

# Parental Leave Policies and the Epistemological Transformation of the Public-Private Dichotomy

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## ABSTRACT

The public-private dichotomy, rooted in Social Contract Theory, has historically circumscribed female subjectivity within domestic spheres while enabling male agency in public domains. This conceptual demarcation emerges from an essentialist ontological framework that associates masculinity with productive rationality and femininity with affective, reproductive labor. The paper critically examines the potential of parental leave policies to deconstruct these entrenched epistemological boundaries. Through a comprehensive analytical investigation, the research explores how emergent childcare leave policies might reconfigure workplace dynamics and societal expectations. The scholarly discourse does not propose parental leaves as a replacement for existing maternity legislation, but rather conceptualizes them as a supplementary institutional mechanism to optimize child welfare and parental engagement. Employing the theoretical lens of ethics of care jurisprudence, the study problematizes traditional public-private distinctions. The research methodology emphasizes a rigorous, evidence-based evaluation of the potential promises and limitations inherent in implementing progressive legislative frameworks. By interrogating the transformative potential of these policy interventions, the authors aim to generate nuanced insights into the complex intersectionalities of gender equality, familial organization, and institutional design. The scholarly intervention seeks to denaturalize deeply ingrained societal constructs, offering a sophisticated theoretical and empirical examination of how innovative policy mechanisms might facilitate more egalitarian conceptualizations of labor, care, and parental responsibility. Ultimately, the research contributes to a more sophisticated understanding of how institutional design can catalyze profound socio-cultural transformations, challenging established paradigms of gender relations and social organization.

**KEYWORDS:** public-private dichotomy; parental leaves; ethics of care; equality; inclusiveness

## INTRODUCTION

*“The public-private dichotomy is defined not by geography, but rather by the association of certain spaces with power.”<sup>1</sup>*

The public-private dichotomy arises from the association of masculinity to the public and femininity to the private.<sup>2</sup> It is based on the supposed sexual division of labour. Discussing public-private dichotomy unfolds two motives – firstly, explaining gender inequalities and secondly, advocating gender justice. Subjecting the dichotomy to a critical analysis may be a complex project, as there is debate about the true meaning of the terms “public” and “private”. Nonetheless, the paper rests on the assumption that the dichotomy can help explain inequalities, and therefore its reconceptualisation can achieve equality. This paper aims to analyse the role played by parental leaves in an attempt to degender and deconstruct the dichotomy. Through this paper, the authors challenge the patriarchal conceptions of ethics of care jurisprudence and the gender inequalities that social roles have supported. The suggestion proposed by the authors is a reconceptualisation of ethics of care offered as a central element of the dichotomy, ultimately leading to gender-neutral social roles. This

<sup>1</sup> Diana Coole, *Cartographic Convulsions: Public and Private Reconsidered*, 28 POLIT. STUD. 337 (2000).

<sup>2</sup> Jennifer L. Berdahl & Sue H. Moon, *Workplace mistreatment of middle class workers based on sex, parenthood, and caregiving*, 69 J. SOC. ISSUES 341 (2013).

would help rework the operational framework of the dichotomy while retaining its originality and helping understand the spheres as “*different modes of interaction*”<sup>3</sup>.

Through this paper, the authors embark on a nuanced intellectual exploration of the epistemological foundations and sociological implications of the public-private dichotomy, methodically deconstructing its historical genesis and its profound ramifications for labor dynamics and gender stratification. Subsequently, the research transitions to a comprehensive taxonomical examination of contemporary leave policies, presenting a rigorous analytical dissection of distinct categorical typologies—specifically maternity, paternity, and parental leave provisions. The authors critically differentiate these policy modalities, illuminating their distinctive structural characteristics, legislative underpinnings, and socio-economic implications. The focal point of the scholarly discourse emerges in the fourth segment, which constitutes a profound theoretical intervention. Here, the authors undertake a critical interrogation of the transformative potential inherent in parental leave policies, explicitly examining their capacity to problematize and potentially deconstruct traditional ontological boundaries demarcating public and private spheres of social organization. Through a methodical and intellectually sophisticated analysis, the researchers identify and problematize potential systemic challenges that might emerge while implementing these novel legislative frameworks within extant labor regulatory structures. This segment represents a nuanced exploration of the complex intersectional dynamics between institutional design, social policy, and lived experiential realities.

