

*Our Founder Aparna Mittal authored this article published in the Business Standard on Sept 16, 2018*

# A circumscribed view of paternity benefits

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A common factor in all forms of gender gaps is that women bear a disproportionate load of caregiving. Caregiving can be of many forms, such as elderly care, dependent care, or child care. In the long run, child care, which is the focus of this article, is one of key reasons why most women drop out of active employment, resulting in a workforce in which the gender ratio remains dismal, and with a severe shortage of women in leadership roles.

Changing the aforesaid trends — more so in a society where women are conveniently stereotyped into traditional caregiving roles — will require concerted action, including legislative intervention, at various levels. Internationally, too, many countries have enacted laws to address the imbalance, such as introducing paid paternity leave or a longer duration of gender-neutral paid “parental” leave.

India is yet to enact legislation allowing paternity leave (and benefits) in the private sector. The Paternity Benefits Bill, 2017 (the “Bill”), introduced in the Lok Sabha last year, is pending discussion. While a much-needed step in the right direction, the Bill has problematic areas, some of which this article seeks to highlight, with the hope that these issues will be addressed when it is finalised.

**Narrow construct of paternity:** The Bill allows paternity benefits (i.e. leave and payment computed in accordance with its terms) in three categories: (i) When a child is delivered by a man’s “legally wedded” wife; (ii) when a child is delivered by “his commissioning mother” (sic) where “commissioning mother” is defined in the Bill as “a biological mother who uses her egg to create an embryo implanted in any other woman”; and (iii) when a man legally adopts a child below the age of three months.

In doing so, legal matrimony has been made the basis for granting paternity benefits by law. This is not only an artificial distinction but also a narrow construct of paternity. For example, a live-in couple who chooses to conceive a child directly will not be entitled to paternity benefits under the Bill. It is pertinent to note that other Indian laws, such as the Protection of Women from Domestic Violence Act, 2005, have created the enabling framework for recognising live-in relationships and extended legal rights and remedies under its ambit to partners who live (or have lived) together in a shared household through a “relationship in the nature of marriage”. However, in the present case, the Bill as currently drafted, has failed to keep pace with developments in both law and society it

caters to.

In any case, there could be other forms of paternity outside matrimony, surrogacy, live-in relationships and adoption, and the Bill ought to explore and adopt an expansive meaning of paternity. By way of example, consenting adults who are not married and are not in a “live-in” relationship and yet want to conceive a child together (which is not through surrogacy) will be excluded from paternity benefits under the Bill. A true enunciation of freedom to exercise reproductive rights should, in the author’s view, include parental benefits and support structures, irrespective of societal institutions or norms that the parents choose to follow (or not follow).

**Two-child cap:** The Bill provides for paternity benefits to a man with “less than two surviving children”. This again is problematic. If a man has two children from his previous marriage and wants to father or adopt another child, there is no rationale why the law should exclude him from paternity benefits. This also appears to run counter to the Bill’s intention of creating a society where men are encouraged (and supported) to play a key role in parenting. The Bill’s noble intentions are circumscribed by a limit on the number of children. Lastly, this appears to be an insidious way of implementing the two-child norm by directly linking the incentive of paternity benefits to the number of children.

**Duration of paternity benefits:** The Bill allows statutory paternity benefits for 15 days at the outside. Given the enormous gender gap in caregiving responsibilities, the period is too small. To bring in tangible change to the dismal trends and statistics we find regularly (such as the data on the attrition of women employees, reduced hiring of women on account of the recent law on six months’ maternity leave and benefit, etc), and to usher in a societal culture where fathers also take a proactive role in full-time/hands-on childcare, the period has to be at least two months, and there should be flexibility to take it within a year of child birth/adoption.

**Parental Benefits Scheme:** The Bill enjoins upon the Central government to create a Parental Benefits Scheme, to which all employees (irrespective of gender), the employers and the Central government will contribute funds, which will be utilised to meet the costs related to paternity benefits under the Bill. While this is an innovative idea, the Bill does not detail how this would be operationalised.

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