costs.

Legal Framework:

Although Indian labour laws include maternity leave, there is presently no formal provision for paternity leave. Introducing paternity leave would involve legal changes and may encounter political or logistical challenges.

Financial Implications:

Employers may be apprehensive about the financial impact of paid paternity leave, particularly for small and medium-sized businesses with limited resources. Some may see it as an extra expense rather than an investment in employee well-being and retention.

Stigma and Discrimination:

Men who take paternity leave may face stigma or discrimination in the workplace, including concerns about being perceived as less committed or dedicated to their jobs. Overcoming these perceptions is essential to creating a supportive environment for fathers to take leave.

Supportive Infrastructure:

Implementing paternity leave requires supportive infrastructure, such as policies for leave administration, clear guidelines for eligibility and entitlements, and mechanisms for addressing

¹⁹⁰ Victoria Gordon and Beth M. Rauhaus; *“Maternity Leave - Policy and Practice”*; (Routledge, 2nd Ed, New York, 2013), p.43
¹⁹¹ Gayle Kaufman; *“Fixing Paternity Leave : The Six Month Solution”*; (New York University Press, New York, 2020)

grievances or disputes. Developing and implementing these systems can be complex and time-consuming.

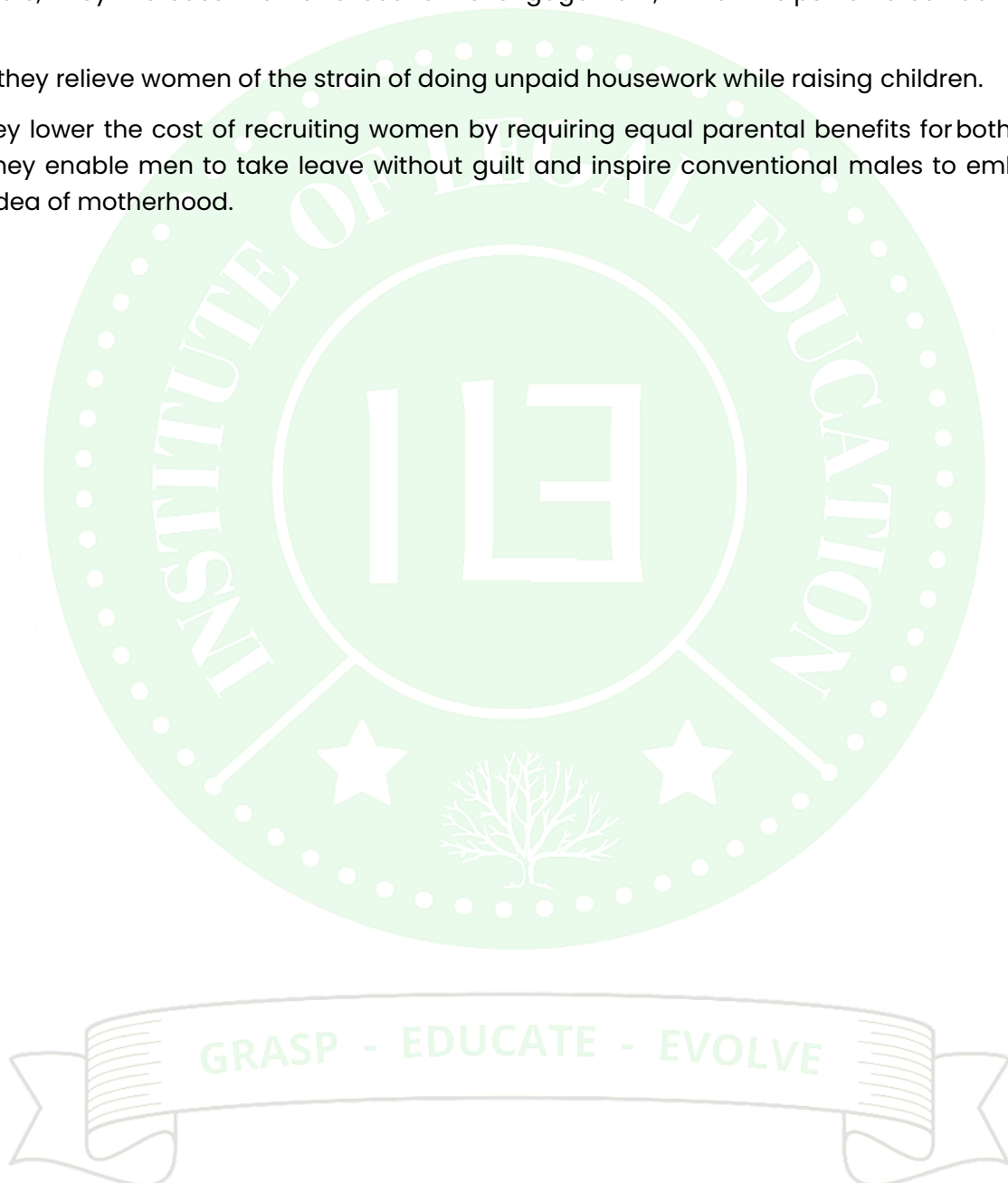
4.7 FINDINGS:

The adoption of paternity leave is a significant step towards encouraging gender-neutral parenting, attaining gender equality in the workplace, and defying traditional conventions. Paternity benefits tackle these preconceptions from several angles.

For starters, they increase women's economic engagement, which helps to break down gender barriers.

Second, they relieve women of the strain of doing unpaid housework while raising children.

Third, they lower the cost of recruiting women by requiring equal parental benefits for both genders. Finally, they enable men to take leave without guilt and inspire conventional males to embrace the current idea of motherhood.



CHAPTER 5

ROLE OF JUDICIARY

5.1 INDIAN JUDICIARY ON PATERNITY LEAVE

There is a noticeable absence of case law in the legal realm regarding the absence of legislation in the private sector concerning paternity leaves/benefits. Despite several cases where requests for paternity leave have been presented to the judiciary, a consistent policy has yet to be implemented.

In the famous case of *Chander Mohan Jain vs. N.K. Bagrodia Public School and Ors*,¹⁹² the petitioner was a postgraduate teacher at N.K. Bargodia Public School, the respondent. He applied for paternity leave, but the school rejected his application, stating that it had not adopted any paternity leave policy and that such leave was not mandated by Indian legislation. The school advised him to claim leave under the existing rules instead. Consequently, the school deducted his salary for the 15 days of leave he took. Petitioner then approached the court to challenge this decision. The Delhi High Court ruled that all male employees of unaided recognized private schools are entitled to paternity leave under the control of the Director of Education, as per the Delhi School Education Act and Rules (DSEAR), 1973, and the Central Civil Services (Leave) Rules, 1972. The court also directed the respondent school to refund the deducted amount to the petitioner.

In the case of *Rakesh Malik vs. State of Haryana And Other*,¹⁹³ the petitioner and his wife were both serving as JBT Teachers under the Haryana Education Department. Tragically, the petitioner's wife, who also held the same position, passed away due to medical complications during delivery. Under these unfortunate and urgent circumstances, the petitioner filed a writ petition seeking a mandamus directing the respondent authorities to consider granting him child care leave or paternity leave. The petitioner's counsel acknowledged that, currently, there are no statutory provisions or instructions in the State of Haryana for granting paternity leave or child care leave to father. The court recognized that the issue raised in the petition falls within the realm of policy making. It is up to the respondent-State to consider and decide on the matter of granting paternity leave or child care leave to fathers. The court, exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, would not intervene in policy making in this regard.

Vijendra Kumar vs. Delhi Transport Corporation, govt of NCD,¹⁹⁴ the applicant's case is that his wife gave birth to their second child, and he sought 15 days of paternity leave, during which he did not attend work. The respondent rejected his leave application based on DTC rules, which do not provide for paternity leave, and deducted 15 days' salary. The applicant filed an OA seeking a direction for the respondent to pay his full salary with 24% interest under the CCS (Leave) Rules, 1972. The court rejected the appeal, stating that the DTC has no provisions for paternity leave and has not adopted the CCS paternity leave rules.

