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# Misdirected by the ‘daddy quota’: A comparative study of paid parental leave across twenty-one Asian nations

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## Abstract

Countries across Asia have attempted to expand the involvement of fathers in childcare, motivated by declining birth rates, growing elderly populations, notable gender inequality gaps, and the demand of fathers for paid leave. This article assesses the efforts of twenty-one Asian nations to achieve a more equal distribution of the responsibility for child-rearing by comparing legal entitlements to paid maternity leave, paternity leave, and parental leave. Twenty-one jurisdictions are classified according to three models. Model A is a ‘gender equality’ model where non-transferable paid leave is provided in more equal share to parents, with an additional post-birth period exclusively for birth mothers. Model B is a ‘quota for fathers’ approach where a number of days or weeks are provided in amounts that fall far short of the amount of paid leave exclusively offered to mothers. Model C captures countries that offer no legal entitlements for paid leave for fathers. The data reveals the extent to which Asia lags behind global good practice in the provision of leave to different-sex and same-sex parents, with regional laws reflecting the view that caregiving primarily or exclusively falls upon women. Generous, paid and non-transferable leave for fathers is needed to increase leave-taking.

## Introduction

In 1967, Japanese paediatrician Michio Matsuda published *Ikuji no Hyakka*, an encyclopaedia on child-rearing. In the book’s second edition, released in the 1980s, Matsuda offered advice to expectant fathers in the period before birth: ‘... even a man should be ready to do simple household chores. A man would feel embarrassed to wash and hang the clothes at first, but every man in a nuclear family household does it, and your neighbours will not care about it at all’.<sup>1</sup> While we may expect that the social context has changed in leaps and bounds in Japan since that time, the longevity of Matsuda’s manual – which saw five different editions before being released as a paperback in 2007 – suggests otherwise.

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<sup>1</sup>Hideki Nakazato, ‘Chapter 9: Culture, Policies and Practices on Fathers’ Work and Childcare in Japan: A New Departure from Old Persistence?’, in Rosy Musumeci & Arianna Santero (eds), *Fathers Childcare and Work: Cultures, Practices and Policies (Contemporary Perspectives in Family Research, 12)* (Emerald Publishing Limited 2018) 240.

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Today, Japanese women are entitled in law to 14 weeks of paid maternity leave<sup>2</sup> and men to four weeks of paid paternity leave<sup>3</sup> at 67 per cent of base pay. In addition to these (distinct) provisions for paid maternity and paid paternity leave, Japan offers a transferable period of leave – that is, a period of leave that can be divided between eligible parents at their discretion – of up to one year under its *Child Care Leave Act* introduced in 1992 in language considered ‘gender-neutral’. This transferable parental leave, paid at 67 per cent of base pay for the first six months and then 50 per cent of base pay for the following six months, has been adopted by nearly 100 per cent of large firms across Japan. Yet nearly 60 per cent of Japanese women do not utilise paid leave, instead exiting the labour force after having their first child,<sup>4</sup> hinting that, in practice, workplaces are unfriendly to leave-taking. Such a context suggests that encouraging Japanese *men* to take leave is a somewhat insurmountable challenge.<sup>5</sup>

Indeed, Japan’s Ministry of Health and Welfare continues to face an uphill battle in its attempts to promote an increase in the take-up rates of parental leave by fathers.<sup>6</sup> A controversial campaign was even attempted, adopting a slogan that Japan would not call a man who fails to care for his children a ‘father’.<sup>7</sup> In early 2023, in a last chance to reverse Japan’s birth rate – one of the lowest in the world – Prime Minister Fumio Kishida declared a national goal of raising the number of male workers taking paternity leave from the then rate of 14 per cent to 50 per cent by 2024 and 85 per cent by 2030.<sup>8</sup>

While Japan, with its *relatively* advanced policy initiatives,<sup>9</sup> sits at one end of the spectrum in Asia, Singapore sits at the other. Singapore introduced just one week of government-paid paternity leave in 2013,<sup>10</sup> alongside 112 days of paid maternity leave.<sup>11</sup> Like Japan, Singapore grapples with the challenge of trying to encourage a bigger role for fathers in childcare and child-rearing, while also facing the persistent fear that, given women’s unequal responsibilities for care, they will soon go on a ‘baby strike’.<sup>12</sup> When Prime Minister Lee Hsien Loong announced an additional week of paid leave for fathers during a 2015 National Day Rally speech, he jested, ‘Do not go and play golf, please use it to take care of your kid’.<sup>13</sup> Public policy discourses have failed to challenge traditional constructions of fatherhood and masculinity,<sup>14</sup> begging us to ask if Singapore represents a cultural norm across Asia or an exception?

Japan and Singapore illustrate the breadth of policy approaches to paternity leave in the region, and these nations set the stage for a comprehensive comparison of legislative efforts to involve fathers in caregiving across Asia. This article focuses on the Asian attempts to move towards more equal sharing of the responsibilities for care by examining the paid entitlements available for men to care for newborns in the period after birth. This discussion is set in a context where all nations in the region, with

<sup>2</sup>Labor Standards Act 1947 (No 49), art 65.

