

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Paternity Leave Policy in India: A Critical Analysis

RAMASAYI GUMMADI¹

ABSTRACT

It is very important to note that the concept of paternity leave is something that is often overlooked when it comes to the Indian Law Regime especially taking into consideration the fact that the same has not even been discussed in detail by the International Labor Organization. This paper will look at the existing Paternal Leave Laws, form a critical overview on the Paternity Benefit Bill, 2017 that was proposed and analyses the loopholes In the same. The paper also looks at what exactly can be considered as something that comes under the scope of "Paternity" especially with regards to the recent de-criminalisation of homosexual couples. Further, the research paper contains a brief analysis of the case Chandermohan Jain v. N.K.Bagrodia High School which is the first case that discussed the issue of paternity leave in private institutions while finally concluding with the author's suggestions as to how the concept of paternity leave can be enforced in India.

Keywords: *Paternity Leave, Social Security, Paternity Benefit Bill.*

I. INTRODUCTION

The basic human attribute is to care for their family which is an important factor determining the humanly way of life. It is important to note that irrespective of anything an employer has to give importance for such basic necessities that are rather mandated by the laws of nature and instincts because, when it comes to employment, it is not only used by an employee to attain financial gains but rather it is used by such an employee to carry out self-realization. Any failure to comply by the self-realization aspect of the employment would render an imbalance in the social security of an individual which is something that is not preferred under any labor law regime and not to mention it has several financial, social and political effects. The Indian Government passed the Maternity Benefit Act in the year 2017 mandating a compulsory maternal care leave period for mothers to nurture their newborns. With that having been said, a new question arose as to 'What is the scope for a paternity leave?' which leaves us with an

¹ Author is a student at Tamilnadu National Law University, India.

answer that there is no legislation mandating the paternity leave in private entities. One of the prime reasons behind advocating for proper structuring and mandating of paternity leave is to make sure that the fathers are reminded of their parental duty too and not to mention towards the end of the day, it kills the society's view that childbirth and care are restricted to the mothers alone. The Paternity Benefit Bill advocated for the same, but the bill never made it as an act.

(A) Research Problem

The Indian labor law regime is very much silent on the issue of paternity leave as a result of which it rather becomes convenient for most of the employers to deprive their employees off their basic humanly instinct. Such an absence only makes it ambiguous and is prone to exploitation. Not to mention, the Government sector has a set of rules mandating the same with regards to the Central Civil Services Rules 551 (A) and this sort of a disparity between the government and the private sector can be attached to irrational classification and categorization. This poses a major risk of damaging the social security of an employee, something that is held on high grounds by the Indian Government as well as the International Labor Organization.

(B) Research Objectives

1. To systematically analyze the standards of a parental leave
2. To determine as to what exactly comes under the scope of the term "Paternity" with special emphasis on homosexual couples
3. To analyze the loopholes on paternity leave policies
4. To suggest and formulate a plan to aid Paternal Leave Policies.

(C) Research Methodology

The research is analytical and descriptive in nature which firstly analyses the Proposed Paternal Benefit Bill while also taking into consideration the definition of the term "Paternity" and analysing it in the terms of homosexual couples. The research also seeks to take into consideration the cons of not legalizing paternity leaves while it will also look into relevant case laws which have pronounced in favor of paternal leave policies while also suggesting relevant conditions for the same. The research will further deliberate with regards to the labor standards mandated by Bodies as under the International Conventions (If any) while also looking at the status of paternal benefit leave in foreign countries.

