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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

SHARED PARENTHOOD, SHARED EQUALITY: THE CASE FOR A PATERNITY BENEFIT ACT IN INDIA

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ABSTRACT:

Historically, women have been recognized main and key caregivers, homemakers, and mothers, which has often yielded in their lower social and economic status. Nevertheless, with societal progress and economic development, there has been a growing commendation of the significant role women play in fostering to both their families and the broader economy. Securing gender equality has become the key objective of modern welfare and labour law. Equal participation of women in the workforce is indispensable for social justice and national development.

In order to address this, the government enacted the Maternity Benefit Act, 1961, so as to protect women's employment during maternity and to ensure their right to health, dignity, and financial security. The Act represents an integral step toward realizing the constitutional vision of equality institutionalized under Articles 14, 15(3), 39, and 42 of the Indian Constitution.

In contemporary years, emphasis has also been directed towards introducing paternity benefits to mediate the gap in caregiving responsibilities and promote equality within the household and workplace. Authentic gender equality can only be achieved when both parents split childcare duties, thereby redefining conventional gender roles. This research paper, hence aims to examine the objectives behind the Maternity Benefit Act, discuss relevant case laws, and explore the concept and significance of paternity benefits as a means to achieve substantive equality. It further undertakes a comparative analysis of parental benefit frameworks in Scandinavian countries—widely regarded as pioneers in gender-equitable leave policies—and concludes with a critical evaluation of the existing challenges and necessary reforms in the Indian context.

INTRODUCTION:

Women's biological association with pregnancy and child-rearing, in conjunction with the failure of employers and policymakers to consistently address these realities, has long intensified the challenges women face in the economic sphere. Traditionally, women have been viewed as belonging to the household sphere, while men have been associated with the public and economic world. Women's ties with pregnancy and child rearing and the failure of employers and policymakers to deal consistently with this issue exacerbate the difficulties women face in the economy¹. However, in contemporary society, rising economic pressures have increased the necessity for dual-income households. While the economic constraints in many cases have led to a growth in women's participation in the labour market, societal views toward gender roles have registered little to no change. Sadly, constructs associated with gender ideologies and stereotypes persist, resulting in gender equality in work and other contexts, remaining elusive.

Women's involvement in economic activity remains the result of a complex interplay of biological, economic, social, and cultural factors that together reinforce systemic gender inequality across familial, economic and political systems. Even though women have made considerable advances toward equality in the workplace, societal and institutional assumptions regarding gender roles and beliefs related to status constrain their opportunities and perpetuate sexist actions.

Traditionally, maternity has been understood as a transitory disabling condition that took mothers away from duties to create a new life for a defined period of time (or in some cases from all such duties at all).

In confronting this burden on women's health and livelihoods, maternity benefits developed out of the legitimate need for women to perform their important social role of giving or caring for a child without excessive pressure or financial hardship. The Maternity Benefit Act, 1961, is a significant part of women's rights law and gender equality law in India. This law is an important forward step in the provision of welfare for workers, providing work protection, financial security, and health cover for women working in India.

¹ Dr. Shashi Bala is Fellow at V.V. Giri National Labour Institute.

Maternity benefits are benefits, both monetary and physical, that are offered to women before giving birth, while giving birth, and after giving birth, including, chiefly paid maternity leave, medical bonuses, and job security. This law protects and enhances the dignity of women in the work force and works towards larger constitutional aspiration of gender equality in private and public life.

OBJECTIVE:

The underlying objective of the act is to oversee the working conditions of women during prenatal and postnatal periods. It applies to all organization that has 10 or more employees. It includes private sector companies, public sector organization, Factories, Mines, Plantations, Shops and other commercial establishments.

To assess how the employers in the selected study area implement and meet with the provisions of the Maternity Benefit Act, 1961².

1. To examine the core elements of maternity leave provisions, including duration, benefits offered, and sources of funding.
2. To assess the implications and significance of Indian legal provisions on maternity in comparison with ILO standards.
3. To understand employers' and beneficiaries' perspectives on the Maternity Benefit Act.
4. To examine issues raised before the courts concerning the Maternity Benefit Act.
5. To explore other organizational measures for maternity protection.
6. To investigate the challenges faced by non-regular workers due to maternity-related issues.