<sup>3</sup>Childcare and Family Care Leave Act 1991 (No 76), art 9(2).

<sup>4</sup>Eunmi Mun & Mary C Brinton, ‘Workplace Matters: The Use of Parental Leave Policy in Japan’ (2015) 42 *Work and Occupations* 335, 337.

<sup>5</sup>*ibid* 337.

<sup>6</sup>Ofra Goldstein-Gidoni, ‘“Working Fathers” in Japan: Leading a Change in Gender Relations?’ (2020) 27 *Gender, Work & Organization* 362, 366.

<sup>7</sup>Nakazato (n 1) 244.

<sup>8</sup>Chris Lau, ‘Japan Wants 85% of Male Workers to Take Paternity Leave. But Fathers Are Too Afraid to Take It’ (CNN, 26 Mar 2023) <<https://www.cnn.com/2023/03/26/asia/japan-paternity-leave-policy-challenges-intl-hnk-dst/index.html>> accessed 7 Feb 2025.

<sup>9</sup>Gillian Whitehouse & Hideki Nakazato, ‘Dimensions of Social Equality in Paid Parental Leave Policy Design: Comparing Australia and Japan’ (2021) 9 *Social Inclusion* 288, 295; Michelle Henault Morrone & Yurmi Matsuyama, ‘Japan’s Parental Leave Policy: Has It Affected Gender Ideology and Child Care Norms in Japan?’ (2010) 86 *Childhood Education* 371, 372.

<sup>10</sup>Child Development Co-Savings Act 2001, s 12H <<https://sso.agc.gov.sg/Act/CDCSA2001>> accessed 7 February 2025.

<sup>11</sup>*ibid* s 9.

<sup>12</sup>Adelyn Lim, ‘Confucian Masculinity: State Advocacy of Active Fatherhood in Singapore’ (2021) 24 *Men and Masculinities* 46, 58.

<sup>13</sup>*ibid* 47.

<sup>14</sup>*ibid*.

the exception of Iran, are parties to the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), a treaty that established in 1981 that ‘the upbringing of children requires a sharing of responsibility between men and women and society as a whole’.<sup>15</sup> The Convention calls upon states parties to ‘take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations’, including establishing the ‘same rights and responsibilities’ for men and women as parents.<sup>16</sup> Here we need to acknowledge, however, that a significant number of states parties in the region have lodged reservations to CEDAW’s Article 16 on marriage and family relations.<sup>17</sup> Reservations of this kind risk nullifying the very meaning of the Convention with respect to the equal duties of men and women in the family.<sup>18</sup>

Compared to the weight of scholarly attention given to maternity leave, the issue of paternity and parental leave for men has received far less attention. Yet the scholarship is growing. O’Brien et al’s 2013 study demonstrated that while paid care was emerging in Global South and middle-income countries, none offered the range or level of father-targeted parental leave observed in the Global North.<sup>19</sup> A more recent comparison of differences in access to leave between same-sex and different-sex couples among OECD countries<sup>20</sup> also offers a solid basis from which to start this interrogation. Yet no studies exist that provide a deep and comprehensive coverage of the Asia region. In turn, the basic premise of this article is that if we are to make headway in moving towards shared care between parents, far greater attention needs to be paid to the quantity of non-transferable paid leave allocated to fathers in heterosexual relationships. Furthermore, this analysis extends to a consideration of how we can ensure a more equitable distribution of care across a diversity of family forms. This article therefore contributes to a gap in current knowledge: how much non-transferable paid leave is available to men in the region in different-sex and same-sex relationships, and how does the region compare with global trends?

It is well-established that legal discrimination is only one of many sources of gender inequality, and that the passing of better laws does not guarantee enforcement. Yet having a model to work towards creates an actionable plan in the near future.<sup>21</sup> This article contributes by providing an Asia-specific sample to facilitate an understanding of regional trends. A comparative approach has been chosen over individual country analysis. This is not to ignore the important nuances across the diverse socio-political and economic environments that exist in the region. Indeed, the studies that focus on patterns of paternity leave and the drivers that shape leave-taking in Asia hint at a multitude of reasons that explain why fathers in Asia choose whether or not to utilise paid leave schemes, and variances in the interest which fathers show in being involved in care.<sup>22</sup>

<sup>15</sup>Convention on the Elimination of All Forms of Discrimination against Women 1979 (adopted 18 Dec 1979, entered into force 3 Sep 1981) 1249 UNTS 13, Preamble.

<sup>16</sup>ibid art 16(1); 16(1)(d).

<sup>17</sup>Of the twenty-one countries studied, Bangladesh, India, Malaysia, South Korea, and Singapore have reservations to Article 16. See United Nations Treaty Collection, ‘Chapter IV, Convention on the Elimination of All Forms of Discrimination against Women’ (17 Mar 2024) <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en)> accessed 18 Mar 2024.

