

The Intersection of Masculinity and Law: Paternity Rights in the Age of Reversed Gender Roles

Dr. Kusum Lata Bawlia^{1*}

¹Asst Prof. VSLLS, VIPS-TC. Pitampura Delhi.

To Cite this Article

Dr. Kusum Lata Bawlia “**The Intersection of Masculinity and Law: Paternity Rights in the Age of Reversed Gender Roles**” *Musik In Bayern*, Vol. 90, Issue 9, Sep 2025, pp1-18

Article Info

Received: 04-07-2025 Revised: 07-08-2025 Accepted: 19-08-2025 Published: 10-09-2025

Abstract

Gender roles are typically assigned to each gender constructed by society inherently tied to biological differences between men and women shaped in due course by expectations, responsibilities and behaviors. The roles are shaped by cultural, historical, and social influences and perpetuated but varies across cultures and changes over time. These roles often dictate professional choices, family responsibilities and social behaviors, reinforcing a divide that affects both men and women. Traditionally, economic and social structure also played a significant role in shaping gender roles. In agrarian societies, men were often seen as providers, responsible for labor-intensive work, while women were tasked with domestic duties, such as child-rearing and household management. Different cultures have specific expectations for men and women, societies emphasize masculinity through strength, authority and competitiveness, while femininity is often associated with nurturing, empathy, and submissiveness. The gender role divide is often observed in the workforce patterns, where certain professions are deemed "masculine" or "feminine." Men are more likely to be found in fields like engineering, construction, and leadership roles, while women are often in nursing, teaching, and administrative positions leading to segregation limiting career opportunities and reinforcing stereotypes. In the majority of cultures, women are expected to take on the domestic responsibilities, including childcare, cooking, and cleaning. This unequal distribution of labour can hinder women's professional advancement and contribute to the gender pay gap.

Keywords: gender roles, paternity leaves, intersectional, patriarchy, female workforce participation, decreasing birthrate.

1. Introduction

There is a general expectation deeply rooted in traditional gender roles and cultural norms that men fulfil the role of financial providers providing stability and support to family and ensuring the family needs, while wives are expected to bear children and take care of household responsibilities and family members shaping family dynamics, influence individual aspirations, and affect the overall well-being of both partners. The societal expectation that

women must bear children places an enormous emotional burden on wives, particularly if they face infertility or difficulties in conceiving.

In many cultures, childbearing is seen as an essential duty, and women who are unable to have children may face social stigma, judgment or blame. Men are generally seen as the head of the household and often expected to be career-oriented as their identity and social status are closely tied to their ability to provide for their families and this creates a pressure on men to continuously strive for career advancement to improve the family's financial well-being. One of the most prevalent societal expectations for wives is the responsibility of bearing children and child rearing. In many cultures, a woman's worth is still closely linked to her ability to conceive and become a mother, linked to the assumption that females are natural caregivers and are best suited for looking after children, especially during early childhood².

Women are also expected to care for elderly family members, sick relatives, and other dependents. This caregiving role often extended to both the husband's and the wife's families. The expectation that men should focus primarily on their careers often prevents them from being actively involved in the upbringing of their children or in household responsibilities. Men who wish to be more engaged in their children's lives or household chores may face social stigma or judgement, as these activities are still largely considered "women's work.". The demanding money work schedules of men prevents them from spending quality time with their families. This often results in a weaker emotional bond with their children and a sense of regret for not being able to spend quality time with family. The protector and decision-maker role of men often translates into a belief that they are emotionally strong and should refrain from expressing vulnerability. This emotional suppression leads to emotional disconnect, mental health issues such as depression, anxiety, and social isolation. This emotional disconnect negatively impacts marital relationships and the men's overall well-being.

1. Evolving Dynamics and Changing Expectations of Gender Roles.

² Sec 6. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are— (a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

Feminism has played a crucial role in challenging traditional gender roles and advocating for equality in all areas of life. The movement has sought to dismantle societal norms that limit opportunities for women and has promoted the idea that roles should be based on individual capabilities rather than gender. The rise of gender equality movements has led to discussions about shared parenting responsibilities and the importance of emotional engagement of males in fatherhood. In recent decades, there has been a gradual shift in societal expectations of husbands and wives, with more emphasis on shared responsibilities and partnership within marriages. With economic pressures and changes in societal values, the concept of dual-income households is becoming more common, where both spouses contribute financially. This has led to some husbands and wives negotiating household responsibilities more equitably to accommodate each partner's career.