(D) Review of Literature

It is important to note that the lack of paternity leave affects the workers as a whole in achieving

self-realization as under the concept of Social Security. O'Brien² clearly lays down a clear emphasis with regards to the Parental Leave Policies and how exactly it affects the Quality of life of the infants as well as how exactly the same can be considered as a basic attribute of the individuals. The publication emphasizes on the need for paternal leave while also taking into consideration the Policies that are seen all over the world. The publication rather gives a social perspective on the concept of parental leave while emphasizing the same with gender quality and social justice as a whole which is one of the main aspects of social security that a laborer seeks to receive as a part of the labor fraternity. Not to mention it is imperative to note down the fact that the publication clearly talks about the concept of parenthood being something that demands responsibility from both the father and the mother as a result of which depriving someone of a chance to fulfil their societal and humanitarian obligations would be a grave moral turpitude. The publication also talks about how the quality of life of an infant is affected when paternal leave is denied to a father. The article further talks about the lack of a centralized International mechanism mandating for paternal leave while also recommending as to 'What can be considered as an ideal paternity leave plan?'. The publication merely gives an idea with regards to the concept of paternity leave but however the Study of the concept of Paternity as under the Indian Labor Law Regime cannot be relied upon this publication alone. In Trzcinski³ the study is rather narrow with special reference to the region of Connecticut. However it is important to note that publication helps to determine the need for parental leave policies in a given society. While the publication only talks about the concept of parental leave policies as a whole, it helps to draw an inference as to what exactly captures the essence of a paternal leave when read in consonance with a broader study of parental leave policies. The publication talks about the role of parents in the infant stage of an individual and why parental leave is an essential factor that has to be considered while talking with regards to a society as whole. In Earle⁴, the publication merely talks about the work-family policies that exist all over the world while looking at the same in an economical perspective. The publication talks about the various parental leave policies that exist all over the world deliberating on the pros and cons of the same and analysing as to how exactly do these policies affect the Nation's economy at large.

² O'Brien, Margaret. "Fathers, Parental Leave Policies, and Infant Quality of Life: International Perspectives and Policy Impact." *The Annals of the American Academy of Political and Social Science*, vol. 624, 2009, pp. 190–213. JSTOR.

³ Trzcinski, Eileen, and Matia Finn-Stevenson. "A Response to Arguments against Mandated Parental Leave: Findings from the Connecticut Survey of Parental Leave Policies." *Journal of Marriage and Family*, vol. 53, no. 2, 1991, pp. 445–460. JSTOR

⁴ Earle, Alison, et al. "International Perspectives on Work-Family Policies: Lessons from the World's Most Competitive Economies." *The Future of Children*, vol. 21, no. 2, 2011, pp. 191–210. JSTOR

II. PATERNITY- AN ANALYSIS

Paternity in short refers to the state of an individual to be someone's father. Medically it refers to the state of being a father and enjoying fatherhood. Now it is important to note that the term "Paternity" has not been defined anywhere as under the Indian Law which is very sad and leaves room for more ambiguities. Now, what exactly comes under the scope of the terms "Father" and "Fatherhood". Biologically the term "Father" is restricted to a male who has contributed towards the formation of the child, but socially it is something that can be extended to adoptive parents too. With that having been said it is very well established that fatherhood is an essence of parenthood and is socially a diverse term. It is important to note that these terms are very ambiguous and makes a very vague assumption that a father is definitely a male. Now does that mean that an individual who went through a gender reassignment surgery to become a man, can be assigned the biological title of a male? It is indeed unknown. Paternity is an important aspect that has to be taken into consideration to determine the outcome of this project because of the fact that several legal changes have taken place in the last decade with special reference to the rights of homosexual couples as well as the transgenders. The Question right now is, can these couples also enjoy what is known as the "Fatherhood"? It is very important to note that in the cases of *NALSA*⁵ and *Navtej Singh Johar*⁶, they not only talked about the existence of a third gender or decriminalization of homosexuality but they rather talked about the various rights that are to be given to the members of the aforementioned fraternity to ensure that no discrimination takes place and the individuals continue to lead their lives bound equally by the laws governing them which in turn are In consonance with various humanitarian laws. It is important to note that the right to marriage or the right to adoption were very much held in the aforementioned judgements. Not to mention the right to marriage is more of a fundamental right as held in the case of *Lata Singh v. State of Uttar Pradesh*⁷. On those lines, it is very important to note that paternity as a term refers to the fatherhood phase of an individual but are the terms "Father", "Fatherhood" restricted to males alone? Are they societal or biological terms is one question which no legislation has answered yet. While we see that society usually restricts these terms to the males alone, it creates an unreasonable classification making the phase of fatherhood inaccessible to the homosexual couples or the transgender community. Parenthood is a phase and fatherhood or motherhood are terms which should be read in broader terms placing mere reliance on the evolving principles of social laws.

