



The Legal Status of Fatherhood in India

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Abstract

Considering that the issue of paternity leave has not been thoroughly discussed by the International Labour Organisation, it is crucial to emphasise that this concept is frequently overlooked in the Indian Law Regime. In this work, we'll examine the current state of parental leave laws, provide an important summary of the proposed Paternity Benefit Bill, 2017, and examine the gaps in the legislation. The paper also examines the definition of "Paternity" in light of the current legalisation of homosexual couples. Finally, the author offers suggestions for how parental leave can be implemented in India as well as an overview of the matter at hand, Chandermohan Jain v. N.K. Bagrodia High School, the first case to address the problem of paternity leave within private organisations.

Introduction

Humans' innate desire to provide for their loved ones is a major factor in shaping their way of life. It's worth noting that no matter what, a business must prioritise providing employees with the necessities of life, which are essentially required by the laws of nature and human decency. Impulses, because an individual uses their job not just to advance their financial situation but also as a means to grow as a person. Any violation of the self-actualization principle in the workplace would result in a disruption to an employee's social security, which is undesirable in any legal framework protecting workers' rights for a number of reasons, including monetary, interpersonal, and political implications. To give new mothers time to care for their children, the Indian government passed the Maternity Benefit Act in 2017. In light of this information, the following inquiry arose: "What is the scope for a paternity leave?" This leaves us with an interesting ambiguity. Humans' innate desire to provide for their loved ones is a major factor in shaping their way of life. To emphasise how work is used not only for financial gain but also for realisation of oneself, it is pertinent to point out that regardless of anything, an employer has an obligation to provide importance for such basic necessities that are instead

required by the laws of nature and instincts. Any violation of the self-actualization principle in the workplace would result in a disruption to an employee's social security, which is undesirable in any legal framework protecting workers' rights for a number of reasons, including financial, social, and political consequences. To give new moms time to care for their children, the Indian government enacted the Act on Maternity Benefits in 2017. In light of this information, the following inquiry arose: "What is the reason for a paternity leave?" This leaves us with an interesting ambiguity.

Issues in Research

Since the issue of paternity leave is largely ignored by India's labour law regime, many companies find it more expedient not to provide it to their workers. Their most fundamental human nature. A lack of clarity like that invites interpretation and can be used for malicious purposes. The Central Civil Services Rules 551 also have similar requirements for the government sector.

(A) and illogical categorization and classification contribute to the gap between the public and private sectors. The Indian government and the International Labour Organisation both see this as a major threat to workers' social security, and for good reason.

(B) The Aims of the Study One goal is to conduct a methodical study of parental leave requirements. The second objective is to define "Paternity" in the context of homosexual relationships.

Purpose 3: Examining Paternity Leave Policy Gaps In order to provide suggestions and a strategy to help Paternity Leave Policies

(C) Techniques of Study Both descriptive and analytical, the study first examines the Proposed Paternal Benefit Bill and then examines the meaning of "Paternity" in the context of gay marriage. The study also plans to consider the drawbacks of failing to legislate paternity leaves and will investigate case laws that have ruled in favour of paternal leave policies while also proposing necessary safeguards. The study will also consider the position of maternal benefit leave in other nations and the labour requirements mandated by countries under global agreements (if any).

Analysing Paternity

In its simplest form, paternity describes the relationship between a man and his child. In the context of medicine, it means the quality of being a father and taking pleasure in that role. Now, keep in mind that the term Unfortunately, the term "paternity" is not defined anywhere in Indian law, leading to further confusion. To what extent do the roles of "Father" and "Fatherhood" extend? Socially, the term "Father" can be extended to include adoptive parents even though the term "Father" is restricted to a male who has contributed to the formation of the child biologically. Having said that, it is well-established that fatherhood is essential to parenting and is a socially nuanced term. These terms are extremely imprecise and presume nothing more than the fact that a father is a male.

2. Blood test legal efficacy

Goutam Kundu was one of the first cases in which the Supreme Court ruled on the legality of mandatory blood tests in paternity cases. The mother and her daughter filed a claim against the husband for maintenance. The mother had left her marriage due to the husband's and his family's cruel treatment of her after she had conceived, and she was being forced to have an abortion. The trial court ordered the payment of maintenance in an ex parte order, which the father challenged, claiming paternity of the child and requesting a blood group test for the child. The trial court

denied the application on two grounds: (i) there were other methods under the Evidence Act to disprove paternity, and (ii) it was established law that medical tests cannot be conclusive of paternity. This was later challenged by the father in a revision petition in the High Court, which dismissed the challenge and upheld the trial court's verdict. Following that, an appeal was filed in the Supreme Court against the High Court's decision.