In the case of *Dr. N. Siva Krishna vs. National Board of Examination and Ors.*,¹⁹⁵ The petitioner surpassed the maximum permissible leave duration during his DNB trainee period at Bhopal Memorial Hospital and Research Centre due to medical reasons, which made him ineligible for the examination. He argued that the NBE Leave rules were discriminatory and contravened Article 14 of the Indian Constitution. The court determined that, as per the NBE Leave rules, male candidates are entitled to a maximum of one week of paternity leave, extendable if necessary. However, the petitioner's excessive

¹⁹² W.P(C) No. 8104 of 2009

¹⁹³ CWP No.3225 of 2013 (unreported)

¹⁹⁴ OA 2513 of 2014(unreported)

¹⁹⁵ WP (c) 4111/2015

leave prevented him from completing his training within the designated time, thus barring him from participating in the current examination.

In the recent case of *B.Saravan vs. The Deputy Inspector General of Police and Ors*,¹⁹⁶ the petitioner, an Inspector of Police at Kadayam Police Station in Tirunelveli District, requested 90 days of paternity leave to care for his wife, who conceived through In Vitro Fertilization (IVF). Despite initially granting the leave verbally, the second respondent later issued a brief order canceling it, citing law and order issues in Kadayam. As the delivery date set by doctors approached, the petitioner had no choice but to challenge the leave cancellation by filing W.P (MD) No. 11862 of 2023. The High Court ruled that paternity leave, while a labour law benefit, originates from the child's right to protection under Articles 14, 15(3), 21, and 39(f) of the Indian Constitution. Both parents play a crucial role in prenatal and postnatal care, which is essential for the child's right to survive. A welfare state has a duty to ensure dignified prenatal care for the fetus and adequate health care, hygiene, and sanitation for the child after birth. The petitioner's child's right to live, survive and develop, as guaranteed by Article 21, entitles the petitioner to seek paternity leave to support his wife during delivery.¹⁹⁷



¹⁹⁶ W.P.(MD).No.19561 of 2023 (unreported)

¹⁹⁷ W.P.(Md).No.19561 Of 2023 (unreported)

CHAPTER 6

INTERNATIONAL PERSPECTIVE OF PATERNITY LEAVE

6.1 COMPARATIVE ANALYSIS OF PATERNITY LEAVE IN OTHER PARTS OF THE GLOBE:

Maternity leave is widely recognized worldwide. In contrast, paternity leave is a relatively modern concept that is essential for new fathers to help raise their children in a healthy environment. The entitlement to paternity leave is becoming increasingly common, though there are still notable differences in the benefits available to fathers globally.

6.1.1 UDHR ON PATERNITY LEAVES:

The Universal Declaration of Human Rights (UDHR) was adopted on December 10, 1948.¹⁹⁸ It was drafted as a "common standard of achievement for all peoples and all nations and has since served as a benchmark for evaluating adherence to human rights."¹⁹⁹ In 1952, the decision was made to split the provisions of the Declaration into two separate treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.²⁰⁰

Article 2 of the Universal Declaration of Human Rights outlines the fundamental principle of equality and non-discrimination, stating that everyone is entitled to all the rights enumerated in the Declaration without distinction. Article 7 guarantees equality before the law without discrimination, and Article 23(2) guarantees equal pay for equal work without discrimination.²⁰¹ In 2000, the Human Rights Committee issued General Comment No. 28 on the Equality of Rights between Men and Women (Article 3).

Article 3 of the Convention specifies that governments must take all necessary steps to guarantee that men and women have equal access to the rights established in the covenant.²⁰² These steps include reducing barriers, educating the public, and passing domestic law. Article 55(c)²⁰³, mandates the United Nations to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion," with the goal of creating circumstances of stability and well-being. Article 56²⁰⁴, requires Member States to take measures to accomplish the goals set in Article 55.