The concluding segment synthesizes the preceding analytical trajectories, offering a comprehensive summation that encapsulates the research's key theoretical interventions and empirical insights, thereby contributing to a more sophisticated understanding of labor policy, gender dynamics, and institutional transformation.

## UNDERSTANDING THE PUBLIC-PRIVATE DICHOTOMY

“*The public-private dichotomy is one of the grand dichotomies of western thought.*”<sup>4</sup>

The origins of the public-private dichotomy have a complex history. First and foremost, one must note that there is no single public-private distinction. The ambiguity arises from the different traditions of political thought.<sup>5</sup> Broadly, there are two approaches taken by political theorists – liberal and classical.<sup>6</sup> The former highlights the distinction between market and state; the latter studies the opposition between the *oikos* (domestic sphere) and *polis* (public sphere). *Oikos* is the sphere of production and reproduction, predominantly inhabited by women. *Polis* is equated with public space for discussion, deliberation, collective decision-making, and actions. The public sphere is characterised by the institutionalisation of equality. It should be open and accessible to allow for rational communication on issues of general significance.<sup>7</sup>

In addition to the above, philosopher Will Kymlicka further explains the public-private distinction as “*state-civil society distinction*” and “*social-personal distinction*” within liberalism.<sup>8</sup> While civil society is private, because it is not governed by the State, the personal is also private as it represents intimacy. His distinction creates a tripartite division of social relation: State, civil society, and personal – wherein the first is always public; last always private; and civil society overlapping between the two so not falling in either sphere.<sup>9</sup>

Public-private dichotomy may be linked to the social contract theory which confined women to private, care-taking roles allowing men to move in the public sphere freely. Men view the domestic sphere as a space for personal privacy, but the same space is a sphere of constraint and oppression for women. The two sexes express different manifestations of the dichotomy, simultaneously. The secondary status of one pave way for the

<sup>3</sup> Judith Squires, *Public and private*, in POLITICAL CONCEPTS 131 (Richard Bellamy & Andrew Mason eds., 2018).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Chris Armstrong & Judith Squires, *Beyond the Public/Private Dichotomy: Relational Space and Sexual Inequalities*, 1 CONTEMP. POLIT. THEORY 261 (2002).

<sup>7</sup> IRIS MARION YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE; Squires, *supra* note 3.

<sup>8</sup> WILL KYMLICKA, CONTEMPORARY POLITICAL PHILOSOPHY (2nd ed. 2010).

<sup>9</sup> Squires, *supra* note 3.

dominant status of the other – mainly in the order of men vs women. Women's confinement to the private sphere is argued to be the "*source of the problem*".<sup>10</sup> The famous political scientist Carole Pateman argues that the social contract theory established freedom for men while simultaneously creating sexual subordination of women in marriages.<sup>11</sup> "*They are unacknowledged preconditions of the male public world of autonomous individuals.*"<sup>12</sup> She points out that the social contract established by Locke and Rousseau is predicated upon a prior sexual contract, accommodating patriarchalism in the process of creating a civil society. A sexual contract thus enforces the exclusion of women, paving way for patriarchal structures to act as a complement to the institutions set up in a civil society. Social contract represents the reorganisation of patriarchy, not its abolition.

Taking the meaning of the dichotomy a step further, feminist theorists explicitly recognise the role of the family within the personal sphere of intimacy. They question the "*normative use of the dichotomy*"<sup>13</sup>, arguing that the distinction should be between the society and family. This gives rise to understanding of a broader meaning of public including State, civil society, government, political deliberation – anything that may fall within this "*residual category*"<sup>14</sup>. By contrast, the private then encompasses the relations and activities of the domestic life. It can be defined with three components – a place for intimate relationships; a space to shed one's public roles temporarily; a means of securing time alone to develop one's creativity.<sup>15</sup>

*"The separation between the public and the private is re-established as a division within the civil society, within the world of men."*<sup>16</sup>

Analysing the conflict between the two spheres with perspectives from different schools of thought is necessary for the following reasons – firstly, the dichotomy is deeply gendered; secondly – it legitimises the division of men and women to the different spheres; and thirdly – it helps take into account particular concerns and considerations of women. Classifying the family as private shields oppression within familial relations, removing it from political scrutiny and legal intervention. Prima facie, the State may appear unrelated to the family, but in reality, the private sphere is regulated in relation to the state realm.<sup>17</sup> The liberal conceptions shield the possible domestic violence, whereas the classical approach may serve to justify and perpetuate it. The feminist approach suggests that the dichotomy has further patriarchy.