⁵ AIR 2014 SC 1863

⁶ (2016) 7 SCC 485

⁷ AIR 2006 SC 2522

While biologically, male and female can produce an offspring thereby the male establishing the paternity of the child, is it right that the term paternity is restricted to the biological terms alone? If yes, this will leave the childless non-homosexual and non-transgender couples as well as the homosexual and transgender couples neglected from the concept of paternity in itself. Now assuming that the paternity as a whole depends upon the legal father of the child, even then there is a lot of ambiguity with regards to the LGBTQIA+ couples. For example as per 5(3) of the Indian Adoption Regulation Act, 2017⁸, the section states that a couple having a stable relationship for more than two years can adopt a child while however using non-substantiated terms like “Husband” and “Wife” which are rather social in nature and are used to denote men and women respectively thereby not recognizing the right to adoption with regards to the same-sex couples or the transgenders. Which when read along with the usage of the term “paternity” states that the homosexual couples or the individuals and the members belonging to the transgender community cannot come under the scope of paternity which makes it outdated. It is important to note that the lack of proper definition as under the Indian Laws with regards to terms such as “Paternity”, “Fatherhood” leave it to the members of the society to determine as to what does and what doesn’t come under the scope of these terms thereby making it such that the minority are deeply affected and their Right to Parenthood is affected. Therefore, What comes under the scope of Paternity? It for sure includes the biological fathers and might as well include the male adopters (with a female married partner). Therefore the current legislation, assuming that a paternity leave concept is introduced will be directed to the aforementioned scenario alone.

III. PATERNITY LEAVE

(A) Private Sector

There is no law mandating the concept of paternity leave as under the private sector owing to which the companies allot the same based on the moral obligations. Some of those companies include-

1. **IKEA**- The employees of IKEA are given a six-month paternity leave and such a paternity leave covers the adopted parents, single parents and the married parents which providing no hunch with regards to the status of the same-sex parents.
2. **AMAZON**- The employees of Amazon are given a six-week paternity leave.

⁸ Sec 5(3), Indian Adoption Regulation Act

3. **ZOMATO-** Provides a twenty-six-week paternity leave for its employees while also taking into consideration the same sex couples which is one of a kind⁹.
4. **NOVARTIS-** Provides a twenty-six-week paternity leave for its employees.
5. **STARBUCKS-** Provides for a twelve-week paternity leave for its employees
6. **MICROSOFT-** Provides for a twelve-week paternity leave for its employees
7. **INFOSYS-** Provides for a five-day paternity leave for its employees.

It is important to note that the companies are not regulated and are heterogeneous with regards to the duration of the paternity leave. With a generous six-month leave to a mere five-day leave it indeed is unfair to create such a differentiation owing to the fact that just because of the fact that two different employers are working in two different companies, that should not deprive the individual of the right to parenthood. Not to mention paternity or the fatherhood is something that is one of the attributes of the humans which should not be denied failure to do which there will be a huge hit upon the social security of the laborers, thereby disintegrating the social structure of the society.

(B) Government Sector

Yet again there is no law that paves way for the paternity leave to a broader spectra incase of the Government employees but there is a provision for the Central Government Civil Services Employees to avail the same as under the current law with due consideration to Rule 551(A) of the Central Civil Services (Leave) Rules, 1972¹⁰. The plight of the individuals working under the state departments is still unknown and it is important to note that the rules under the aforementioned statute aren't very accommodative of same-sex couples. The conditions stipulated as under the aforementioned legislation are-

1. It is applicable to a male employee
2. Who has lesser than two children
3. For an overall period of 15 days with the next 15 days to be availed before six months from the date of the birth of child.