There is growing awareness of the importance of gender equality at home, and in many urban areas, men are taking on more household responsibilities and caregiving duties. This shift is seen more among younger generations and in nuclear families, where roles are shared more equitably compared to joint families. In some countries, paternity leave policies have been introduced to encourage fathers to take an active role in child-rearing. This is helping challenge traditional gender roles, normalize shared parenting, and ease the burden on mothers. As more women enter the formal workforce, perceptions of traditional roles are changing. Wives are increasingly seen as contributors to household finances, and many husbands are supporting their wives' career aspirations. Despite these changes, challenges remain, particularly in terms of work-life balance and equal sharing of unpaid work. Encouraging shared responsibilities in the household, normalizing men's involvement in caregiving, and providing workplace flexibility for both partners can help create a more balanced approach to family life and improve the well-being of all family members.

Contemporary family structures are increasingly diverse, with more dual-income households and stay-at-home dads. These shifts challenge traditional roles and reflect changing attitudes towards gender responsibilities. Recognizing the intersectionality of gender roles in how race, class, sexuality, and other factors intersect with gender can provide a more nuanced understanding of the role divide and highlight the experiences of marginalized groups. Policies³ that promote gender equality in the workplace and at home, such as paid parental leave, flexible

³ P.B. VIJAY Kumar v. Government of Andhra Pradesh 1995 SCC (4) 520.

work arrangements, and equal pay initiatives, help to address the role divide. Addressing these divides is essential for promoting gender equality and creating a more inclusive society.

By challenging traditional roles and advocating for equal opportunities, individuals and communities can work towards dismantling the barriers that limit potential and perpetuate inequality. The transition from "housewife" to "homemaker" represents a linguistic and cultural shift toward greater inclusivity, gender neutrality, and respect for the role of managing a home. It reflects the evolving understanding of domestic roles, recognizes the value of unpaid labor and aligns with modern views on gender equality. The term "housewife" inherently suggests that only women are responsible for managing the household. In contrast, "homemaker" is a gender-neutral term, recognizing that both men and women can take on the role of managing domestic duties. As more men take on domestic responsibilities or becoming stay-at-home fathers, the term "homemaker" has become more inclusive and reflects the diversity of modern family dynamics and the term "homemaker" aligns with this change, as it moves away from the outdated notion that only women manage the home. "Homemaker" better describes the role without implying a gender or a marital relationship. As family structures evolve (e.g., single-parent households, same-sex couples, cohabiting partners without marriage), the term "homemaker" is more reflective of these changes. It applies to anyone who assumes the role of managing the home, regardless of marital status or gender.

2. Patriarchy and Paternity: An Interlink

The relationship between patriarchy and paternity reveals the complexities of fatherhood within patriarchal frameworks. Understanding this evolution is crucial for fostering healthier familial relationships and promoting gender equality. Patriarchal social systems give men primary power control over other genders significantly influencing the roles and responsibilities of males as fathers. The intersection of patriarchy and paternity shapes not only familial dynamics but also changes in societal expectations of male behavior, authority, and nurturing. Contemporary views of fatherhood in patriarchal society characterized by male dominance in political, social, and economic spheres manifests a family structure where fathers are the primary authority figures in family wielding authority over family decisions and dynamics prioritizing male leadership and control over emotional and affectionate relationship with children. The strict adherence to patriarchal norms can affect father-child relationships, in such

circumstances fathers generally struggle to connect with their children on emotional levels due to fears of appearing weak or vulnerable. As societal norms shift, the definition of fatherhood is expanding. Modern fathers are encouraged to embrace nurturing roles and emotional vulnerability, leading to healthier father-child relationships paving the way for more inclusive and emotionally engaged definitions of fatherhood.

3. Changing Dynamics of Women's Workforce Participation and Gender Roles

The participation of women in the workforce in India has varied significantly over time, influenced by socio-economic, cultural, and policy factors⁴. India experienced a gradual increase in the Female Workforce Participation Rate (FWPR) during the 1970s and 1980s, driven by expanding opportunities in agricultural and informal sectors. Economic necessity increased female participation rates during this period and were estimated to be around 30-35% as many rural women joined the workforce as agricultural laborers. In the 1990s, with the beginning of the process of liberalization, opening up of new markets and increasing formal employment opportunities in urban areas, more women began to take up roles in the services and manufacturing sectors. However, the actual FWPR⁵ remained relatively stable or even showed a slight decline during this period due to factors such as rising household incomes, which often resulted in women withdrawing from labor as the family income increased.