The counsel for the appellant (father) contended that the blood test was the only way to prove paternity. He cited developments in English law to support his claim that blood tests were a legally acceptable method of determining paternity and that denying access to this test would be unreasonable. In response, the Court conducted a study of developments in the United Kingdom and the United States to determine that in both of these cases, specific statutes allowed the Court discretion in certain circumstances to order blood testing in paternity disputes. The Court does note, however, that in India, this issue has not been addressed through statutory legislation, and the two relevant statutes in such cases - the Evidence Act and the Criminal Procedure Code - do not provide for such tests to be directed by the Court. In *Polavarapu Venkateswarlu v. Polavarapu Subbayya*, the Court stated that there had been previous cases in which the litigants had requested the Court to direct a blood test for establishing paternity by invoking the inherent powers of the Court under Section 151 of the Code of Civil Procedure. Surprisingly, the Court remained unconvinced, stating that

"In any case, I am not convinced that the Court can compel the parties to submit their blood for a test of this nature."

The Court, it appears, could not be forced to use its inherent jurisdiction to order such blood tests, just as the parties could not be forced to submit to blood tests.

The Court appears to have followed this line of reasoning all the way up to the 1970s. In *Vasu v. Santha*, the Court reiterated its refusal to establish paternity through blood tests for three reasons. First, marriage was given special legal protection, and as a result, there was a legal presumption of the child's legitimacy. This presumption was rebuttable, but the standard of proof required was higher than in other civil cases.

As an aside, it is critical to put this in context. In criminal cases, the standard of proof is "beyond reasonable doubt," whereas in civil cases, the standard is much lower "balance of probability." A child born to a married woman is presumed to be legitimate under the law. Given the stigma of illegitimacy, as well as the mental anguish and pain that can be caused to the child and the mother, the imperative in law is to demand greater protection, which is reflected in the construction of the standard of proof required to rebut or overturn such a presumption is relatively higher (and thus resembles the standard of proof in criminal cases) than just balance of probabilities. According to the Court, "evidence of non-access for the purpose of repelling it must be strong, distinct, satisfactory, and conclusive."

The second issue is the requirement for individual consent to conduct blood tests. Because this is a matter of individual liberty, blood tests cannot be ordered without the consent of the individual. Although the Court stated in this case that refusing to take a blood test could result in an adverse inference, such an inference would have limited legal value because it would not relieve him of his burden of proving that he had no opportunity of sexual intercourse with his wife during the time when the child could have been conceived (it does not mean actual cohabitation). As a result, adverse inference had no effect on the burden of proof required by Section 112 of the Evidence Act. In order to reach a conclusion, the Court conducted a fairly detailed examination of the scientific developments in blood group testing. Despite accepting the scientific veracity of such tests, the Court took a more cautious approach in denying recourse to blood tests in paternity disputes in the first instance. Based on its analysis, the Court developed principles that would guide the Court's approach in these matters. These are the following:

1. Blood tests cannot be ordered routinely by Indian courts.
2. Applications for such prayers in order to have roving inquiry; blood tests cannot be granted.
3. A strong prima facie case must be established by the husband in order to overcome the presumption arising from Section 112 of the Evidence Act.
4. The court must carefully consider the consequences of ordering the blood test, including whether it will brand a child as

a bastard and the mother as an unchaste woman.

5. No one can be forced to give a blood sample for analysis.

These principles, taken together, preclude the use of blood tests in the first instance and until a prima facie case for rebutting the presumption under Section 112 of the Evidence Act is established. This exemplifies the Court's approach in such paternity disputes, which prioritises the child's interests over individual consent. Thus, while the Court accepts the scientific veracity of such tests, it does not accept their legal efficacy in providing a just outcome in paternity disputes.

Developing the 'Eminent Need' requirements
The Court was confronted with a paternity dispute over the maintenance of the mother and her child in the Bhabani Prasad Jena case. The Orissa High Court upheld the Orissa State Commission of Women's (OSCW) order for the child's and mother's DNA testing. First, the Supreme Court considered whether the OSCW had the authority to direct the DNA test for the appellant and the child. According to the provisions of the Orissa State Commission for Women Act, 1993, it was discovered that, while it had the stated authority to receive complaints, it lacked the authority to adjudicate such complaints. As a result, it was determined that the order directing the holding of the DNA test fell outside the OSCW's jurisdiction, power, or competence.