We observe that the rule is applicable only to the male employees and leaves out the accommodation of the couples belonging to the LGBTQIA+ fraternity. Not to mention the classification that the males with lesser than two surviving children are only applicable under this rule, is very unreasonable and is capable of deeply affecting the social structure of the society. Further, the period of 15 days is very less and will really not make any difference as

⁹ Goyal, D., 2019. Introducing the new parental leave policy at Zomato. [Blog] Zomato munchies- the blog

¹⁰ Rule 551(A), Central Civil Services (Leave) Rules, 1972

opposed to the twenty-six-week maternity leave that is given to mothers. It just goes on to prove that the Indian society treats men and women unequally where the women are only expected to take care of the newborn while the men are rather expected to return back to their work in a much shorter span of time. Further, the same-sex couples and the transgenders are excluded from these rules, which makes the law pretty outdated on that front.

IV. BRIEF ANALYSIS: CHANDER MOHAN JAIN V. N.K. BAGRODIA PUBLIC SCHOOL &ORS¹¹

Court: Delhi High Court

Coram: Justice Sunil Gaur

Citation: (2009)163DLT 1

(A) Background & Facts of the Case

This is one of the very first cases to talk about the concept of paternity leave in private unaided institutions which are of the nature of a school. It is important to note that although the case hasn't discussed on the various conditions or any other procedural stipulations for granting such a paternity leave, it has held that the private institution has erred in deducting the salary of the teacher while he was absent owing to the birth of his child. Chander Mohan Jain, a teacher at the N.K.Bagrodia School which is a private institution had his paternity leave application rejected and his salary deducted for the days he had taken leave. Aggrieved by such an act of the school authorities he moved to the High Court of Delhi challenging the same

(B) Issue

Whether the school has erred in rejecting the Paternity Leave Application of the case and if the school is entitled to refund the amount that is deducted from the salary of the petitioner?

(C) Judgment and Analysis

The Court held that the application for the paternity leave is to be considered as valid and ordered the respondent school to refund such a deduction of the salary. The rationale behind such a judgement is however not something that can be applied universally in determining the applicability of the Paternity Leave. The main rationale is that all the unaided public schools will come under the scope of the Central Government Civil Services Rules, 1972 as under the Delhi Schools Education Act and Rules 1973 as a result of which owing to the fact that the Civil Services Rules has a provision for the paternity leave and also taking into mere

¹¹ (2009)163DLT 1

consideration the fact that the schools will come under the supervision of the Director of Education as under the state laws, the act of the school in denying the petitioner of his right to paternity leave is unlawful. This is the stand that was taken by Respondent 3- The Director of Education who accepted that the school had erred in this aspect. We see that the court had rather taken a very negligent view with regards to this case owing to the fact that the scope of this case could've been made wider with the court attempting to define various terms including "Paternity" and for the court to stipulate proper conditions for paternity leave which unfortunately has not been done and not to mention it is important to note that the court had not attempted to break down the view of the Director of Education which should've been done in the first place. Not to mention the court had failed In interpreting the scenario as such and further, this case cannot be called as a major landmark towards the promotion of paternity leave in India owing to the fact that the facts and circumstances of the aforementioned case are way too limited and specific and the applicability is thus restricted to the State of Delhi alone. The court had rather stuck to the facts and circumstances of the case alone while not taking into account the non-existence of any legislation to regulate the paternity laws all over the country. The court should've not just relied on the submission made by Respondent-3, the Director of Education but it should've construed the issue into a broader perspective to make it a broader precedence in nature.

V. PATERNITY BENEFIT BILL 2017- AN ANALYSIS

The Paternity Benefit Bill was introduced in the year 2017 by Shri Rajeev Satav. While the bill is yet to be passed, it is officially viewed as a first step that is taken in order to regulate the employment of the men in certain establishments for some amount of time after they become a father in order to avail their paternity benefit. The verbatim of the bill merely talks about men which is a societal term rather a biological one which could imply that it could extend to the individuals who adopt a child after their gender-reassignment surgery into a man. However, it is not clearly stated as to what comes under the scope of the term man, although Section 3(i) of the bill which talks about the definition of the term "Man" states that

".... "Man" means a man

(1) employed, whether directly or through any agency, for wages in any establishment;

(2) self-employed or working in the unorganised sector or in establishments where less than ten persons are employed"¹²

¹² Sec 3(i), The Paternity Benefit Bill,2017

It is important to note that the definition of man as such is linked to the employment aspect of the same while it failed to provide scope as to what comes under the scope of a “man” who is employed or self-employed. We can appreciate the extending of the benefit of paternity leave to even those who are self-employed.