The female workforce participation rate was relatively high in the early 2000s, reaching around 31% in 2005-06 with more women entering both formal and informal sectors, as education opportunities for women increased and women found employment in areas like education, healthcare, and the service industry, driven by the growth of sectors like Information Technology (IT) and financial services. The Periodic Labor Force Survey (PLFS 2020-21) showed an improvement, with the FWPR rising to 22.8%. This modest recovery was primarily driven by growth of service sector jobs, healthcare, retail and education, government programs like Skill India and National Rural Livelihoods Mission (NRLM) contributing to increased female participation, particularly in rural areas. Self-Help Groups and Entrepreneurship (SHGs) and micro-entrepreneurial activities also increased women participation particularly in rural areas.

⁴ Nargesh Meerza v. Air India 1982 SCR (1) 438

⁵ The **Female Workforce Participation Rate (FWPR)**.

As of 2022, the FWPR⁶ in India is estimated to be around 25%, reflecting a gradual but insufficient recovery from earlier lows. The rise in women joining the workforce has been particularly evident in urban areas, where the IT, finance, and professional services sectors have attracted more women to formal jobs⁷. The pandemic had a mixed impact on women's employment. While many women lost their jobs due to layoffs, the increased adoption of remote work enabled some women to join or remain in the workforce. Government initiatives such as Skill India, Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), and Beti Bachao, Beti Padhao have aimed to improve women's skills and employment opportunities. Additionally, policies like the Maternity Benefit Act (2017) have aimed to support women in balancing work and family life. Government schemes focusing on women-led businesses, skill development, and financial inclusion could further support women in accessing paid employment opportunities. Female participation in the workforce remains lower compared to many other countries as women in India continue to face challenges related to unpaid care work, gender bias and lack of suitable job opportunities.

Women participation in paid employment adds directly to a country's economic growth and development. Their earnings contribute to household income, resulting in better living standards and financial security. Studies show that increasing women's participation in the labour force can significantly boost a nation's GDP⁸. Women entering paid work force helps to diversify the labour market and increase the pool of talent leading to increased innovation and productivity within industries that benefit from gender diversity. Women's financial independence, providing greater control over financial decisions within the household empowers women to invest in education, healthcare, and the overall well-being of their families. Women's unpaid work is an invisible economic contribution of women by performing household chores, caregiving, cooking, and child-rearing is of substantial economic value that

⁶https://www.mospi.gov.in/sites/default/files/publication_reports/Annual%20Report%2C%20PLFS%202017-18_31052019.pdf 2.

⁷ International Labour Organization. "ILO Modelled Estimates and Projections database (ILOEST)" ILOSTAT. Accessed February 06, 2024. ilostat.ilo.org/data.

⁸ According to a McKinsey report, achieving **gender equality in workforce participation** could add **\$700 billion** to India's GDP by 2025

is often not accounted for in GDP calculations⁹. This work is crucial for maintaining households, raising healthy children, and supporting productive workers.

The heavy burden of unpaid work often prevents women from taking up paid employment or advancing their careers resulting in a loss of potential productivity and earnings, affecting the broader economy. The "time poverty" reduces the opportunities available to women for education, skill development, and employment, which negatively impacts the overall workforce participation rate. Time poverty, a lack of time for leisure, personal development leads to physical exhaustion and chronic stress, impacting their physical and mental health. Women's unpaid work reinforces traditional gender roles that view caregiving and domestic work as primarily the responsibility of women, thus division of labor limits women's opportunities for personal growth, education, and economic participation. The social expectation that women must handle unpaid household responsibilities regardless of their paid employment status, perpetuates gender inequality both at home and in the workplace. The dual responsibility of paid and unpaid work often forces women to accept flexible or part-time roles that offer lower pay, which further exacerbates the gender pay gap. Women are also often excluded from promotions and leadership opportunities because of assumptions that they cannot take on demanding roles due to household responsibilities¹⁰. Women in paid work gain greater social status and autonomy within their families and communities. Employment helps challenge traditional norms and stereotypes by showing that women are capable of contributing financially and playing important roles in various sectors.