Confining women to the private sphere is seen as oppressive.<sup>18</sup> Social institutions are a reflection of social relations, and also contribute towards shaping individuals in socially-accepted molds. The perception that women are warmer and more empathetic carry with it the assumed perception that they lack rationality, and are therefore not deserving of rights granted in a liberal economy, thereby limiting their status to a caregiver. Though a biological outcome, motherhood has a social, historical, and cultural construct.<sup>19</sup> Karl Marx was one of the first to argue that reproductive labour is fundamental in creating resources and maintaining the strength of waged men workers. In his opinion, Childcare and housework are not activities recognised on résumés.<sup>20</sup>

<sup>10</sup> BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1963).

<sup>11</sup> Teresa Brennan & Carole Pateman, '*Mere Auxiliaries To the Commonwealth*': *Women and the Origins of Liberalism*, 27 *POLIT. STUD.* 183 (1979).

<sup>12</sup> Squires, *supra* note 3.

<sup>13</sup> Chris Armstrong & Judith Squires, *Beyond the Public/Private Dichotomy: Relational Space and Sexual Inequalities*, 1 *CONTEMP. POLIT. THEORY* 261 (2002).

<sup>14</sup> Jeff Weintraub, *The Theory and Politics of the Public/Private Distinction*, in *PUBLIC AND PRIVATE IN THOUGHT AND PRACTICE: PERSPECTIVES ON A GRAND DICHOTOMY* 1 (1997).

<sup>15</sup> Susan Moller Okin, *Gender, the Public, and the Private*, in *FEMINISM AND POLITICS* 116 (1998).

<sup>16</sup> CAROLE PATEMAN, *THE SEXUAL CONTRACT* (1988).

<sup>17</sup> Squires, *supra* note 3; Armstrong and Squires, *supra* note 13.

<sup>18</sup> FRIEDAN, *supra* note 10.

<sup>19</sup> Swati Akshay Sachdeva, *Not born a Mother, but Naturalized into One: Experiences of Motherhood, Reality and Challenges*, 6 (2019).

<sup>20</sup> Berdahl and Moon, *supra* note 2.

Liberal societies do not hold high regard of the processes of nurturing and caring, and women are therefore denied privileges that are otherwise granted to “rational individuals”. The implication is that the role of a primary caregiver is casually and unapologetically overlooked, generating extensive literature<sup>21</sup> on “ethics of care”. Reproductive work involves child-rearing, which is exclusively conducted by women but does not receive the credit it deserves. Responsibility is one of the most important aspects of excellent mothering, and it remains a sort of invisible labour that significantly contributes to women's employment.<sup>22</sup>

The growing concerns of gendered division of labour necessitates a critical appraisal of the public-private dichotomy in legal theory. The divide can be used to understand women's socially constructed subordinate status better.<sup>23</sup> It is not sufficient to focus only on who represents what sphere, but rather question their construction itself. Liberal states have failed to extend the principles of justice to the private sphere.<sup>24</sup> Feminist critiques not only reject the liberal approach to public-private dichotomy, but also suggest that despite gender-neutral theory, liberal regimes continue to work against women's interests.<sup>25</sup> For example, middle-class and working-class women rarely have the “luxury” of confining themselves to their homes. Liberal feminists focus on equality of opportunity; socialist feminists argue that since a woman's biology is different from men, therefore policies should focus on equality of outcome and not equality of opportunity.<sup>26</sup> The need is to not only challenge the conceptualisation of the dichotomy, but rather de-gender their very formation. This may be achieved in one of two ways – encouraging women's participation in the public sphere; or increasing men's role in the private. Thus, The authors take a leaf from both books to argue that labour laws must cater to women's rights (addressed now, within maternity benefit schemes). However, since the purpose of maternity leaves does not favour women, the second step is to propose including fathers within the legislative framework.

## OVERVIEW OF PARENTAL LEAVES

The transition to motherhood is experienced differently by different women,<sup>27</sup> on account of having social and historical characters. This is why each mother has a unique and personal experience of motherhood.<sup>28</sup> Maternity leave is an organisation-provided protected leave of absence from work, starting a few weeks before childbirth and continuing a few weeks after delivery. Maternity protection policies, particularly leave entitlements, place the mother and child at the centre to lower morbidity rates and preserve health. It allows the mother to heal, rest, and recover physically from labour and related complications. The mother also has more time to form a stronger bond with her child and learn how to meet their needs best to ensure the baby's healthy growth. The goal is to shield the woman from pressure to go back to work that could harm her health and her child's health – pressure that comes from both the family and the workplace.