<sup>18</sup>Susanne Zwingel, ‘From Intergovernmental Negotiations to (Sub)National Change’ (2005) 7 International Feminist Journal of Politics 400, 407; Nicholas Doyle, ‘The ASEAN Human Rights Declaration and the Implications of Recent Southeast Asian Initiatives in Human Rights Institution-Building and Standard-Setting’ (2014) 63 International & Comparative Law Quarterly 67, 77.

<sup>19</sup>Margaret O’Brien, ‘Fitting Fathers into Work-family Policies: International Challenges in Turbulent Times’ (2013) 33 International Journal of Sociology and Social Policy 542, 542.

<sup>20</sup>Elizabeth Wong et al, ‘Comparing the Availability of Paid Parental Leave for Same-Sex and Different-Sex Couples in 34 OECD Countries’ (2020) 49 Journal of Social Policy 525, 541–542.

<sup>21</sup>Marie Hyland, Simeon Djankov & Pinelopi Koujianou Goldberg, ‘Gendered Laws and Women in the Workforce’ (2020) 2 American Economic Review: Insights 475, 476.

<sup>22</sup>Syeda S Jesmin & Rudy Ray Seward, ‘Parental Leave and Fathers’ Involvement with Children in Bangladesh: A Comparison with United States’ (2011) 42 Journal of Comparative Family Studies 95, 108.

The first part of this article sets out the research parameters, including key concepts, country selection, and the scope of the laws selected for this study. Part two sets out the picture of parental leave globally, beginning with the role of international law in founding women's entitlement to maternity leave. It then traces the evolution of paternity leave across the world in recent decades and demonstrates the differing degrees to which it has emerged. Here I discuss the three main types of leave that exist in various jurisdictions – paid maternity leave, paid paternity leave, and paid parental leave – and explain why non-transferable leave for fathers is the gold standard.

In the third part, I turn to categorisation and introduce the three different models that explain patterns of leave-taking by fathers globally: first, a 'gender equality' model where non-transferable leave is provided, in equal share, to both parents, with an additional period exclusively for birth mothers for post-birth recovery; second, the quota model, where a number of days or weeks are provided to 'fathers', yet often only to those fathers who are legally married to birth mothers, and in amounts that fall far short of the leave offered to mothers; and third, a problematic maintenance of the status quo, where no paid leave is allocated to fathers, creating circumstances in which the responsibility for care exclusively falls on mothers.

In the fourth part, I offer the most substantive mapping of paternity leave in the Asia region to date. I first set out levels of paid non-transferable paternity leave and compare this to the amount of maternity leave available, in days, across the region. Second, I provide a mapping of the number of days of transferable parental leave that men can access, if they choose to, and that would otherwise be primarily taken by mothers. I interrogate too the inequitable experiences of adopting parents and parents in same-sex couples. In setting out this data, I identify where each of the different countries in the region sits vis-à-vis the three models. I follow this presentation of data with a discussion of emerging trends in the region.

Women's rights scholar Sandra Fredman argues that '[w]hereas pregnancy is unique and should be treated as such, a true application of substantive equality requires a "levelling up" option, extending women's parenting rights to fathers'.<sup>23</sup> That is, we need to move beyond a continuum of approaches to care after birth that have placed the responsibility for care solely or primarily on women. We will see the extent to which Asia lags behind in challenging that norm. In short, this article demonstrates how the existing models for care in Southeast and South Asia fail to detangle pregnancy and parenting.

## Methodology

This article attempts a comprehensive mapping of all laws related to paid parental leave – maternity, paternity, and non-transferable paid parental leave – available in Asia as of 1 January 2023.<sup>24</sup> Twenty-one countries are represented in the discussion that follows, making this the largest known mapping of non-transferable and transferable leave for fathers in Asia. However, there was a limit to what could be covered. The absence of the People's Republic of China (PRC), Taiwan, and the Macau and Hong Kong Special Administrative Regions must be acknowledged in this otherwise broad and comprehensive sample of countries. The primary reason for China's exclusion from the dataset is the wide divergence in the number of days of paid leave available to mothers and fathers; there is no definitive national standard. A multitude of factors determine the level of leave entitlements for Chinese women and men, ranging from questions of geography through to age. For instance, while China extended the previous 90 days of maternity leave up to 14 weeks, or 98 days, nationally in 2012, the number of paid days of leave to which individuals are entitled will differ depending on the province in which the woman lives and her age. Cases of

<sup>23</sup>Sandra Fredman, 'Reversing Roles: Bringing Men into the Frame' (2014) 10 *International Journal of Law in Context* 442, 442.

<sup>24</sup>All parental leave entitlements discussed in this paper, inside and outside of the Asia region, are accurate as of 1 January 2023.