Women's paid work leads to changes in household dynamics, including shared decision-making and greater economic security. Studies show that households with working women tend to have more egalitarian decision-making structures, resulting in better outcomes for children in terms of health and education¹¹ with the men's participation in domestic work due to more women joining the paid workforce, there is a gradual shift towards sharing household

⁹ **Oxfam India** estimated that unpaid care work contributes over **\$10 trillion annually** to the global economy. In India, unpaid labour performed by women was estimated to be **3.1% of GDP**

¹⁰ C.B Muthamma v. Union of India 1980 SCR(1) 668

¹¹ Grappling with the challenges of measuring women's economic empowerment in intrahousehold settings [World Development](#), Volume 132, August 2020, 104959.

responsibilities between men and women. Women's contributions through both paid and unpaid work are invaluable to society and the economy. While paid work leads to economic empowerment, better household living standards, and greater autonomy for women, unpaid work is the foundation that keeps households and communities running smoothly. However, societal expectations still place a greater burden of unpaid work on women.

4. Increased female participation in paid jobs and the decreasing birth rate

Evolving Social Norms that described women primarily as caregivers to equal contributors in the workforce, makes women to give preference career building over childbearing in present times under the influence of several social, economic, and personal factors. Women having more access to higher education and professional training, leading to better career opportunities priorities financial independence, which is often closely tied to career advancement, focus on building a stable career before considering having children¹². When both men and women take time off for caregiving, there is less gender disparity in employment interruptions. Pregnancy and motherhood can cause significant disruptions in a woman's career trajectory, especially in industries where taking extended time off can affect promotions or advancements. There has been an increase in the participation of women in STEM (Science, Technology, Engineering, and Mathematics) fields. According to the World Economic Forum, women made up about 28% of the STEM workforce globally in 2020, up from 22% in 2015.

Paternity leave for fathers contributes to a reduced gender pay gap, as women are less likely to be penalized for taking career breaks related to childcare. Modern contraception methods allow more control over reproductive decisions and advancement in reproductive technologies such as in-vitro fertilization (IVF) and egg freezing allow women to delay childbearing thus the women are choosing delayed marriage and childbearing, often until they feel secure in their career or personal life. The **United Nations Population Division (UNPD)** reports the global decline in birth rates as a well-documented trend, due to declining fertility rates, and women more engaged in paid works with a projected global fertility rate of 2.1 by 2050—near the "replacement level," where the population will neither grow nor shrink significantly.

¹² According to the International Labour Organization (ILO), women's labor force participation globally increased from around 39.9% in 1990 to about 47.5% in 2020.<https://www.ilo.org/resource/women-work-initiative>

In **Europe**, the average fertility rate has been consistently low since 1970's, Japan has one of the lowest fertility rates globally at 1.33 in 2020, contributing to a rapidly ageing population and the U.S. fertility rate has fallen to a historic low of 1.64 in 2020¹³. Women employment is one of the major factors contributing to the decline in birth rates along with other factors like urbanization, access to family planning services and contraceptives, the rising cost of raising children leading to changing attitudes toward marriage and parenthood. According to the United Nations Population Division (2022) by **2050**, the total fertility rate is expected to fall below replacement level in more than 90 countries¹⁴.

The Maternity Benefit Act¹⁵ was amended in 2017 to extend paid maternity leave from 12 weeks to 26 weeks for women in establishments with 10 or more employees¹⁶. Although this is an important step, it focuses only on mothers, and there is no mandatory paternity leave policy for fathers in most sectors. Encouraging the introduction of paternity leave could help share the caregiving burden between parents more equitably. The National Crèche Scheme is aimed at providing affordable daycare facilities to children of working mothers in India. These centers provide daycare for children aged six months to six years. The initiative helps reduce the double burden by ensuring that working women, especially those in the informal sector, have a safe place to leave their children while they work. Anganwadi Centers (Integrated Child Development Services(ICDS) established under the ICDS program, provide early childhood education and nutrition support for young children, as well as healthcare services for mothers offering support to mothers in both urban and rural areas, allows women to return to paid work without worrying about their children's welfare. National Rural Livelihood Mission (NRLM) offers support for women-led self-help groups (SHGs) to start small businesses and micro-enterprises. The flexibility of managing these enterprises allows women to earn an income while also being able to fulfil their domestic responsibilities. Several companies in the Indian IT sector, such as Infosys, Wipro, and Tata Consultancy Services (TCS), have adopted work-from-home policies or flexible work hours to help employees, particularly women, balance their responsibilities. These policies gained traction during the COVID-19 pandemic, enabling

¹³ National Vital Statistics Reports Volume 73, Number 2, April 4, 2024

¹⁴ <https://www.un.org/development/desa/pd/data->

¹⁵ Maternity Benefit (Amendment) Act, 2017

¹⁶ P. Geetha v. Kerala Livestock Development Board.W.P(C) No. 20680 of 2014(H)

more women to continue working while managing household and caregiving duties. Zomato introduced 26-week paid parental leave for both men and women¹⁷.