6.1.2 UNICEF ON PATERNITY LEAVES:

UNICEF found that India is one of 90 nations without a national paternity leave policy. Two-thirds of the world's children live in nations where dads do not get paternity leave, robbing them of their fathers' love and devotion throughout their early infancy.²⁰⁵

According to statistics, dads who contact with their newborns from birth are more likely to participate actively in their child's development. According to UNICEF, studies show that children who have healthy contact with their dads have better psychological well-being, self-esteem, and life satisfaction over time. It has pushed legislators to enact national family-friendly policies that promote childcare and development, such as paid paternity leave, to provide parents with the time, support, and knowledge they require to care for their children. In 2018, UNICEF revised its parental leave policy,

¹⁹⁸ Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N.

¹⁹⁹ Ibid., Preamble

²⁰⁰ H. J. Steiner, P. Alston, and R. Goodman, "International Human Rights in Context - Law, Politics", *Morals* 3rd edn. (Oxford University Press, 2008), p.136.

²⁰¹ Universal Declaration of Human Rights, 10 December 1948, GA Res. 217 A (III), Articles 2, 7 and 23(2).

²⁰² UN Doc. HRI/GEN/1/Rev. 7, p. 178, Human Rights Committee, General Comment No. 28: Equality of Rights between Men and Women (Art.3)

²⁰³ Charter of the United Nations, 1945 (1 UNTS XVI), Art.55(c)

²⁰⁴ Charter of the United Nations, 1945 (1 UNTS XVI), Art.56

²⁰⁵ "India among over 90 nations without paid paternity leave for new dads: UNICEF", *The Economic Times*, <https://economictimes.indiatimes.com/news/politics-and-nation/india-among-over-90-nations-without-paid-paternity-leave-for-new-dads-unicef/articleshow/64587239.cms> (last accessed . May 8, 2024)

becoming the first United Nations institution to increase parental leave from four to sixteen weeks.

Global data from the WORLD Policy Analysis Center show that the percentage of nations providing paid leave for dads climbed from 21% in 1995 to 52% by 2015.²⁰⁶ Fathers' leave arrangements are most common in developed economies, Africa, Eastern Europe, and Central Asia. The length of paternity leave varies greatly, with only Finland, Iceland, Lithuania, Portugal, and Slovenia providing duration greater than two weeks. In Lithuania, the father receives paternity benefits for 30 calendar days following the child's birth, which can be extended until the kid reaches the age of one year. It equates to 77.58% of profits.²⁰⁷

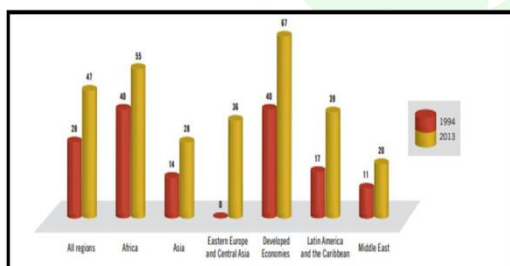
South Korea boasts the world's longest paternity leave, at 53 weeks, yet many men opt not to use it. The Nordic welfare states were the first to actively advocate the usage of paternity leave by proclaiming it gender neutral. Paternity leave is recognized in 23 of the EU's 27 member states; nevertheless, there are substantial disparities, and the distinction between paternity and parental leave is occasionally muddled. Spain is the most generous member state, offering dads 16 weeks of vacation starting in January 2021. There are no statutory restrictions for paternity leave in the United States. Some innovative firms offer partners one to two weeks. More than 20% of American workers have access to paid family leave, yet most dads choose not to take it or return to work early due to concerns about the impact on their jobs. In the United Kingdom, males are entitled to statutory paid paternity leave lasting one to two weeks at 90% of their usual wage.

Fathers have the choice to use their paternity leave in almost every country that offers it. However, only Chile, Italy, and Portugal require paternity leave.²⁰⁸ In 1994, statutory paternity leave was offered in 40 of the 141 countries that provided data to the ILO. By 2013, the figure had risen to 78 out of 167 nations with relevant data.