In the context of the prayer for the administration of a DNA test, it referred to two significant cases. Referring to *Sharda v. Dharampal*, the Court stated that a matrimonial court had the authority to order a person to undergo medical tests, which would be a violation of the right to privacy recognised by the interpretation of Article 21 of the Constitution. However, this power should be used only when there is a strong prima facie case that can be established from sufficient evidence submitted to the Court. Finally, the respondent had the right to refuse such a medical examination, in which case the Court could draw an adverse inference against him. Similarly, in *Banarasi Dass v. Teeku Dutta*, a succession dispute, the court accepted a genuine DNA test as scientifically accurate but reiterated that this "was not enough to escape from the conclusiveness of Section 112 of the Evidence Act, e.g., if a husband and

wife were living together at the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable... Even in such a case, the law protects the innocent child from being harmed if his mother and his spouse were living together at the time of conception. As a result, the question of the degree of proof for non-access in order to rebut the conclusiveness must be answered in light of what is meant by access or non-access as defined above."

Based on these two cases, the Court concluded: "In our opinion, when there is an apparent conflict between a person's right to privacy and the duty of the Court to reach the truth, the Court must exercise its discretion only after balancing the interests of the parties and on due consideration whether a DNA test is eminently needed for a just decision in the matter." When a request for a DNA test for the paternity of a child is made, the court should not order one as a matter of course or in a routine manner. The court must consider a variety of factors, including the presumption under Section 112 of the Evidence Act, the pros and cons of such an order, and the "eminent need" test, which determines whether it is impossible for the Court to reach the truth without using such a test." (Para 22). The Court went on to say, "Obviously, therefore, any order for a DNA test can be given by the court only if a strong prima facie case is made out for such a course.

As a result, the Court rejects DNA testing as an alternative mechanism for establishing paternity. It can only be used when there is enough evidence to establish a prima facie case rebutting the presumption established by Section 112 of the Evidence Act; this is what is required to prove "eminent need." *W v. H* was another divorce case in which the father disputed the child's paternity and requested a DNA test of the child and his wife. After conducting an extensive review of case law, the court concluded that "the strong presumption of legitimacy of a child born during marriage under Section 112 of the Evidence Act can thus only be rebutted by strong, clear, satisfying, and conclusive evidence of "non-access." (Para 52). According to *Karapaya Servai v. Mayandi*, access is defined as the opportunity to have intercourse in such circumstances and does not include cohabitation. Following *Kamti*

Devi (Smt.) v. Poshi Ram, a husband who challenges the paternity of a child born during the marriage must demonstrate that not only he did not have the opportunity to approach his wife, but she did not have the opportunity to approach him during the relevant time. The husband in this case admitted to "access" at the relevant time, according to the Court. As a result of the circumstances on record and the evidence supporting the presumption under Section 112 of the Evidence Act, the husband was unable to establish a prima facie case of non-access. Furthermore, the court noted that in this case, the husband admitted to being the child's father in an earlier petition. These admissions, taken together, render his paternity challenge moot. The Court also rejected the privately performed DNA test because the husband was unable to confirm the identity, authenticity, and purity of the sample (in this case, umbilical cord fragments). Furthermore, the Court stated unequivocally that the constitutional rights of children must be protected under all circumstances. Thus, the courts are the *paren patriae* and will act to ensure the child's welfare and best interests. Following this principle and given that the husband failed to present evidence to establish a prima facie case that would rebut the presumption under Section 112 of the Evidence Act, the Court determines that there is no imminent need for DNA test directions.

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.

Conclusion

In the nation of India, the 1961 legislation known as the Maternity Benefit Act offers leave along with perks for women employees while pregnant or giving birth. However, there is not a specific law for parental leave in India. In the past few years, certain businesses in the business community have begun to provide parental leave to male employees. The length of fatherhood leave differs from business to business, but it typically ranges from one to two weeks. In the government sector, the Department of Workers, Public Grievances, and Pensions passed an order in 2019 granting parental leave to male government employees. Male employees are entitled to fifteen days of paternity leave within six weeks of the birth of their child. In general, while the availability of parental leave in India is still restricted, there is increasing awareness of the significance of promoting gender equality in job settings via such laws.

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