'late childbirth' (generally considered in China from age 24 years and older) attract between 30 and 45 additional days of paid leave, with the exact number again differing by province. While China's statutory paternity leave generally does not exceed 14 days, a male employee in Shanghai might be entitled to a ten-day paternity leave in cases of late childbirth, while a male employee in Shenzhen may be entitled to 15 days of paid paternity leave if his wife is 23 or older.<sup>25</sup> These nuances are further complicated by the fact that maternity benefits tend to be less robustly enforced in rural communities than in urban ones.<sup>26</sup> Hence single figures, in days, could not be accurately provided to include China in the comparative dataset.

In seeking to provide a comprehensive picture of the region, it is important to emphasise that country-based and sub-regional nuances have not been overlooked. Rather, these national experiences are particularly illustrative of the reality that gendered norms exist throughout the Asian region and continue to define roles and responsibilities in families. In East Asia, scholars of China, Taiwan, Singapore, Japan, and Korea<sup>27</sup> describe the continuing – albeit slowly shifting – notion that 'fatherhood' is about 'being an effective provider', with employment being an 'integral part of what fathers do, *as fathers*'.<sup>28</sup> Across South Asian nations, legislation falls short, such as the legal exception in Bangladesh that denies women managers access to paid maternity leave.<sup>29</sup> In Southeast Asian countries such as Vietnam, internal migration adds further layers of complexity in circumstances where 'breadwinning wives' leave husbands behind to take on caregiving roles.<sup>30</sup> Moreover, in all of these cultural settings, women already dominate care work even before they have children,<sup>31</sup> creating an uneven playing field before the question of parental leave arises.

This study focuses on paid leave only. Paid entitlements are the focus for the economic security they offer and the normative message that paid provisions send to shift societal expectations towards more equal roles of parents in childcare and child-rearing. Paid leave can take many forms – from a relatively low flat rate, similar to social assistance, to actual wage recovery. The scholarship contains different approaches to how we understand being 'well-paid' in parental leave contexts. In some cases, for example, it is described as reaching at least 66 per cent of the base wage.<sup>32</sup> In the discussion that follows, country-specific examples include the legally mandated rate of pay in cases where paid leave falls below 100 per cent of wage recovery. This is particularly necessary given the influence of income replacement rates on leave-taking decisions, although it is certainly not the sole or even the primary factor driving decision-making.<sup>33</sup>

The approach taken in this article also seeks to broaden the scope and include the largely under-explored question of whether adopting parents and same-sex couples have access to paid leave. Elizabeth Wong and colleague's comparison of the paid leave experiences of same-sex and different-sex couples across OECD countries is a rare exception.<sup>34</sup> Significant gaps remain in our knowledge

<sup>25</sup>Dezan Shira, 'Expecting in China: Employee Maternity Leave and Allowances' (China Briefing News, 6 Apr 2017) <<https://www.china-briefing.com/news/maternity-leave-allowance-china/>> accessed 12 Mar 2024.

<sup>26</sup>Lingsheng Meng, Yunbin Zhang & Ben Zou, 'The Motherhood Penalty in China: Magnitudes, Trends, and the Role of Grandparenting' (2023) 51 Journal of Comparative Economics 105, 109.

<sup>27</sup>Yingchun Ji, 'Asian Families at the Crossroads: A Meeting of East, West, Tradition, Modernity, and Gender' (2015) 77 Journal of Marriage and Family 1031.

<sup>28</sup>Goldstein-Gidoni (n 6) 363.

<sup>29</sup>Rumana Liza Anam, 'Maternal and Paternal Leave Policies in Bangladesh: Scope for Improvement' (2020) 20 Journal of Bangladesh Studies 82.

<sup>30</sup>Lan Anh Hoang & Brenda SA Yeoh, 'Breadwinning Wives and "Left-Behind" Husbands: Men and Masculinities in the Vietnamese Transnational Family' (2011) 25 Gender & Society 717.

<sup>31</sup>Saumya Tripathi, Sameena Azhar & Fuhua Zhai, 'Unpaid Care Work among Women in South Asia: A Systematic Review' (2022) 16 Asian Social Work and Policy Review 275.

<sup>32</sup>Alison Koslowski, 'Capturing the Gender Gap in the Scope of Parenting Related Leave Policies Across Nations' (2021) 9 Journal of Social Inclusion 250, 253.

<sup>33</sup>Lennart Ziegler & Omar Bamieh, 'What Drives Paternity Leave: Financial Incentives or Flexibility?' (IZA Institute of Labour Economics Discussion Paper No 15890, Jan 2023) <<https://www.ssrn.com/abstract=4338212>> accessed 13 Mar 2024.

<sup>34</sup>Wong et al (n 20).

about same-sex couples' access to leave. Some scholars have suggested that there is 'no regional pattern' when it comes to LGBTIQ+ rights in the region.<sup>35</sup> Broadly speaking, however, this article takes particular issue with the refusal of many Asian nations to acknowledge same-sex marriages or same-sex partnerships within which children are born or adopted. We are therefore presented with an opportunity to interrogate the differences in access to paid parental leave between men in same-sex relationships and men in different-sex relationships. Underpinning this discussion is an acknowledgement that criminalisation of consensual same-sex relations persists in some Asian nations, including but not limited to Afghanistan, Brunei, and Malaysia,<sup>36</sup> reflecting the significant barriers faced by gender diverse individuals, couples, and parents in the region.<sup>37</sup> The region is outdated in its failure to guarantee equal enjoyment of these rights to all individuals.