Paid maternity leaves gives space to a new-mother to foster a strong relationship with her child by being available when she is needed the most. By including maternity leaves within the ambit of a cash-benefit program, the State reflects the view that childcare activities contribute to society and to family.<sup>29</sup> It is viewed as a “*form of employment equity*”<sup>30</sup> instead of penalising women for becoming pregnant. The early months of

<sup>21</sup> JEAN BETHKE ELSHTAIN, PUBLIC MAN, PRIVATE WOMAN: WOMEN IN SOCIAL AND POLITICAL THOUGHT (2nd ed. 1993); SARA RUDDICK, MATERNAL THINKING: TOWARD A POLITICS OF PEACE (1989); CAROL GILLIGAN, IN A DIFFERENT VOICE.

<sup>22</sup> Erin M. Rehel, *When Dad Stays Home Too: Paternity Leave, Gender, and Parenting*, 28 GEND. SOC. 110 (2014).

<sup>23</sup> Armstrong and Squires, *supra* note 6.

<sup>24</sup> SUSAN MOLLER OKIN, JUSTICE, GENDER, AND THE FAMILY (1989); Susan Okin, *Gender Inequality and Cultural Differences*, 22 POLIT. THEORY 5 (2017).

<sup>25</sup> Armstrong and Squires, *supra* note 6.

<sup>26</sup> Maureen Baker, *Parental Benefit Policies and the Gendered Division of Labor*, 71 SOC. SERV. REV. 51 (1997).

<sup>27</sup> Ananya Chatterjee, *Travails with Motherhood: An Auto-ethnographic Exploration of Being a Mother*, 7 INDIAN J. LAW JUSTICE 181 (2020).

<sup>28</sup> Sachdeva, *supra* note 19.

<sup>29</sup> Baker, *supra* note 26.

<sup>30</sup> *Id.*



a child's life are perhaps the most crucial, and paid leaves allow the parents to foster emotional connections. Maternity leave should not be equated as a "sick leave", which means that the mother should be entitled to the organisation-granted sick leaves (if any), apart from the period of maternity leave.

The International Labour Organization has stipulated fourteen weeks for maternity leave – of which six weeks must be reserved for after delivery of the child.<sup>31</sup> The World Health Organization holds a similar thought<sup>32</sup>. The medical community collectively believes that a to-be mother requires two to six weeks of leave before the estimated date of birth of the child.<sup>33</sup> This time period however is subject to every individual's body requirements, and is dependent on variety of factors including childbirth, depressive symptoms, fatigue, infections, or psychological distress. In India, the Maternity Benefit Act, 1961 read with the Amendment of 2017 lays down the statutory requirement of twenty-six weeks of leave.

Unfortunately, fatherhood does not receive the same level of attention in a workplace, as motherhood receives. Policies that allow women employees to focus on their family, but deny men to avail such benefits, perpetuate gender-based discrimination and stereotypes. This impedes men's ability to share household responsibilities, or provide the emotional connect with the family.<sup>34</sup> Over the last few decades, with the attempt of fostering gender equality and equal treatment, countries have introduced within their labour legislation a new set of leave provisions. These provisions – parental leave in some countries, paternity leave in others, and a few countries offering both – facilitate fathers to take up child care responsibilities. The leave entitlements differentiate "recovering from childbirth" from "caring for the child"<sup>35</sup>.

Paternity leave is exclusively available only to fathers, and are non-transferable provisions. Non-transferable paternity leaves encourage men to participate in the domestic sphere while children are very young.<sup>36</sup> If the father does not avail the leave, it collapses and cannot be availed later. Specific leaves available only to fathers aim for participation and presence of fathers during the early years of a child's growth. Currently, there is no uniform international convention that provides paternity leaves. Despite the absence of a uniform set of guidelines, States view paternity leaves as a way to encourage fathers to be involved in raising their child, and as a tool for workplace equality and breaking gender roles.