Since 1994, paternity leave arrangements have increased most significantly in Eastern Europe and Central Asia, the Developed Economies, and Latin America and the Caribbean (Figure.2).

Figure 2.²⁰⁹

Utilization of compulsory parental leave by area, 1994 (141 countries) to 2013 (167 countries) (%)



(Source: ILO Working Conditions Laws Database – Maternity Protection, 2013)²¹⁰

Norway:

Norway's welfare system for new parents is well-known for its generosity and flexibility. Norwegian

²⁰⁶ UNICEF, *Parental Leave and Family-Friendly Policies* (2019), <https://www.unicef.org/media/95086/file/UNICEF-Parental-Leave-Family-Friendly-Policies-2019.pdf>, (last visited, May 8, 2024)

²⁰⁷ European Commission, Directorate-General for Employment, Social Affairs & Inclusion, *Parental Leave*, <https://ec.europa.eu/social/main.jsp?catId=1119&intPageId=4660&langId=en>, (last accessed . May 8, 2024)

²⁰⁸ Resolution concerning Gender Equality at the Heart of Decent Work, adopted by the International Labour Conference at its 98th Session (Geneva, 2009), 6, 42.

²⁰⁹ ILO Working Conditions Laws Database, *Maternity Protection, 2013*, <http://www.ilo.org/travdatabase> and the Conditions of work digest: Maternity and work (ILO, 1994)

²¹⁰ <http://www.ilo.org/travdatabase>, (last accessed, May.5, 2024)

society values children and offers considerable help.²¹¹ Norway's dedication to education is seen in the provision of free core and higher education. However, the focus on children's well-being begins before they start school. The first few years of a child's existence are critical for their general development. Parents get up to 12 months of leave after childbirth.²¹² Norway's policy is unique in that it provides parental leave with paternal leave, allowing both genders to take time off together as a family without prejudice.

Parents are entitled to a total of 48 weeks' leave before and after the birth of their kid. The term can be extended to 58 weeks if parents agree to a lower cost.²¹³ This time includes up to 12 weeks of prenatal leave and six weeks of postpartum leave reserved for mothers. If both parents qualify for the parental benefit, the length is divided into three parts: a maternal quota, a paternal quota, and a combined period that can be apportioned according to their preferences.²¹⁴

Finland:

Unlike its neighboring countries, this Nordic country provides exclusive parental leave for dads. Fathers can take up to 54 working days of paternity leave after their child's birth.²¹⁵ The father can be present at home with the mother for up to 18 working days, or around three weeks. During this brief period, both parents may spend quality time together as a family and form a deep attachment with their kid. This service is especially vital in today's environment, as people's needs go beyond physical and financial help, and mental health is paramount. It helps both parents to strengthen their emotional bond, which adds to the child's good upbringing. It is worth mentioning that paternity leave starts after maternity leave, and parents get a paternal allowance for 158 working days.

Japan:

Japan has one of the most comprehensive parental leave programs internationally, reflecting its dedication to assisting families. Fathers can take up to a year off work after their child's birth, with two-thirds of that time fully compensated. Despite the substantial offer, paternity leave is underutilized. According to OECD data, just 3% of Japanese dads benefit from this chance.²¹⁶

Sweden:

Sweden is generally lauded as a forerunner in gender equality policy, notably its paternity leave. Swedish dads are entitled to a generous 480 days of paid parental leave, plus 90 days designated just for them. This innovative legislation has successfully encouraged dads to have an active part in child rearing, resulting in improved gender equality and greater ties between fathers and children.

Iceland:

Iceland has made significant progress toward promoting gender equality and work-life balance. In addition to substantial parental leave, the country implemented a "daddy quota" in 2000, providing dads with dedicated and non-transferable leave. This method has improved gender equality, with men taking a larger share of available leave and becoming more active in child-rearing.