Of the twenty-one jurisdictions included in this study, each country was studied for the three types of leave reflected in the following section: paid maternity leave, paid paternity leave, and the amount of paid transferable parental leave available. This study focuses solely on statutory entitlements in national legislation, but acknowledges that such entitlements may be supplemented or take the form of other benefits, such as through collective agreements or the entitlements offered by individual employers.<sup>38</sup> While we recognise that reforms may be underway in some of these jurisdictions, this article maintains a consistent point of comparison across all twenty-one jurisdictions, assessing leave entitlements as of 1 January 2023.

## The Existing Landscape: Understanding Terminology and the History of Paid Parental Leave

### *Paid Maternity leave: From a global norm to the entanglement of pregnancy and parenting*

Maternity leave has long been an established right in international law.<sup>39</sup> The International Labour Organisation (ILO) acknowledged the right in its 1919 *Maternity Protection Convention (No 3)*,<sup>40</sup> granting women at least six weeks mandatory leave after confinement. The ILO's *Convention No 156* (1981) set a normative basis for equality among parents in fulfilling 'family responsibilities'.<sup>41</sup> *ILO Convention No 183* (1952) set a maternity floor – or minimum – of fourteen weeks,<sup>42</sup> while the 2000 *ILO Maternity Protection Recommendation No 191* raised this to a recommended eighteen weeks.<sup>43</sup>

Today, paid maternity leave is a part of the vast majority of countries' national family and social security policies. A number of different factors encourage countries to offer paid leave. In many countries of the Global South, the focus remains on the socio-economic benefits of providing maternity leave. This includes the availability of a longer period for mothers to breastfeed newborns; a resulting lower infant mortality and higher vaccination rates; and for birth mothers themselves,

<sup>35</sup>Anthony J Langlois, 'No Regional Pattern: LGBTIQ Rights and Politics in Asia', in Fernande de Varennes & Christie M Gardiner (eds), *Routledge Handbook of Human Rights in Asia* (Routledge 2018) 322.

<sup>36</sup>Ramona Vijeyarasa, 'Flamer-Caldera v Sri Lanka: Asia-Wide Implications of an Essential Evolution in CEDAW's Jurisprudence' (2022) 13 *Asian Journal of International Law* 1, 9.

<sup>37</sup>See a positive attempt in the work of Ramasayi Gummadi, 'Paternity Leave Policy in India: A Critical Analysis' (2021) 4 *International Journal of Law Management and Humanities* 420, 424.

<sup>38</sup>Peter Moss & Fred Deven, 'Leave Policies and Research: A Cross-National Overview' (2006) 39 *Marriage & Family Review* 255, 259.

<sup>39</sup>Viola D Oceanio, 'Maternity Leave and Gender Equality: Comparative Studies of Indonesia, Malaysia, and Thailand' (2022) 30 *Populasi* 15, 15–16.

<sup>40</sup>ILO Convention No 3 concerning the employment of women before and after childbirth (adopted 29 Nov 1919, entered into force 13 Jun 1921) 38 UNTS 53.

<sup>41</sup>ILO Convention No 156 concerning equal opportunities and equal treatment for men and women workers: workers with family responsibilities (adopted 24 Jun 1981, entered into force 11 Aug 1983) 1331 UNTS 295.

<sup>42</sup>ILO Convention No 103 concerning Maternity Protection (Revised 1952) (adopted 28 Jun 1952, 214 UNTS 321, entered into force 7 Sep 1955) art 4(1).

<sup>43</sup>ILO Recommendation R191: Maternity Protection Recommendation, 2000, art 1(1).

better post-partum health.<sup>44</sup> From a gender equality perspective, in the early 2000s, Marian Baird, scholar and expert on paid parental leave in Australia, identified four typologies to explain how and why different governments make paid maternity leave available to women.<sup>45</sup> The model that was emerging at the turn of the century was what Baird called the ‘new equity orientation’. This approach recognised women’s multiple roles as wives, mothers, workers, and citizens, positioning maternity leave as a special form of compensation. By and large, the model drew from the ‘social feminist’ models of Europe.