Paternity leave is an opportunity for fathers to experience the transition of parenthood free from work constraints. It provides them a space to develop a sense of responsibility, otherwise core to "mothering".<sup>37</sup> Mothering refers to the practice involved in taking care of children.<sup>38</sup> Paternity leave is also seen as an opportunity for fathers to define their role in their family. This can involve combining traditional and modern aspects of fatherhood, creating a personalised approach to nurturing and caregiving. In the contemporary socio-cultural landscape, paternity leave emerges as a critical nexus for interrogating and reconstructing traditional masculinity paradigms, offering fathers a distinctive institutional mechanism through which to recalibrate and redefine familial engagement and paternal identity constructions.

The institutional framework of paternity leave functions as a complex sociological intervention that enables fathers to negotiate and synthesize historically divergent conceptualizations of masculine caregiving strategically. This nuanced process involves a sophisticated dialectical integration of traditionally

<sup>31</sup> Maternity Protection Convention, 2000 (No. 183)

<sup>32</sup> WHO, *Postpartum care of the mother and newborn: a practical guide*, (1998).

<sup>33</sup> International Labour Organization (ILO), *Module 6: Maternity leave and related types of leave*, in MATERNITY PROTECTION RESOURCE PACKAGE: FROM ASPIRATION TO REALITY FOR ALL (2012).

<sup>34</sup> Jennifer Karr, *Where's My Dad? A Feminist Approach to Incentivized Paternity Leave*, 28 HASTINGS WOMENS. LAW J. 225 (2017).

<sup>35</sup> International Labour Organization (ILO), *supra* note 33.

<sup>36</sup> Diane Gabrielle Tremblay & Émilie Genin, *Parental Leave: An Important Employee Right, But an Organizational Challenge*, 23 EMPL. RESPONSIB. RIGHTS J. 249 (2011).

<sup>37</sup> Rehel, *supra* note 22.

<sup>38</sup> Sachdeva, *supra* note 19.

circumscribed patriarchal masculinity models and emergent, more fluid configurations of emotional and instrumental parental involvement. The personalisation of paternal caregiving facilitated through such leave policies represents a multilayered hermeneutic process. Fathers can dynamically synthesize inherited cultural scripts of masculinity with contemporary egalitarian sensibilities, thereby generating a more complex, nuanced approach to familial participation that transcends monolithic, essentialist constructions of gender roles.

On the other hand, parental leave is a provision available to both parents. Parental leave allows one or both parents to take time off from work to care for their newborn. It is a noteworthy illustration of the initiatives taken by States to incorporate into their internal framework policy measures that assist workers in balancing their job and family duties. Parents should not have to choose between work or family. Parental leaves are usually supplementary and complimentary to existing maternity or paternity leave provisions. The International Labour Organization does not expressly mention a uniform standard of parental leaves that countries within their domestic framework should include. However, countries – keeping in mind the child's welfare requirement – have introduced parental care provisions to prevent long absences from the workplace and to support the child.<sup>39</sup>

Parental leaves contribute to the well-being of working parents, and encourage them to return to the organisation that granted them the leave benefits. This motivates them to work with more passion and dedication. The goal is to improve efficiency, profit personal reputation and community goods.<sup>40</sup> Research shows that when companies prioritise employee well-being through paid parental leave policies, they foster a more engaged and loyal workforce. Paid parental leave can “*deliver significant rewards that outweigh costs*”<sup>41</sup>: improved employee retention; better talent attraction; reinforced values; improved engagement, morale & productivity; and enhanced brand equity.<sup>42</sup> Working mothers especially share their positive experiences with potential colleagues, which can indirectly enhance a company's brand image and attract top talent.<sup>43</sup> Positive brand advocacy is a mere add-on of which companies get the advantage by offering paid leaves. The real value addition is directly to children and parents.

## PARENTAL LEAVES AS A TOOL FOR TRANSCENDING THE DICHOTOMY

*“It is important to challenge social norms in order to offer more choices to both men and women when it comes to work and family life.”*<sup>44</sup>

As established in the previous segment of this paper, states and liberal economies enforce patriarchal power relationships within families while limiting themselves from interfering in familial disputes.<sup>45</sup> The conflict between the public and private highlights a tension, the burden of which is carried by women. Past social policies, shaped by patriarchal norms, failed to account for the diverse realities of families, assuming a rigid model of male breadwinners and female caregivers.<sup>46</sup>

To address the challenges posed by the public-private distinction, States have now introduced parental leaves within the ambit of their labour laws. Such policies that support equal opportunities and contributions from both the mother and the father are ideal for achieving gender equality in public and private spheres.<sup>47</sup> Providing parents with childcare benefits has the potential to reconceptualise the dichotomy in less gendered ways. The

<sup>39</sup> CATHERINE HEIN, RECONCILING WORK AND FAMILY RESPONSIBILITIES: PRACTICAL IDEAS FROM GLOBAL EXPERIENCES (2005).