5. Redefining Fatherhood: The Role of Paternity Leaves in Changing Social Norm of Child Care and Responsibility.

Paternity rights typically concern the legal recognition of a father's role in raising and caring for a child. Paternity leave has become increasingly significant in light of changing gender norms and feminism and declining birth rates. As societies face lower fertility rates considering the importance of supporting both parents during the early stages of a child's life, father's participation in child care gained recognition. When fathers are granted leave, it becomes easier for couples to plan and manage their family dynamics, more control over fertility decisions, reducing the gender gap in decision-making around family planning. The paternity leave policies aimed to create more equitable sharing of responsibilities, Paternity leave helps alleviate the double burden on women in providing support to women in conventional society and ensure better work-life balance for women too.

Nordic Countries like Sweden, Norway, Finland and Iceland provide the most comprehensive parental leave policies in the world providing for paid parental leave for both parents, which encourages shared caregiving responsibilities. Sweden offers 480 days of paid parental leave per child, with 90 days reserved specifically for each parent ensuring that fathers too are actively involved in caregiving activities and reducing the double burden on women for more gender-equitable distribution of household and caregiving responsibilities and allowing women to pursue their careers more effectively.

Germany introduced Elterngeld in 2007, a parental benefit that incentivizes both parents to take leave is a fundamental paradigm shift in Germany's family policies aligned with the Scandinavian models¹⁸. Families receive a financial bonus if both parents share parental leave equally. This policy encourages fathers to take time off, promoting shared caregiving duties and helping

¹⁷ Business today, (01 : 26, 19th May 2021), <https://www.businesstoday.in/current/corporate/zomato-parental-leave-policy-paid-26-week-both-men-women/story/353791.html>

¹⁸ How Policy Matters: Germany's Parental Leave Benefit Reform and Fathers' Behavior 1999-2009, MPIDR WORKING PAPER WP 2012-021 JULY 2012

women return to their paid employment without carrying the entire caregiving burden alone. In Germany, the introduction of Elterngeld (parental allowance) was designed to encourage both parents to share childcare duties. This policy provides financial incentives if both parents take at least two months of parental leave each, with up to 14 months of leave available. Germany traditionally had one of the lowest birth rates in Europe. However, since the introduction of family-friendly policies, including paid paternity leave, the fertility rate in Germany has risen modestly from 1.3 children per woman in the early 2000s to around 1.5-1.6 in recent years. This increase is partly attributed to the shift toward more balanced caregiving roles between mothers and fathers.

The Flexible Working Act, 2016 of the Netherlands allows employees to request changes to their work hours, work location and work schedules to achieve a better work-life balance. This policy has been particularly helpful for working parents, allowing them to adjust their schedules to manage both work and caregiving duties.

The Flexible Working (Amendment) Regulations, 2023 in the UK allow all employees with at least 26 weeks of continuous service to request flexible working arrangements, such as part-time work, compressed hours, or work-from-home options.

Paid paternity leave is crucial for encouraging fathers, particularly in lower-income groups, to take leave without economic hardship. Governments can provide incentives to employers, such as tax breaks or subsidies, for offering paternity leave. This would encourage more companies to adopt family-friendly policies and overcome resistance to allowing men to take leave. Governments and organizations should conduct awareness campaigns to challenge traditional gender norms and promote the importance of paternity leave. Public awareness initiatives can help reduce the stigma around men taking leave and encourage a cultural shift toward shared caregiving. Governments can provide incentives to employers, such as tax breaks or subsidies, for offering paternity leave. This would encourage more companies to adopt family-friendly policies and overcome resistance to allowing men to take leave.