Now speaking of its applicability, Section 2 states as follows-

“(a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

(b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months:

Provided that the State Government may, with the approval of the Central Government, after giving not less than one month’s notice of its intention of so doing by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise;

(c) to every men who is self-employed or working in the unorganised sector or in establishments where less than ten persons are employee”¹³

Which inadvertently implies that the same is applicable to all workplaces irrespective of their classification as public and private areas of work and not to mention it is also important to note that this applicability clause goes away with the unreasonable classification between private and government areas of work. Further it is important to note that the bill attempts to give the states the power to apply the provisions of this bill if it becomes an act to any other establishment that comes under the scope of subclauses (a) and (b) of the act which is one of the important features of the bill. Not to mention, this bill aims to keep a check on the paternity leave in the unorganised sector owing to the fact that the unorganised sector which is not strictly monitored is more prone towards such violations and disruption of social security which has to be taken into account. The best part of the applicability is the universality of the aforementioned bill, if it becomes an act, in terms of the category of workplace that so is under consideration.

Section 4 talks about the Right of Paternity Benefit where it merely states as follows

¹³ Sec 2, The Paternity Benefit Bill,2017

“1) Subject to the provisions of this Act, every man shall be entitled to, and his employer shall be liable for, the payment of paternity benefit at the rate of the average daily wage for the period of his actual absence....”

This sub-clause talks about the nature of paternity benefit where it merely aims to state that the concept of paternity benefit is something that takes into consideration the daily wages of the labourer and makes sure that the labourer at that juncture is given the wage he is entitled to per day.

“2) No man shall be entitled to paternity benefit unless he has actually worked in an establishment of the employer from whom he claims paternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the expected date of delivery of child to his legally wedded wife or commissioning mother”

This sub-clause states that the employee should've worked in the company where he claims the paternity benefit for more than 80 days in order to avail such a paternity leave. While the rationale behind the addition of this sub-clause is unknown it is safe to say that it just doesn't make any sense for the law to discriminate or to validate the individual's benefit to paternity leave based on the number of days they have worked in an institution because assuming the due date of delivery is after a month of the employee joining the company it just wouldn't make any sense to deny his application of paternity leave and benefit depending on the number of days he had worked with the employer.

“3) The maximum period for which any man with less than two surviving children shall be entitled to paternity benefit shall be fifteen days of which not more than seven days shall precede the date of expected delivery:

Provided that paternity benefit shall be availed up to three months from the date of delivery of child:

Provided further that where a man dies during this period, the paternity benefit shall be payable only for the days up to and including the day of his death”

This sub-clause entitles an employee of the paternity benefit from 15 days to 3 months. While the wordings of the sub-clause aren't very clear as to how exactly they can be carried out owing to the fact that the sub-clause inadvertently states that the maximum period for a man to be entitled to paternity benefit is fifteen days while however providing for a duration of upto three months in the provisional addition to the sub clause which really is confusing and makes it

ambiguous. The wordings are rather puzzling because the provisional attachment to the sub clause contradicts the 15 day maximum cap by extending the same upto 3 months. Apart from that it is indeed safe to say that the three month paternity benefit timeframe is something that will be beneficial to carry out the paternal parental duties and is adequate in my opinion. The sub-clause also takes into consideration the aspect of death of the man in his paternity leave where it held that the individual is entitled to the paternity benefit only till the date up to the date of his death. Not to mention the wordings also without any rationale discriminates individuals who have less than two children with those who have more than two while not providing for a provision to such a parent. In that case all we can assume is that parents who have more than two children will not be entitled to paternal leave which looks like the bill seeks to forcefully reduce the number of offsprings of a couple which In my opinion ideally is their choice and such a restriction is something that affects the social security as a whole.