Indeed, since the turn of the century, there has been a ‘forward march’ for gender equality in the area of paid leave, with Nordic countries leading the way at one end<sup>46</sup> and the United States at the other, remaining one of the last of the ‘wealthy’ (OECD) nations with no federal paid maternity and family leave policy in place.<sup>47</sup> Yet women in many nations continue to bear the primary responsibility for the care of children. While policy decisions to provide and even increase the number of days of paid maternity leave are frequently driven by Baird’s ‘new equity orientation’ and concerns about, for instance, gender pay gaps,<sup>48</sup> the male breadwinner models persist.<sup>49</sup> Generally, these global norms have not succeeded in shifting the unequal distribution of care responsibilities,<sup>50</sup> with women regarded as ‘mothers first and workers second’.<sup>51</sup> Paid maternity leave as a standalone intervention has ‘implicitly reinforce[d] women’s primary responsibility for childcare,’<sup>52</sup> particularly because maternity leave tends to foster little distinction between pregnancy and parenting. The natural question to ask is where paid paternity leave figures in these debates. Moreover, typologies such as those of Baird’s beg the question: What models exist to understand how and why different governments make paid leave available to fathers? Moreover, what values regarding gendered norms, sex, and sexuality are reflected in a jurisdiction’s approach to paid leave?

### *Paid paternity leave: Finding and reinforcing men’s place in paid care*

While mandatory *maternity* leave has been a principle of international law for over one century, paid paternity leave has long held a secondary place in both legal norms and scholarship. While efforts have been made in some regions – such as the European Union<sup>53</sup> – there is no legal entitlement dictating the right to mandatory *paternity* leave.<sup>54</sup>

There are two types of leave for fathers discussed in this paper. First, paternity leave refers to any days or weeks of leave after the birth of a child reserved for the father. In heterosexual couples, this tends to be leave taken concurrently with the mother and, in most families, represents a period

<sup>44</sup>Salma Ahmed & David Fielding, ‘Changes in Maternity Leave Coverage: Implications for Fertility, Labour Force Participation and Child Mortality’ (2019) 241 *Social Science & Medicine* 112573, 1.

<sup>45</sup>*ibid* 266–267.

<sup>46</sup>Guðný Björk Eydal et al, ‘Trends in Parental Leave in the Nordic Countries: Has the Forward March of Gender Equality Halted?’ (2015) 18(2) *Community, Work & Family* 167.

<sup>47</sup>US Department of Labor, ‘Paid Parental Leave’ <<https://www.dol.gov/general/jobs/benefits/paid-parental-leave>> accessed 19 Aug 2022; Ellen Francis, Helier Cheung & Miriam Berger, ‘How Does the U.S. Compare to Other Countries on Paid Parental Leave? Americans Get 0 Weeks. Estonians Get More than 80’ (Washington Post, 11 Nov 2021) <<https://www.washingtonpost.com/world/2021/11/11/global-paid-parental-leave-us/>> accessed 19 Aug 2022.

<sup>48</sup>Fredman (n 23) 442.

<sup>49</sup>Rossella Ciccio & Mieke Verloo, ‘Parental Leave Regulations and the Persistence of the Male Breadwinner Model: Using Fuzzy-Set Ideal Type Analysis to Assess Gender Equality in an Enlarged Europe’ (2012) 22 *Journal of European Social Policy* 507.

<sup>50</sup>Berit Brandth & Elin Kvande, ‘Flexibility: Some Consequences for Fathers’ Caregiving’, in Peter Moss, Ann-Zofie Duvander & Alison Koslowski (eds), *Parental Leave and Beyond* (Policy Press 2019).

<sup>51</sup>Emily V Sanchez-Salcedo, ‘On Paternity Leaves and Parental Leaves – The Dilemma over “Daddy Days”’ (2023) 23 *DLU Business & Economics Review* 84, 84.

<sup>52</sup>Fredman (n 23) 449.

<sup>53</sup>Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L 188/79.

<sup>54</sup>Fredman (n 23) 451.

where the father shares the responsibilities for care with the mother.<sup>55</sup> This leave can be distinguished from parental leave where the father on leave is often the sole carer. Given this important difference, Fredman argues that parental leave, rather than paternity leave, is the more effective means of the two forms of leave, as it allows fathers to establish individual routines of care that can help galvanise the practical change needed to detangle pregnancy and parenting.<sup>56</sup>

Yet while paid leave for fathers has been introduced into legislation in various forms, policy-makers worldwide appear confounded by the challenge of encouraging men to avail of such paid parental leave schemes. Low rates of wage replacement, where the resulting income loss from taking leave is considerable, are a significant factor,<sup>57</sup> to which I return below. Incentives have been needed to encourage men to utilise their rights.<sup>58</sup> Enforcement and monitoring may also be a challenge – ten days of compulsory paternity leave in Portugal still sees take-up rates below 100 per cent.<sup>59</sup> In the Philippines, lack of sanctions for non-compliance has also been flagged as an issue.<sup>60</sup> Research in Nordic countries has suggested that while fathers may use paternity leave available to them, their take-up rates for parental leave – transferable shared leave – remains very low; in most cases they transfer such available leave days to mothers where this is legally possible.<sup>61</sup> This leads to a sense that a generous, individual, *and* non-transferable right to paid leave for fathers is the best approach, what I describe in this article as the ‘gold standard’. Other scholars have also named this the ‘ultimate goal’,<sup>62</sup> where we de-gender leave use, reduce discrimination against women in the labour market, and foster co-responsibility.<sup>63</sup>