6. Equal gendered workforce: reversing the gender roles for a way ahead

Workplace Culture and Economy providing paternity leave helps create a family-friendly workplace culture where both male and female employees are supported in balancing work and family responsibilities. This contributes to increased employee satisfaction, improved retention, and greater productivity. The legitimate expectation of paternity and maternity

leaves to both parents during the early years of child after birth calls for reframing provisions of common leaves for both parents as child care leave along with special self-care leaves for mother separately as maternity leaves.

There is a notable relationship between reduced childbirth rates (or low fertility rates) and paternity leave provisions. In many developed countries, declining birth rates are becoming a significant concern, with governments trying to implement policies that encourage couples to have more children. Paternity leave provisions—along with other family-friendly policies play a key role in influencing fertility decisions by addressing the challenges of balancing work and family life. Couples often decide whether to have children based on their perceived ability to balance work and family life. Financial stability, workplace flexibility, and availability of caregiving support are crucial factors that impact this decision. The prospect of greater involvement by fathers during the early months of a child's life can alleviate the stress and anxiety of child-rearing, making it easier for families to consider having more children.

In societies where caregiving responsibilities fall disproportionately on women, the burden of combining paid employment with child-rearing can discourage families from having more children. Paternity leave provisions help to alleviate this burden by encouraging fathers to take an active role in childcare, thereby making it easier for couples to decide to have children. This equitable sharing makes parenting a less daunting prospect for women and encourages families to have more children.

A more supportive environment that facilitates work-life balance encourages couples to have larger families. In contrast, the absence of supportive policies can lead to delayed childbirth or decisions to have fewer children due to the difficulty of managing career and family responsibilities. Paternity leave provisions also contribute to changing the perception of fatherhood and gender roles within the family. When fathers take an active role in childcare, it sends a strong signal that parenting is a shared responsibility rather than something that should be managed primarily by women. This shift in perception reduces the fear that mothers may have about bearing the brunt of caregiving responsibilities, leading to greater willingness to have more children. Studies have shown that couples who share caregiving responsibilities report higher relationship satisfaction and lower levels of conflict.

7.1 Select jurisdictions and their policies

The availability of paternity leave enables fathers to be more involved in raising their children, which can strengthen family relationships. Iceland is known for having one of the most progressive policies for paternity leave. Parents are entitled to nine months of leave, divided into three equal parts, three months reserved for the mother, three for the father, and three shared between them. This approach has significantly increased the involvement of fathers in childcare, thereby reducing the double burden on women and contributing to greater gender equality both at home and in the workplace. Japan's government has actively promoted the idea of "working fathers" and encourages fathers to take paternity leave. France offers home care allowances for those fathers who choose to stay home and provide care to young children or elderly family members. This financial support recognizes the economic value of caregiving and provides some compensation for the unpaid labour performed by caregivers most of whom are women. Japan has one of the lowest fertility rates globally, which has raised concerns about an ageing population and a shrinking workforce. To address this, the government introduced policies that encourage men to take paternity leave and play a greater role in childcare. Despite these provisions, uptake has been low due to cultural norms and workplace pressures. However, in different states, the government has continued to promote paternity leave, recognizing that sharing caregiving responsibilities is essential to reducing barriers for women equality.

The rights of paternity for third-gender individuals, particularly in legal and social frameworks, have garnered attention in recent years due to the evolving recognition of diverse gender identities.

7. Parenthood through the lens of third gender

Over the last decade, several countries have legally recognized the third gender as **India**¹⁹, **Nepal**, **Pakistan**, and **Bangladesh** and recognized the rights of transgender individuals to identify as a "third gender." Though legal rights around parenthood such as paternity, adoption, and family life remain limited to many places. In cases where a third-gender individual was assigned male at birth and has fathered a child, they may claim paternity rights, even if they no longer identify as male. Legal systems adapt to recognize their gender identity

¹⁹ *Nalsa v. Union of India* .(2014) 5 SCC 438.

while still preserving their paternal rights. In cases where a third-gender individual is not biologically related to the child but is raising the child as a parent (e.g., in same-sex relationships, adoption, or surrogacy), their rights are more complex. Legal frameworks often lack provisions for recognizing non-biological third-gender parents as "fathers" or legal guardians, especially in conservative legal systems.