<sup>40</sup> Tanja H. Nordberg, *Managers' views on employees' parental leave: Problems and solutions within different institutional logics*, 62 ACTA SOCIOL. (UNITED KINGDOM) 81 (2019).

<sup>41</sup> Elizabeth Kagan Arleo, *Paid Parental Leave in Radiology: The Time Is Now—Challenges, Strategies, and the Business Case for Implementation*, 16 J. AM. COLL. RADIOL. 389 (2019), <https://doi.org/10.1016/j.jacr.2018.10.031>.

<sup>42</sup> *Id.*

<sup>43</sup> Ankita Verma & Yashwant Singh Negi, *Working women and motherhood – a review*, 25 ANN. AGRI BIO RES. 170 (2020).

<sup>44</sup> Karr, *supra* note 34.

<sup>45</sup> Armstrong and Squires, *supra* note 6.

<sup>46</sup> Baker, *supra* note 26.

<sup>47</sup> Nordberg, *supra* note 40.

reconceived model of labour law in the public sphere is built on the foundation of equality. Paternal leaves enable inclusivity of the public sphere, *“promoting positive recognition of differences of perspective, experience and affiliation”*<sup>48</sup>.

Parental leaves, unlike maternity and paternity leave, are gender-neutral. Though the Constitution of India does not expressly mention parental leaves, it does lay down provisions of gender-neutrality.<sup>49</sup> Parental leaves do not see child-birth as an activity restricted only to women. They may be offered to both parents and the gender-specific leaves. The types of roles that parents play are developed together inside a socially created and moralised setting that shapes perceptions of 'mother' and 'father'. Leave benefits restricted to women only may discourage employers from hiring women of childbearing age.<sup>50</sup> Parental leaves address this concern, for they are founded on the philosophy that fathers should be encouraged to participate during the early years of a child's growth and development.

Parental leaves carry with it the potential to *“engage in a process of deconstruction and reconstruction”*<sup>51</sup> of the meanings of parenting. Paid parental leave policies – available to both the father and the mother – can promote gender equality at the workplace. They prevent discrimination against men who wish to be involved with their families. The policy can potentially promote equitable roles of men and women in the social, economic, and family life, thereby assisting to break the restrictions imposed by the public-private dichotomy. By providing structured temporal and institutional space for paternal caregiving, these leave policies facilitate a profound epistemic shift in understanding masculinity. Fathers are afforded an unprecedented opportunity to deconstruct rigidly normative masculine archetypes that have historically marginalized emotional labor and nurturing capacities from hegemonic conceptualizations of paternal responsibility.

Research indicates the preference by fathers to take extended paternity leaves at the same time as mothers, so that they can contribute to “ethics of care” by taking up household responsibilities while the mother looks after the child.<sup>52</sup> This preference highlights the step towards fostering more equitable family dynamics. Shared parenting – couples sharing tasks and responsibility – can help shift the gender dynamics towards equality.<sup>53</sup>

Despite the changing notion of family over the years, raising children continues to be perceived as the sole responsibility of mothers.<sup>54</sup> Discussions about men's involvement in fatherhood and the potential of parental leave to promote gender equality reveal entrenched assumptions about traditional gender roles, with participants primarily associating women with mothering and men with breadwinning.<sup>55</sup> Fathers are expected to adjust their leaves to meet the requirements within the workplace, whereas a similar expectation is not imposed on women.<sup>56</sup> Parental leaves break these stereotypes, as they empower women to increasingly participate in the public domain, by reducing the burden of household work on their shoulders. Simultaneously, men are given more significant incentives to take charge of childcare responsibilities within the private realm.

Rather than questioning the value of men's active fatherhood and leave's potential for gender equality, we should examine how existing gender norms limit these possibilities and advocate for policies and cultural shifts that encourage balanced family roles and shared responsibilities. The introduction of parental leave

<sup>48</sup> YOUNG, *supra* note 7.