Canada:

Canada recognizes the value of fathers' engagement in child rearing and has made initiatives to

²¹¹ 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), p.43

²¹² Eydal, Guðný Björk, Rostgaard and Tine; *“Fatherhood in the Nordic Welfare States : Comparing Care Policies and Practice”*; (Policy Press, 2016)

²¹³ *“Parental Leave Systems”*; (OECD Family Database, 2020); https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf, (last accessed . May 15, 2024)

²¹⁴ *Ibid.*,

²¹⁵ Carl Cederström; *“State of Nordic Fathers”*; (Nordic Council of Ministers, 2019), p.42

²¹⁶ Douglas Broom; *“The 'future' prime minister of this country just made history by challenging gender stereotypes”*; <https://www.weforum.org/agenda/2020/02/paternityleave-japan-government-minister/> (last accessed . Apr.10, 2024)



increase paternity leave benefits. In 2019, the Canadian government increased the period of parental leave from 35 to 40 weeks, giving dads greater possibilities to take time off work. Furthermore, the new policy allows parents to choose a longer leave of up to 69 weeks at a lower benefit rate, giving dads more freedom while caring for their children.



CHAPTER 7

CONCLUSION

7.1 SUMMARY:

All male employees should have access to paternal leave, as is common in other nations. Providing paternal leave is vital for maintaining a strong marriage and family. This sort of leave helps new fathers to build strong ties with their babies and families, leading to a greater appreciation for their position as fathers. Both parents play an equal role in their child's birth, and it's impossible to tell who is more lavish or inconsequential. Furthermore, it reduces the strain on mothers and relieves the stress they suffer. Offering paternal leave strengthens the family structure while also promoting gender equality. By enacting legislative measures for paternal leave, traditional norms might be challenged, resulting in a rethinking of gender roles and obligations. Finally, this transformation would help the country as a whole.

The aforementioned assessment aids in comprehending the alleged necessity for paternity leave in the current Indian context. The comparative analysis of policies across various countries highlights an increasing awareness regarding the importance of addressing gender inequality. The Nordic countries, in particular, serve as a model for others in formulating policies aligned with the sustainable development goal of reducing inequality. Through a thorough cost-benefit analysis, we address concerns related to cost and expectations, demonstrating that the societal and economic benefits of reducing gender disparities outweigh the associated costs.

In comparison to other nations, India lacks essential paternity leave laws that enable new fathers to manage their work and family obligations. Paternity leave policies are pivotal in advancing gender equality, strengthening family ties, and supporting the overall well-being of parents and children. Developed and Western countries have instituted specialized paternity leave laws, childcare arrangements that involve both parents, and sufficient state-provided financial benefits. Countries worldwide are recognizing the importance of fathers' engagement in raising children and implementing policies to allow them to take time off work to actively care for their children. These initiatives promote a fairer distribution of responsibilities, challenge traditional gender roles, and lay the groundwork for a more inclusive and balanced society. By drawing insights from nations leading in paternity leave policies, other countries can move closer to ensuring equal opportunities for fathers and forging a more gender-equal future.

Implementing paternity leave regulations will benefit not just families, but also productivity and workplace peace. It is critical for politicians, employers, and society in general to recognize the importance of such laws and work together to ensure its implementation, therefore developing a more gender-equitable and family-friendly atmosphere in India.

Our analysis of the proposed Indian Paternity Benefit Bill highlights its benefits, especially in a culture with traditional patriarchal traditions. However, the proposed measure has weaknesses. Policymakers are responsible for pushing reform, in addition to implementing laws. The policy aims to break a long-held societal norm that affects both genders, making it tougher. Women may underestimate the impact of unpaid domestic labour on their economic engagement, while males may be hesitant to accept rewards. With a rising emphasis on gender equality, India is striving for overall improvement. Fatherhood is a fresh and distinct experience for each guy. Being emotionally, physically, and cognitively present for their kid fosters a deep link while also influencing other dads. As a result, India, as a multicultural society, can benefit from copying techniques from other nations or enacting beneficial legislation to help enhance our country.