In many countries, the legal framework surrounding paternity rights remains binary, focusing on "mothers" and "fathers." This leaves third-gender individuals in a grey area where their parental roles are not clearly defined or protected²⁰. Canada's parental leave policy is gender-neutral allowing up to 40 weeks of shared parental leave, with the flexibility for parents to split the time and adoption laws are also inclusive, allowing non-binary and third-gender individuals to adopt children either as single parents or as part of a couple in Germany too offers generous, gender-neutral parental leave to Parents where they can share up to 14 months of leave between them, with either parent eligible to take time off regardless of gender recognizing third-gender parents' rights too in terms of parental leave, custody rights, and paternity. Sweden offers most gender-equal parental leave systems providing 480 days of parental leave, with each parent receiving an individual entitlement of at least 90 days that cannot be transferred to the other parent allowing for non-binary and third-gender individuals to fully participate in parental leave without discrimination. Iceland's parental leave policy is gender-neutral, with both parents entitled to equal leave of six months and there is additional leave that can be shared between the two parents. This system too supports non-binary and third-gender parents by ensuring equal rights to parental leave. Finland, Netherlands, Norway, United Kingdom, New Zealand, Argentina and South Africa etc emerged as leaders in providing inclusive parental leave systems that do not discriminate based on gender identity. Their policies represent important steps in supporting diverse family structures and ensuring that transgender parents are treated equally.

8. Conclusion

Traditional gender roles often deter fathers from taking leave, as caregiving is still perceived as a woman's responsibility. Social stigma around men taking paternity leave can prevent fathers from utilising their entitlements. In many workplaces, there is an expectation that men

²⁰ Supriyo @ Supriya Chakraborty & Anr. vs Union of India is Writ Petition (Civil) No. 1011 of 2022

should prioritise their jobs over family responsibilities. Employers may discourage paternity leave, viewing it as a lack of commitment to work. This is particularly true in industries with a macho work culture. In countries like India, there is no nationwide mandatory paternity leave policy, especially in the private sector. The absence of a legal framework leaves paternity leave at the discretion of employers, leading to inconsistency and inequality in its availability. In countries where paternity leave is unpaid or only partially paid, financial constraints prevent many fathers from taking time off work. Paid paternity leave is crucial for encouraging fathers, particularly in lower-income groups, to take leave without economic hardship. In India, paternity leave provisions vary significantly based on the sector and employer. Central government employees are entitled to 15 days of paid paternity leave, which can be taken up to six months after the birth or adoption of a child. Women's participation in the workforce is a crucial driver of economic growth, social progress, and gender equality. In India, despite improvements in female literacy and education, the female labour force participation rate (FLFPR) remains low around 37% in 2023 according to the Periodic Labour Force Survey largely due to entrenched patriarchy, gender role stereotyping, and inadequate support structures for working mothers. Patriarchal norms assign women the primary responsibility for childbearing and caregiving, which limits their career prospects and often forces them out of the workforce after marriage or childbirth.

Globally, research shows a strong correlation between increased women's workforce participation and declining fertility rates, as women delay childbirth to pursue careers. Nations with progressive gender policies, such as Sweden, Norway, and Iceland, balance this trend by offering generous parental leave as Sweden grants 480 days shared between parents with incentives for fathers to take leave, while Norway mandates 15 weeks for each parent. Even Asian economies like Japan and South Korea, facing ultra-low fertility rates, have implemented paid paternity leave schemes to encourage shared parenting and reduce the career penalty for women.

India, however, currently mandates 26 weeks of paid maternity leave under the Maternity Benefit (Amendment) Act, 2017, but has no statutory national paternity leave policy for the private sector, apart from limited provisions for central government employees (15 days). The absence of such a policy perpetuates the notion that childcare is a woman's duty, deepening gender disparities at work and contributing to women's early career exits. For India's overall

economic development, a two-pronged approach is vital: first, adopting a gender-neutral parental leave framework that encourages fathers to actively participate in child-rearing, thereby reducing the disproportionate caregiving burden on women; second, strengthening workplace policies such as flexible work arrangements, affordable childcare infrastructure, and strict anti-discrimination measures. Studies by the International Labour Organization (ILO) indicate that closing the gender gap in workforce participation could boost India's GDP by up to 27%. Therefore, dismantling patriarchal structures, implementing progressive family policies, and enabling equal participation in economic life are not just matters of social justice but essential strategies for sustaining long-term economic growth in India.