### Models of Leave for Fathers

In this section, I turn to the three models of leave for fathers based on a categorisation of the approaches of the twenty-one countries in the region. There have been early attempts to assess parental leave policies in terms of their generosity and likely impact on gender equality.<sup>64</sup> Such studies offer strong foundations for how we understand the ways in which parental leave policies can either reinforce or counteract the factors that work to exclude fathers from childcare. For instance, Ray, Gornick, and Schmitt highlight that if a country were to introduce generous maternity leave but with no paid leave for fathers, this may represent a substantial improvement in policies for women. However, by restricting the support to new mothers, such policies may ‘reduce gender equality in the long-run, relative to doing nothing’.<sup>65</sup> Women would be induced to take longer breaks from work, leading women to fall far behind men in the labour market.<sup>66</sup> For this very reason, while the analysis in this article includes separate considerations of allocations for paid

<sup>55</sup>Guðný Eydal & Tine Rostgaard, ‘Policies Promoting Active Fatherhood in Five Nordic Countries’, in Rosy Musumeci & Arianna Santero (eds), *Fathers Childcare and Work: Cultures, Practices and Policies* (Emerald Publishing Limited 2018) 267.

<sup>56</sup>*ibid.*

<sup>57</sup>Clara Albrecht, Anita Fichtl & Peter Redler, ‘Fathers in Charge? Parental Leave Policies for Fathers in Europe’ (2017) 15 ifo DICE Report 49.

<sup>58</sup>Fredman (n 23) 443.

<sup>59</sup>Albrecht, Fichtl & Redler (n 57) 50.

<sup>60</sup>Victoria Caparas, ‘Work-Family Balance and Family Poverty in Asia: An Overview of Policy Contexts, Consequences and Challenges’ (United Nations Expert Group Meeting on ‘Assessing family policies: Confronting family poverty and social exclusion & ensuring work-family balance’, 1–3 Jun 2011) 8.

<sup>61</sup>Eydal & Rostgaard (n 55) 267.

<sup>62</sup>Gerado Meil et al, ‘Trends towards de-Gendering Leave Use in Spain and Portugal’, in Ivana Dobrotić, Sonja Blum & Alison Koslowski (eds), *Research Handbook on Leave Policy Parenting and Social Inequalities in a Global Perspective* (Edward Elgar Publishing 2022) 225.

<sup>63</sup>*ibid.* 221.

<sup>64</sup>Rebecca Ray, Janet C Gornick & John Schmitt, ‘Parental Leave Policies in 21 Countries: Assessing Generosity and Gender Equality’ (Center for Economic and Policy Research 2008).

<sup>65</sup>*ibid.*

<sup>66</sup>*ibid.* 4.

maternity and paternity leave by country, the purpose of categorising paid leave allowances is to consider both paid maternity and paternity leave entitlements side by side (see Figure 3 below). As such, these three models speak to the interrelationship between paid maternity and paternity leave.

### *Model A: The gender-equal man and father*

This first model of leave is the one underpinned by a goal of gender equality. At the outset, it should be clear that no country in Asia falls within Model A, where a government spends roughly the same amount of its resources for both parents under a parental leave policy designed to promote a more equal distribution of childcare responsibilities. For instance, it may provide ‘mothers six months of fully paid leave and fathers six months of (non-transferable) fully paid leave’ in a different-sex couple.<sup>67</sup> Under Model A, fathers in different-sex couples have entitlements to care in equal portion to mothers, with the exception of the allocated weeks required for ‘post-birth recovery’, biologically necessary weeks that require non-transferable leave for birth mothers. Fathers would have equal access to the opportunity to care for children, bonding with their child as a result of their equal involvement in their child’s well-being and development. At its optimum, such a policy would entitle single mothers to claim the extra six months of fully paid leave.<sup>68</sup>

Now I turn to the entitlements for care for same-sex couples under a gender equality model. Best practice laws in this category would use the more inclusive language of ‘parents’, ensuring that leave is accessible for a diversity of family structures. No reference to ‘mother’, ‘father’, ‘maternity’, or ‘paternity’ would exist in the law. Rather, legislation would refer to leave entitlements for parents in general and recognise in law the same-sex marriages or same-sex partnerships within which children are born or adopted.

Aspects of Model A are in place in a significant number of Nordic countries that were at the forefront of many of these legislative and policy advances.<sup>69</sup> In fact, one scholar goes so far as to ask if the ‘Nordic turn’ has crystallised in Japan,<sup>70</sup> as the latter tries to reverse the exit of women, post birth, from the market. Data from 2007 indicated a stark difference between the percentage of Japanese women and men in their thirties in the workforce (61.6 per cent compared with 84.5 per cent).<sup>71</sup> Numerous studies have credited the more recent increase in Japanese women’s labour force participation, particularly among women in their 30s, to paid leave policies.<sup>72</sup> One study, relying on data from the Japanese Ministry of Internal Affairs and Communications, claims that labour force participation among women aged thirty to thirty-four had reached a new high of 79.6 per cent in 2020, although it acknowledges that many of these women are part-time workers.<sup>73</sup>

Here it is worth turning to Sweden and Iceland,<sup>74</sup> countries that are among the world’s leaders. In Sweden, for instance, 240 days are allocated to each parent (480 days combined), of which ninety days are not transferrable (paid parental leave is paid at the level of the sickness benefit). In Sweden,

<sup>67</sup> *ibid.*

<sup>68</sup> *ibid.*

<sup>69</sup> Eydal et al (n 46) 168.