This legislation ensures women are entitled to maternity benefits including paid leave, healthcare benefits, and employment protection, allowing them to take essential time for childbirth and postnatal recovery without economic hardship.

The Maternity Benefit Act 1961:

This act was promulgated to ensure the well- being, health and the employment of women during their pregnancy and after they have given birth to a child. This Act enables all women to avail paid leave and other associated benefits so as to take care of themselves and their babies without any fear of losing job and wages from it.

² Maternity Benefit Act, 1961, acts of parliament (India)

Firstly, the Amendment in the Maternity Benefit Act 1961, made in 2017 has proposed many changes which are progressive in nature to support the women during the pregnancy period and after giving child birth which is a major stride in promoting gender equality as work place inclusiveness. These Maternity benefits, due to the continuous judicial and legislature efforts are being recognized as an extension of fundamental rights of the constitution.

Maternity Benefits ensure that the motherhood would not cause hindrance to continued employment and payment of wages. Though there are some challenges in implementing these benefits to all the women employees especially in the information sector, moving ahead there is a need to mitigate this hardship and ensure that overall benefits of this Act are passed to eligible women employees across the country. Prior to the Amendment was made in 2017, the maternity benefit Act allows 12 weeks of paid maternity leave to the eligible women employees.

This 12 weeks leave is being allowed in two spells :

1. Six weeks before child birth
2. Six weeks after delivery of the child. Maternity Act is applicable to all establishments under all sectors having ten or more employees working in it. However, this benefit will not be applicable for surrogate mothers, adoptive mothers (or) mothers who are already working from home options.

Maternity Act is applicable to all establishments under all sectors having ten or more employees working in it. However, this benefit will not be applicable for surrogate mothers, adoptive mothers (or) mothers who are already working from home options.

Duration of Maternity leave increased from 12 weeks to 26 weeks for women employees having one or two children after amendment 12 weeks of paid Maternity leave only available for a women employee for the third child birth more over the amendment also paved way for adoptive mother and commissioning mother to avail maternity leave of 12 weeks (A women adopting child below the age of three months or a commissioning mother) Under Section 11 A of new amendment Act every establishment having 50 or more employees to compulsorily provide a Creche facility within a short prescribed distance. To ensure the well- being of children all women employees may be allowed to go to the Creche, four times a day. In addition to this, the new amendment Act requires all the employers to inform in writing or through email to their women employees working in their establishment about the maternity benefits available as and when they are applied.

Neera Mathur v. Life Insurance Corporation of India, AIR 1992 SC 392³

Facts of the Case

Neera Mathur was appointed as a probationary employee with the Life Insurance Corporation of India (LIC). LIC required all women candidates to fill a medical and personal information form as a part of the recruitment process that included intrusive questions about Menstrual history, pregnancy details, and the date of the last menstrual cycle. Later after being employed in LIC, Neera Mathur became pregnant and applied for maternity leave. In response to her request, LIC terminated her employment during probation, citing concealment of facts regarding her pregnancy instead of granting maternity leave.

Legal Issue in this case

Whether the termination of employment and the requirement to disclose personal medical details violated the constitutional rights of the women employee, especially right to privacy, dignity, and equality under the Constitution of India.

Arguments by both parties

Neera Mathur argued that asking for private reproductive details was humiliating, discriminatory, and irrelevant to her ability to perform the job. She also claimed that her termination on account of pregnancy was arbitrary and unjust. LIC claimed that the questions were part of a standard medical assessment and that the termination was within the rights of the employer during the probationary period.

Judgment by the Supreme Court

The Supreme Court ruled in favor of Neera Mathur.

The key observations of the Supreme court were:

1. **Violation of Privacy and Dignity:** The Court condemned LIC's practice of demanding details about menstruation and pregnancy, Stated it as "highly improper and unnecessary." It held that such questions invade the personal privacy and dignity of women employees.
2. **Gender discrimination**

The Court also stated that pregnancy is a natural biological process and cannot be

³ Neera Mathur v. Life Insurance Corporation of India, AIR 1992 SC 392

treated as a ground for disqualification or termination. Woman employees must not be terminated only on the basis of pregnancy and it amounts to gender discrimination, violating Article 14 (Equality before Law) and Article 21 (Right to Life and Dignity) of the Constitution. Thus, LIC was directed to reinstate Neera Mathur and pay her the appropriate maternity benefits as per the Maternity Benefit Act, 1961.