As a result, the theory was proven correct: the numerous constitutional provisions governing gender equality and social security recognition did not recognize paternity leave. As a result, the paternity leave provisions in the Central Civil Services (Leave) Rules, 1972, for central government workers should be implemented and standardized for state government employees, as well as those employed in both the organized and unorganized sectors.

7.2 SUGGESTIONS:

1. Creating comprehensive paternity laws in India might ensure that all dads, regardless of job position or firm size, have access to this crucial benefit.
2. By enacting a paternity leave law that applies to both the public and private sectors, organized and unorganized, India may help children develop and promote more egalitarian family relationships. Mandating that all employers give this perk might help to create a more competitive and equitable labour market, leveling the playing field for businesses.
3. Introducing paid paternity leave, comparable to policies in numerous Western countries, might encourage more men to take time off work without facing financial hardship. Establishing a paid paternity leave program may encourage more fathers to take use of this perk.
4. Granting paternity leave to fathers may reduce work-family conflicts, enabling them to engage more effectively in their employment.
5. Promoting paternity leave as a cultural norm, akin to Sweden's approach, may involve advocacy efforts and public awareness campaigns highlighting the benefits of paternity leave. By embracing paternity leave as a societal norm, India can advance a more inclusive and family-friendly workplace culture.
6. In enhancing its paternity leave laws and practices, India can better support fathers in their care giving responsibilities and promote a more egalitarian and supportive work environment for families.
7. Establish strict enforcement mechanisms to ensure compliance with paternity leave policies. Penalize employers who fail to grant paternity leave or retaliate against employees for taking leave.
8. Provide additional supportive measures, such as flexible working arrangements and parental education programs, to help fathers balance work and family responsibilities effectively.
9. Encourage public sector organizations to lead by example by adopting progressive paternity leave policies and promoting their benefits. This can set a standard for the private sector to follow.
10. Collaborate with international organizations and countries with successful paternity leave policies to learn best practices and adapt them to the Indian context.

7.3 RECOMMENDATIONS:

1. Implement a nationwide paternity leave law that applies equally to both public and private sector employees. This ensures that all fathers, regardless of their job position or the size of their employer, have access to paternity leave. This would also help reduce disparities between different sectors and promote a fairer work environment.
2. Learn from nations with effective paternity leave policies, like Sweden, Iceland, and Norway. Sweden's 90-day paid paternity leave encourages father engagement in childcare and promotes gender equality. Adopting comparable techniques can enhance India's supportive environment for working parents. Similar to Norway's legislation, this allows dads to take up to ten weeks of paid leave. Extended parenting time promotes bonding and shared duties, benefiting both the kid and the family.

3. Establish a minimum term of 15 days for paternity leave, which can be extended to 10 weeks or more. Fathers can be present during the early days of their child's life, helping both mother and infant.
4. Ensure that paternity leave is fully paid, so fathers do not face financial burdens when taking time off. Paid leave encourages more fathers to utilize the benefit, fostering a culture where taking paternity leave is normalized.
5. Ensure that paternity leave benefits extend to adoptive fathers for recognizing the diverse family structures and their needs.
6. Amend the Social Security Code, 2020 to include paternity leave provisions, ensuring all workers have access to this benefit. This inclusive approach supports all families in providing the best care for their children.
7. Allow men to take flexible paternity leave in smaller chunks to better fit their work and family schedules. Flexibility allows fathers to balance their work and personal life.
8. Encourage a societal change that prioritizes dads' engagement in early childcare. Public awareness initiatives and excellent role models can shift society views and lessen stigma around men taking parental leave.
9. Ensure that employees taking paternity leave have job protection, similar to maternity leave policies. This would protect fathers from being terminated or demoted for taking leave.
10. Establish mechanisms for collecting data on paternity leave usage and its impact on families and workplaces. This data can help policymakers refine and improve paternity leave policies over time.
11. Establish a national paternity leave program funded through contributions from both employers and the government. This initiative will ensure that paternity leave is paid and does not impose a financial burden on either employers or employees.

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