“4) Subject to provisions of this Act, every man who legally adopts a child below the age of three months or the legal husband of the commissioning mother, shall be entitled to paternity benefit for a period of fifteen days from the date the child is handed over to the adopting father or legal husband of the commissioning mother, as the case may be.”

This sub-clause talks about the adoption of a child and the applicability of the paternity benefit when the employee adopts a child in his due course of employment. However the man is entitled to only a fifteen day period of paternity benefit that too only if the child he adopts is lesser than 3 months of age which really doesn't make any sense owing to the fact that it undermines the relationship between an adopter father and an adopted child by inadvertently reducing the number of days the man takes to induce his paternal care towards the child. Ironically, from a psychological perspective, it is important that the adopting father spends greater time to showcase his paternal attributes towards the adopted child in order to establish the element of an emotional bond. This sub clause is very much impractical and it discriminates adoptive parents from those who actually give birth to offsprings which is ironic because, assuming the fact that overpopulation is the reason behind the non-specification of paternal benefit for men with more than two children, creating this sort of a discrimination would only increase the population (Assuming that the couple are capable of choosing to pro-create by their own or to adopt a child).

Section 5 talks about the establishment of a fund with special emphasis on the Paternity benefit scheme where all the employees pay a part of their income in varying ratios that will be specified as their contribution towards such a fund where such a fund can very well be used in providing the paternity benefit towards the paternity leave that is sanctioned to the employees.

Providing for such a fund is beneficial and would contribute effectively towards managing the employer's finances such that he is not put at burden by paying income to an individual when the individual is not working at all. In that case, the interests of the employees and the employer are balanced.

Section 6 talks about the procedure by which an employee can apply for the paternity leave by issuing a notice with regards to the same specifying his paternity benefit amount and undertaking that he will not work in any enterprise in this due course of paternity leave he enjoys. It stipulates that for a person with a legally wedded wife, who is pregnant, a notice for the same shall be issued not earlier than 7 days from the date of delivery. Now this concept of a "legally wedded wife" excludes a child born out of the concept of live-in relationships and is not inclusive of the aforementioned concept which makes it compelling upon the employee to be married as under the law in order to be eligible for paternity benefit. This is ironic especially when the law as a whole has no restrictions on the concept of live-in relationships.

With that having been said the rest of the bill talks about the competent authority and the penalty for any breach of conditions laid down by this act by the employer and the employee respectively. The bill as a whole is great owing to its inclusiveness towards the private and public sector companies and not to mention it played a very important role in standardizing the concept of paternal leave all over the country. What the bill lacks is a look at modern perspectives of various concepts such as adoption by homosexual couples or a child born out of live-in relationships which are the need of the hour especially when the bill irrationally discriminates them. The bill, as mentioned earlier, allows for the paternity leave of adoptive parents but it more or less discriminates the parents on that front owing to the fact that the adoptive parent is given a significantly smaller paternity leave time period in contrast to with the case of a parent whose child is delivered by his legally wedded wife. Not to mention it is important to understand that the bill as a whole must be in consonance with the day to day changing social structure, which it clearly is not. Not to mention there are loads of ambiguities that are associated with the practical functioning of this bill. Nevertheless, the spirit of the bill to systematize the concept of Paternity leave is appreciable and if this bill is amended such that it is on par with the current social norms and it doesn't pave way for undue discrimination and not to mention if the bill clearly substantiates as to what various terms cover, it would for sure seek to achieve the main agenda of systematizing paternity leave.

VI. PATERNITY LEAVE IN THE INTERNATIONAL COMMUNITY

There are several conventions by the ILO (International Labour Organization) which gives the

equal opportunities for men and women in the labour regime with no forms of discrimination whatsoever. In that sense it is very important to note that the concept of maternity leave obviously needs a countering paternity leave in order to make sure that the father bonds with the offspring and not to mention it also establishes that the care and nurturing of the offspring are to be viewed as an equal opportunity and that can be achieved in the employment industry by paving way for the concept of paternity leave. One of the prime conventions dealing with this aspect is the 1981 Convention on Family Responsibilities which talks about two important aspects being-