<sup>49</sup> Tarun Arora, *Judicial Approach towards Socio-Cultural Paradox on Entry of Women at Sabarimala*, 13 INDIAN J. LAW JUSTICE 29 (2022).

<sup>50</sup> Hadas Mandel & Moshe Semyonov, *Family Policies, Wage Structures and Gender Gaps: Sources of Earnings Inequality in 20 countries*, 70 AM. SOCIOL. REV. 949 (2005), <https://journals.sagepub.com/doi/10.1177/000312240507000604>.

<sup>51</sup> Sachdeva, *supra* note 19.

<sup>52</sup> Katherine Twamley, *‘Cold intimacies’ in parents’ negotiations of work – family practices and parental leave ?*, 67 SOCIOL. REV. (2018).

<sup>53</sup> Rehel, *supra* note 22.

<sup>54</sup> Chatterjee, *supra* note 27.

<sup>55</sup> Twamley, *supra* note 52.

<sup>56</sup> Nordberg, *supra* note 40.

policies reiterates that parenthood is a joint responsibility for the nurture and care of the child. It contributes towards social, emotional, and intellectual growth.

Parental leaves can therefore help achieve the following goals – firstly, breaking patriarchal norms; secondly, ensure women utilise their capabilities to the maximum free from gender bias; and thirdly, relieving women from the stress of the “*double burden phenomenon*.”<sup>57</sup>

## CHALLENGES AND CONSIDERATIONS IN IMPLEMENTING PARENTAL LEAVE POLICIES

In the intricate landscape of contemporary labor policy and organizational dynamics, the implementation of parental leave policies presents a paradoxical jurisprudential phenomenon wherein ostensibly progressive legislative interventions systematically diverge from their foundational normative objectives. Empirical investigations, as substantiated by scholarly research such as Verniers and Vala's critical examination of workplace gender discrimination mechanisms<sup>58</sup>, reveal a profound disjuncture between the theoretical conceptualization of these institutional frameworks and their pragmatic manifestations within professional environments. Despite being conceptualized as fundamental employee entitlements designed to ameliorate systemic gender inequities and facilitate equitable familial caregiving strategies, these policy instruments encounter significant epistemological and structural impediments that fundamentally compromise their transformative potential. Parental leaves are undoubtedly considered important rights for employees, but application in the work environment is not without its own challenges. The nuanced scholarship of Tremblay and Genin<sup>59</sup> illuminates the multifaceted challenges inherent in translating legislative intentionality into substantive organizational practice, thereby exposing the complex interplay between normative policy design and the deeply entrenched socio-cultural architectures governing workplace interactions and familial role constructions.

The lack of support from the employer or organisation, or attitude of colleagues and behaviour of the supervisor/ boss can directly impact the effective implementation of the policies. If management is not supportive towards employees, or creates a hostile work environment when leaves are requested, this could translate to non-availing parental leave provisions. Several cultural and social factors are directly at play when deciding whether a father should ask his manager for time off to take care of the newly born child in his family. Employer's support, therefore, is an essential ingredient in successful implementation of parental leave schemes within the labour legislation of a country. They have the impact of encouraging, discouraging, or even deterring employees from taking benefit of policies.<sup>60</sup>

In patriarchal societies, the efforts of working fathers are not appreciated at par with those of their female counterparts. While family policies and paid parental leave aim to empower women in the workplace, their unequal utilisation by fathers can inadvertently exacerbate gender gaps.<sup>61</sup> With most fathers taking minimal or no leave, childcare burdens often remain disproportionately on mothers, undermining the goal of economic independence. The social construct reinforces the gender stereotype that mothers are the primary caregivers, and that there is no consensus between child's health and paternity leave.

Research also indicates that while there may be an initial enthusiasm to take time off for the family, those who took it perceived more negative career impacts than those who did not.<sup>62</sup> This may be due to the requested leave's timing or the duration. There exist gendered expectations about both.<sup>63</sup> This raises eyebrows about deviation from the original purpose for which leaves were offered – i.e. care of the mother and newborn, when

<sup>57</sup> Rehel, *supra* note 22.

<sup>58</sup> Catherine Verniers & Jorge Vala, *Justifying gender discrimination in the workplace: The mediating role of motherhood myths*, 13 PLOS ONE 1 (2018).

<sup>59</sup> Tremblay and Genin, *supra* note 36.