However, paternity leave provisions for private-sector employees are inconsistent, and many companies do not provide formal paternity leave policies. Introducing mandatory paid paternity leave at the national level²¹ is crucial to ensure that all fathers, regardless of their employment status or sector, have the opportunity to take time off. The leave should be non-transferable and non-convertible ensuring that it is specifically utilized by fathers. In countries where paternity leave is unpaid or only partially paid, financial constraints prevent many fathers from taking time off work. In countries, where the third gender is recognized legally, societal stigma and discrimination often create barriers for third-gender individuals seeking parental or paternity rights. Courts and child welfare systems are biased in favor of traditional gender roles, making it harder for third-gender parents to assert their rights. Third-gender individuals who wish to become parents through surrogacy or adoption face additional challenges. Many countries have restrictive adoption laws that do not include provisions for non-binary or third-gender individuals to become adoptive parents. In surrogacy cases, the legal recognition of parenthood may exclude non-traditional gender identities, making it difficult to assert paternity. Paternity rights for third-gender individuals are still an emerging area of law that requires significant attention and reform. Legal systems worldwide are gradually beginning to recognize third-gender individuals, but their rights as parents, especially in terms of paternity, are often overlooked or inadequately protected.

References:

²¹ Chander Mohan Jain vs. N.K. Bagrodia Public School and Ors Delhi High Court Sept 9 2009

- 1) Braithwaite, J. (2001). *Restorative justice & responsive regulation*.
http://opac.lib.fh.unsyiah.ac.id/index.php?p=show_detail&id
- 2) Narayan, D., Chambers, R., Shah, M. K., & Petesch, P. (2000). *Crying out for change*.
<https://doi.org/10.1596/0-1952-1602-4>
- 3) Smeaton, D., & Marsh, A. (2006). Maternity and Paternity Rights and Benefits: Survey of Parents 2005 [Dataset]. In *PsycEXTRA Dataset*.
<https://doi.org/10.1037/e580042011-001>
- 4) Paige, K. E., & Paige, J. M. (1973). The Politics of Birth Practices: A Strategic analysis. *American Sociological Review*, 38(6), 663. <https://doi.org/10.2307/2094130>
- 5) Smeaton, D., & Marsh, A. (2006). Maternity and Paternity Rights and Benefits: Survey of Parents 2005 [Dataset]. In *PsycEXTRA Dataset*.
<https://doi.org/10.1037/e580042011-001>
- 6) Bianchi, S. M. (2000). Maternal employment and time with children: Dramatic change or surprising continuity? *Demography*, 37(4), 401–414.
<https://doi.org/10.1353/dem.2000.0001>
- 7) Lahoti, R., & Swaminathan, H. (2015). Economic development and women's labor force participation in India. *Feminist Economics*, 22(2), 168–195.
<https://doi.org/10.1080/13545701.2015.1066022>
- 8) Gustafsson, S., & Bruyn-Hundt, M. (1991). Incentives for Women to Work: A Comparison between The Netherlands, Sweden and West Germany. *Journal of Economic Studies*, 18(5/6). <https://doi.org/10.1108/eum00000000000159>
- 9) Goldin, C., Katz, L. F., & Kuziemko, I. (2006). The Homecoming of American College Women: The Reversal of the college Gender gap. *The Journal of Economic Perspectives*, 20(4), 133–156. <https://doi.org/10.1257/jep.20.4.133>

- 10) Beauregard, T. A., & Henry, L. C. (2008). Making the link between work-life balance practices and organizational performance. *Human Resource Management Review*, 19(1), 9–22. <https://doi.org/10.1016/j.hrmr.2008.09.001>
- 11) Bierema, L. (2003). The role of gender consciousness in challenging patriarchy. *International Journal of Lifelong Education*, 22(1), 3–12. <https://doi.org/10.1080/02601370304825>
- 12) Narayan, D., Chambers, R., Shah, M. K., & Petesch, P. (2000). *Crying out for change*. <https://doi.org/10.1596/0-1952-1602-4>
- 13) Fenton-Glynn, C. (2025). *The law of parenthood: A Comparative Guide*. Edward Elgar Publishing.
- 14) Goldscheider, F., Bernhardt, E., & Lappegård, T. (2015). The Gender Revolution: a framework for understanding changing family and demographic behavior. *Population and Development Review*, 41(2), 207–239. <https://doi.org/10.1111/j.1728-4457.2015.00045.x>
- 15) Neyer, G., & Andersson, G. (2008). Consequences of family policies on childbearing behavior: effects or artifacts? *Population and Development Review*, 34(4), 699–724. <https://doi.org/10.1111/j.1728-4457.2008.00246.x>