1. Development of Childcare facilities
2. Importance of bringing in social awareness such that the gender roles are not stigmatised or generalised

This Convention was the first one that took into consideration the interests of childcare and development while prescribing that there is an immense necessity for a labourer to take care of one's child especially when such a care is required during the early stages of life. The Convention on Maternity Protection in 2000, called for a maternity leave benefit for four weeks after the birth of such a child and while not just stopping over there, it also talks about the possibility of creating something known as "Paternity Leave" on those ground such that the father of the child also spends a significant amount of time with the child and nurtures. While the concept of Paternity Leave is not something that is explicitly discussed in the ILO conventions and reports, ILO at several times has re-emphasized on the fact that the compulsory mandate of paternity leave would render it such that the fathers share the childcare responsibility along with the mothers which makes sure that there is no generalization on the basic functioning of the parenthood in the eyes of the society.

In the International Community several nations such as Sweden, Denmark, Norway, Iceland and Portugal have taken initiatives towards providing paternal benefits with Sweden being the first country to allow paid paternity leave right in the year 1974 which called for a maximum of 480 days out of which each parent has to mandatorily take care of their offspring for 90 days atleast. In the case of Finland, each parent gets 164 days of leave making it the first country to grant equal number of maternity and paternity leave. In the case of Norway, it called for an exclusive set of benefits reserved for the fathers, wherein each father is given an exclusive reservation of 15 weeks to take care of the child which is not transferable to the mother. In the case of Denmark, it called for a 52 week parental leave policy out of which earlier there existed a quota for paternal leave which was inadvertently abolished in the year 2002. Iceland has a nine-month Parental leave policy out of which 3 months are availed as a paternal benefit leave

while the other three months are availed as a maternal benefit leave while the last fragment being the final three month period being left out to either of the parents to share among themselves. The United Nations as such has an exclusive 4 week paternity leave policy which was amended for UNICEF by the powers vested upon it, where the UNICEF modified and extended the same to 16 weeks.

VII. SUGGESTIONS

It is very important that a much clearer nationwide policy to include paternity leave is to be considered. A much clear nationwide policy refers to a policy where there exists no unwanted exceptions like in the case of the Paternity Benefit bill, 2017 which provides little to no information about the availing of paternity leave for the adoptive parents, homosexuals and the members of the trans community. Not to mention, the bill creates unfair discrimination by not taking into consideration the various sections of the society that has evolved a period of time and it is important to note that the concept of Live-in-relationships which were clearly recognised as valid in practise were not taken into consideration at all which gives rise to ambiguity. It is also very important to understand that be it in the Indian Law or the act as such, various terms are rather left undefined owing to which it can be told that they are often manipulated and put to use in a rather societal perspective thereby providing no scope for an update in the pre-existing notions. Not to mention the fact that the legislation that exists in the case of Central Civil Service (Leave) Rules, 1973 and even the Paternity Benefit Bill, 2017 irrationally discriminates the parent who has more than two children with no practical reasoning is rather puzzling. It is highly important that the paternity and maternity leave are equitable and reasonable for both the genders respectively while taking into consideration the various medical, social, and cultural factors influencing such a bond between the parent and the child. Lastly, any default or misuse of the provisions of law that exist with regards to the paternity leave must be taken seriously and appropriate redressal measures must be specified in the act.

VIII. CONCLUSION

The two main purposes behind the concept of paternity leave are, firstly, the paternal entity must be given a chance to bond with the offspring and secondly in order to make it clear to the community as such, that the child care is something that is to be viewed as an equal responsibility of both the parents and the society cannot stigmatise such that the men are the breadwinners of the house and the women play a major role in the nurturing and caring for the offspring. The Right to avail paternity leave is something that exists only in the form of gender

equality conventions and nothing has been written in specific with regards to the paternal leave benefits which makes it ambiguous in nature with people interpreting the concept differently in different parts of the world. The paternity leave benefit will not only contribute to a great child care but it also calls for a shared responsibility at the household thereby breaking down the gender stereotyping on the roles of men and women in the society which calls for an immediate need to enforce such a law that is updated, inclusive and viable in this sphere.