Air India v. Nergesh Meerza (1981 AIR 1829):⁴

Facts of the case

Air India and Indian Airlines had few service regulations that applied to all the air hostesses employed under them. According to those rules, an air hostess would be terminated from service upon her first pregnancy, or upon reaching the age of 35, or on marriage (if she married within four years of joining).

Nergesh Meerza supported by several other air hostesses challenged these regulations in the Supreme Court, arguing that they were discriminatory and violated their fundamental rights.

Legal Issues in this case were

1. Whether termination of service upon pregnancy was valid.
2. Whether such conditions violated Article 14 (Right to Equality) and Article 15 (Prohibition of discrimination on grounds of sex) of the Constitution.
3. Whether these service conditions were arbitrary, unreasonable, and against the dignity of women.

Judgment of the Supreme court

The Supreme Court struck down the rule that terminated employment upon the first pregnancy. It held that this regulation was arbitrary, unconstitutional, and violated Article 14 (Right to Equality). However, the Court upheld other conditions such as retirement at 35 years or on marriage after 4 years, stating they were related to the operational needs of the airlines (though this part has later been criticized as outdated).

Key observations of the court were:

The Court said that pregnancy is a natural condition and a biological process which is the important part of womanhood. Terminating a woman's employment only because she is

⁴ Air India v. Nergesh Meerza (1981 AIR 1829):⁴

pregnant is grossly unfair and unreasonable. Such a rule amounts to discrimination based on sex, as only women can become pregnant. The Court stated that management can make service rules, but they must be reasonable and non-arbitrary.

Paternity Leave:

Paternity leave is one of the crucial aspects of employment relations that fosters paternal involvement in family life and raising children. Contrary to the importance of paternity leave in our modern societies, laws can be promulgated on wrong perceptions that women must stay at home and take care of the household and children, while men are obliged to work to provide for their families. The current reality of life calls for a paradigm shift in traditional gender roles of men and women that both are equal and have become career- and family-orientated. In several democratic nations, the constitution protects rights. These rights prohibit discrimination, be it on the basis of sex or gender. However, labour legislation in some jurisdictions does not explicitly allow paternity leave. Paternity leave is for working fathers. Women are granted maternity leave. It is a reasonable period to care for newborn babies and there should be paternity leave to match it. This reality then, necessitates a debate. We must consider whether exempting paternity leave aligns with constitutional values in laws and policies and if something isn't off.

In India there is no statutory provision sanctioning paternity leave in the private industry, as a result the companies allow leave for new fathers on moral grounds. In *Chander Mohan Jain V N.K. Bagrodia Public School & Ors*⁵ recognized paternity leave when a private school teacher filed a petition before the Hon'ble Court as the school had rejected his leave and had deducted his salary as well. It is necessary to understand that private companies are largely unregulated and vary widely in regard to the duration of the paternity leave that they offer. Fatherhood is and to be viewed as a fundamental responsibility and a basic human attribute that should not be denied as failing to provide adequate leave can substantially threaten social security and thereby subvert broader social fabric of society.

Under Central Civil Services (Leave) Rules, 1972⁶, it applicable to male employees who have less than 2 children for a period of 15 days before or within six months of the child's birth, and

⁵ *Chander Mohan Jain V N.K. Bagrodia Public School & Ors*

⁶ Central Civil Services (Leave) Rules, 1972, acts of parliament

may be combined with other types of leave, similar to maternity leave whereas that mother is provided 182 days off. The imbalance between the maternity and paternity is 8.2% having said that, it is justified that women need more time to recover after delivery but the disparity is huge and needs to be addressed. Paternity leave promotes an egalitarian perspective in the society which is crucial for building a bond between the father and the child. Raising a child is the fundamental responsibility and develops a positive effect and extend beyond the initial years.