<sup>60</sup> *Id.*

<sup>61</sup> Mandel and Semyonov, *supra* note 50.

<sup>62</sup> Tremblay and Genin, *supra* note 36.

<sup>63</sup> Nordberg, *supra* note 40.



their physical and emotional well-being are most sensitive. Fathers unintentionally hinder women's economic advancement by limiting their leave entitlements, leaving childcare responsibilities primarily on mothers.<sup>64</sup> Women, through surveys and studies, have indicated their apprehension of men taking paternity or parental leaves, as they felt that *"fathers taking leave was likely to result in more housework for women and less caring between themselves and their children."*<sup>65</sup>

The sentiment expressed by women reveals a complex and nuanced concern about gender stereotypes and gender roles. Women fear that if fathers avail parental leave benefits, it could exacerbate existing gender inequalities and negate the intended benefits of shared parental leave. The mothers also expressed the perception that to uphold symmetrical work roles, they were left emotionally isolated. Additionally, the father's constant presence may disrupt this crucial bonding period and potentially damage their relationship with their child. *"These accounts demonstrate a lack of trust in men's ability to undertake household work."*<sup>66</sup>

Implementing paid parental leaves can be financially challenging, especially for smaller organisations. Financially, different organisations have different budgets, so "one-size-fits-all" plans are not enforceable or practical.<sup>67</sup> The concern is two-fold – firstly, to make the payments to employees who are availing the leave, and secondly, to arrange the resources to train potential substitutes during the leave of absence. It may take several months to find replacements for the employees proceeding on leaves, so organisations have indicated that the costs of interviews and recruitments heavily outweigh the costs of providing the benefits.<sup>68</sup> Non-replacement of staff and personnel may impact the colleagues' and supervisors' attitudes of allowing more employees to avail the provisions when their time comes.<sup>69</sup> This may further impact productivity and efficiency of the organisation in general. Productivity may rise in terms of employee-morale, but there may be a dip in collective productivity due to reallocation of resources.<sup>70</sup> Parental leave can therefore be seen to increase pressure on remaining employees.

## CONCLUSION

There has been a progressive transformation within the leave management provisions forming part of labour legislation, especially in India. With the 2017 Amendment of the Maternity Benefit Act, and the inclusion of paternity leave in the Central Civil Servants Rules, the State has shown that it recognises the importance of ethics of care for the benefit of both mother and child. However, as shown above, studies indicate that despite an open and supportive attitude of organisations, the actual implementation of the policies is a bed of roses full of thorns. There exist organisational challenges in complete utilisation of the provisions.

Though maternity leaves are recognised as a legal right, parental leaves lack the enforceability of law. Parental leaves are not necessarily a problem; the institutional and logistical limitations may have a detrimental effect, opposite to the intended purpose of the policy. Lack of parental leave utilisation, despite legal guarantees, fuels gender inequality. Without the organisation's support, availing parental leave policies can be both difficult and unfulfilling, negatively impacting an individual's career growth. This could impact not just new mothers, but fathers as well, as parents may fear that the leave would hinder their professional growth. The lack of support from management can result in a lack of awareness and understanding about the importance of parental leave, further perpetuating gender inequality in the workplace. The societal expectations that women must focus on caregiving, while men prioritise their careers may then reinforce traditional gender roles and hinders progress towards gender equality in the workplace.

<sup>64</sup> Verniers and Vala, *supra* note 58.

<sup>65</sup> Twamley, *supra* note 52.

<sup>66</sup> *Id.*

<sup>67</sup> Arleo, *supra* note 41.

<sup>68</sup> *Id.*

<sup>69</sup> Tremblay and Genin, *supra* note 36.

<sup>70</sup> Rehel, *supra* note 22.

Parental leave policies can potentially reduce work-family conflict, and break the gender stereotypes established in society, by transcending the public-private dichotomy and redefining the ethics of care jurisprudence. Flexible, non-transferable paid leave policies can alleviate parental anxieties about job security and finances, encouraging equitable utilisation by both genders and nurturing strong family bonds.<sup>71</sup> Only when leave benefits are available to both parents and utilised effectively, would there be a progress towards the ideals of equality.

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<sup>71</sup> INTERNATIONAL LABOUR ORGANIZATION (ILO), *Protect the future: Maternity, paternity and work*, (2008), [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_106262.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_106262.pdf).  
Acta Sci., 25(5), 2024