Paternity benefits are crucial:

Paternity benefits play a vital role in creating happier and healthier and more balanced families in the society. These benefits provide the fathers the opportunity to take time off from their work after the birth of their child or adoption of a child and to be actively involved in their child's early life which is one of the most important stages of their child's life. This time helps all the fathers to create a deep emotional connection with their child and also gives mothers much-needed rest and support as they recover and adjust to new routines after childbirth. Most importantly, these benefits help to break the stereotypes that childcare is not only mother's duty but it is a shared responsibility.

Benefits for Children: When fathers are involved from the start of the childbirth, children often grow up healthier, more confident, and perform better in school. Spending time together with the children in the early months helps fathers and children have a very deep, lasting connection. Having fathers take care of them helps children learn that parenting is a shared responsibility, not defined by gender and fathers can be a positive role model for their children when they grow up.

Benefits for Mothers: Fathers will be able to offer much-needed emotional and physical support after childbirth, helping mothers rest and recover quickly. When fathers are given paternity leave, it reduces the pressure on mothers as they can share both childcare and household duties equally. Many reports suggest that Couples who share parenting from the childbirth have greater satisfaction and harmony in their relationship that leads to a happy family.

Benefits for Gender Equality and Workplaces: Paternity leave challenges old beliefs and breaks the stereotypes that only women should handle childcare, fostering an equality in the society. When fathers take on more family duties, mothers can return to work more confidently and

pursue their career that leads to women empowerment. Workplaces that support paternity leave show that they care about employee's family that results in more loyal, motivated, and productive employees.

The PATERNITY BENEFIT BILL, 2017⁷ The paternity benefit bill, 2017 was introduced in parliament after the maternity benefit act, 1961 was amended in the year 2017. It was a private member's bill as it was proposed by a member of parliament, RAJEEV SATAV from the congress party, who was not a minister.

The main aim of this bill was to create gender neutral law that provided parental benefits not only to mothers but also to fathers, adoptive parents and others taking care of a child.

The bill was not passed in the Parliament but it contained several important and progressive ideas such as duration of leave, parental benefit scheme, the applicability of the bill, working duration, advance payment of salary, no dismissal etc.

This bill aims to recognise that childcare is a shared responsibility of both parents and not just mothers, to provide paid paternity leave for men across all sectors (Govt, private, unorganised) and establish a Parental benefit scheme fund to manage and finance these benefits.

Criticisms and Challenges

All of us knew that towards gender equality, Paternity leave to the father is being allowed, so as to ensure family – friendly work places and to motivate the parents to involve themselves in the child care activities without any difficulty.

However, there are some challenges in availing or even granting Paternity leave due to various reasons say for example, financial burdens, administrative work load on the father etc., The father who is on Paternity Leave often thinks that being away from work for a longer period would harm their career (or) they would think about what the administration feel about their absence on Paternity leave which in turn portray them as less committed. In a male dominated office or work place, even taking time off as Paternity Leave to look after the needs of a newborn would be seen as an act of unmanly or even as unprofessional.

⁷ The PATERNITY BENEFIT BILL, 2017

- 1) Financial Impacts: Main barrier in taking Paternity leave is the financial impacts it creates. When, the period of Paternity Leave is being compensated with low wages or even without wages / payment, many fathers would not like it and even they cannot avail the leave due to the commitments they already have. This sort of situation would drive the society to think about the inequality of taking Paternity Leave amongst eligible fathers. (i.e) Paternity Leave benefits are accessible to those who can afford it (mainly to the financial need) rather than to those who really need it for the welfare of his family / child.
3. Gap in Policy / Legal Bottlenecks: Though the majority of male parents are eligible for Paternity Leave as per current law, many self-employed, temporary or contract employees are deprived of the same. Some are even not eligible for availing Paternity leave due to their period of service which does not meet the criteria fixed for Paternity Leave. As such the vigour to Paternity Leave is only seen as symbolic gesture than a practical reality towards gender equality
4. Deep rooted Gender stereotyped: The paternity leave is mainly given to Male parents for care giving to new born as well as to the mother of the child. However, the caregiving responsibility was assigned to mothers owing to our society / cultural norms which should be changed otherwise the goal of giving Paternity Leave will not be reached. Even when the fathers are ready to shoulder caregiving responsibility the society and societal attitudes would not encourage them in this regard.
5. Employer worries: When the parents are taking leave frequently instead of one parent taking long leave, employers won't find it as good, rather they are skeptical about the shared parental leave. The employers felt that the shared parental leave (especially parents taking leave in short bursts) will complicate the work force management due to:-
 - a. Difficulty in arranging substitutes for several short absence
 - b. High cost as well as inefficiency associated with hiring and training such temporary staff.
 - c. Continuity and productivity of the team will get affected.
 - c. For professional roles requiring specialized skills, temporary replacements are not practically viable.
 - d. When the temporary replacement is not made for the short absence of any parents, redistribution of work load to other team members is inevitable which may cause stress amongst others in the team.

6. Inequality among employees: When Paternity / Maternity Leave is granted to both parents, it tends to create inequality feelings amongst other employees who are not eligible to such leave. They feel overburdened by additional work being thrust upon them. Thus, the employers may be reluctant to offer enhanced package that would be very generous in future.
7. Flexible Working hours: The flexible working hours though seem to be fair while offering to all employees, in practical due to obvious reason this is not allowed. Some of them though preferred a clarity of formal procedures and some offices don't.
8. Administrative difficulties: While the issue of Paternity Leave largely revolves around the welfare of the employees, the employers had some practical issues like unpredictable changes in the leave period is very short from the employees alternate week work plan etc. Though the alternate arrangements are viable for bigger.
9. Limitations of current policies: In situations where paternity leave laws are minimal, offering only a few days or weeks of leave at low pay, the policy serves as more of a symbolic gesture than a transformative solution, doing nothing or very little to change entrenched gender roles or alleviate caregiving pressures. Employers acknowledge that statutory pay is insufficient for living expenses, and in a challenging economic environment, they cannot afford to voluntarily increase it.
10. Broader Implications: For paternity and shared parental leave to really make a difference, both policies and people's attitudes need to be changed. The rules should be simple and clear, the pay should be fair, and workplaces need to actually back dads who want to take time off for their families. Employers also need to know that giving this leave won't throw everything off balance. Until these things happen, paternity benefits will just look good on paper—nice idea, but not very useful in real life.

Comparative Implementation of Parental Benefit Policies in: Denmark and Sweden

Denmark:

When parents live together at the time of a child's birth, the mother is entitled to four weeks' leave before birth, and each parent is entitled to 24 weeks of leave with parental benefit after the birth, total 52 weeks. Parents can transfer some leave weeks to each other, though certain weeks (e.g., nine weeks for employees) must be taken individually before the child turns one, unless special circumstances allow postponement. The father or co-parent may take two weeks

of leave immediately after birth (or before the child is ten weeks old by agreement) and 22 weeks before the child's first birthday, with possible extensions up to age nine under specific conditions.

For parents not living together, single parents, or those in special circumstances, leave distribution is adjusted accordingly. Parents can transfer leave to suit their work and family needs, allowing one parent to take more than 24 weeks if the other transfers leave. Parents not qualifying for parental benefits due to employment requirements cannot take leave which benefits themselves, but can transfer their leave to the other parent, who may receive benefits if they meet the necessary conditions.

Sweden:

Sweden experienced a significant decline in their divorce rates after the enactment of the Paternity Benefit Act. It became the first ever country to provide paid paternity leave in 1974. It is important to appreciate that Sweden allows the highest number of paid paternity-leave among the Nordic countries. Out of 480 days of paid leave, each parent is entitled 90 non-transferable days, with the rest available for joint use.

Conclusion:

The pursuit of gender equality in parenting and the workplace calls for a shared duty rather than a gendered role. The Maternity Benefit Act, 1961, does safeguard and protect the women's health and employment rights the, absence of a corresponding legal framework for the fathers reiterates the traditional stereotypes and burdens and hurdles women empowerment and achievement of gender equality.

Countries like Denmark and Sweden depicts the equitable parental leave policies that is beneficial to the families and society at large. This, highlights that shared parental leave fosters balanced domestic responsibilities and strengthens social harmony.

In India enacting the paternity benefit act would be pivotal move and of substantial progress towards achieving gender equality. In addition to legislation, it will lead to a cultural shift in terms of societal attitudes and enables the employers to normalize paternal involvement in parenthood and childcare. Thus, to conclude true equality can be attained when both the parents are empowered to nurture the next generation.