<sup>70</sup> Hideki Nakazato, ‘Has “Nordic Turn” in Japan Crystallized?: Politics of Promoting Parental Leave Take-up among Fathers and the Divergence from the Nordic System’ (2023) 29 *Journal of Family Studies* 2615.

<sup>71</sup> Morrone & Matsuyama (n 9) 372.

<sup>72</sup> Jay Shambaugh, Ryan Nunn & Becca Portman, ‘Lessons from the Rise of Women’s Labor Force Participation in Japan’ (Brookings, 1 Nov 2017) <<https://www.brookings.edu/articles/lessons-from-the-rise-of-womens-labor-force-participation-in-japan/>> accessed 18 Mar 2024; Statista, ‘Female share of seats on boards of large publicly listed companies in Japan from 2014 to 2023’ (Dec 2023) <<https://www.statista.com/statistics/1311751/japan-share-women-boards-largest-publicly-listed-companies/>> accessed 16 Feb 2025.

<sup>73</sup> Mayumi Hirose, ‘Japan Women in 30s Stay in Workforce as Parental Benefits Improve’ (Asia Nikkei, 28 May 2022) <<https://asia.nikkei.com/Economy/Japan-women-in-30s-stay-in-workforce-as-parental-benefits-improve>> accessed 18 Mar 2024.

<sup>74</sup> Ramona Vijeyarasa, ‘Does Law Matter? Defending the Value of Gender-Responsive Legislation to Advance Gender Equality’ (2022) 24 *New York University Journal of Legislation and Public Policy* 671, 699.

a single parent without a partner who is also benefiting from the leave scheme, can obtain the full 480 days of paid leave.<sup>75</sup> Iceland's law describes the rights of each parent as 'independent' rights.<sup>76</sup> Each parent is entitled to six months of paid leave. Six weeks of those six months are transferable between parents. Spain's 2019 reforms also place the country in the Model A category, making it the first nation in the world to allocate each parent, in same-sex or different-sex couples, the same amount of paid leave. In this case, sixteen weeks (or 112 days) of non-transferable leave are available to mothers (with six weeks compulsory after birth), and 16 weeks are available to the parent other than the biological mother.<sup>77</sup> These reforms build on a long history of leave, with paid maternity leave and breastfeeding leave established in Spain in 1929, and a one-day birth leave for fathers established as early as 1931.<sup>78</sup>

It should be noted that I do not classify those nations with a difference in the amount of non-transferable leave as falling into Model B (a 'father quota') unless the number of days of paid paternity leave is less than two-thirds of what is offered to mothers in the form of paid maternity leave. This threshold is, I acknowledge, arbitrary, and another threshold could have been set. However, such an approach would allow for a jurisdiction to be categorised as Model A where it offers, for instance, twenty-six weeks of maternity leave, including six weeks of post-birth recovery and twenty weeks of paternity leave. Such a threshold seeks to avoid misleadingly classifying those countries with a less significant gap in non-transferable leave in the same way as those jurisdictions represented in Model B, where the gap in the amount of paid leave between parents is considerable. Model B, as we will see, is the one that best reflects the regional approach in Asia.

### *Model B: Quotas for fathers: An add-on*

Model B adopts the approach where a quota is allocated for fathers, but by and large in the form of an 'add-on'. Fourteen of the twenty-one countries across Asia examined in this study are examples of Model B jurisdictions. In most cases, maternity leave was first provided for in law, and it was only after a period of reform that attention shifted to the role of fathers in families. This is a natural trajectory for many nations, particularly Anglophone countries with an English-language legal tradition, and, as we will see shortly, has been mirrored in Asia. As Baird and O'Brien have pointed out, none of these countries, in their initial legislative designs (that is, prior to subsequent amendments), showed a generous approach to dedicated paternity leave, whether paid or unpaid.<sup>79</sup>

For instance, in Canada paid maternity leave was introduced in 1971 and parental leave in 1990; in the UK, paid maternity leave was introduced in 1975 and paid paternity leave in 2003. New Zealand and Australia were even later.<sup>80</sup> Paid maternity leave legislation for all workers was only introduced in New Zealand in 2000 and in Australia in 2010.<sup>81</sup> In some of those cases, such as in Australia until leave amendments were introduced in July 2023, eligibility for paid leave and the title of being the 'primary carer' was primarily held by mothers; such leave was only made transferable to a father or partner under certain conditions.<sup>82</sup> It is worth noting that Canada has evolved since these early years. However, of the forty weeks of parental leave that eligible Canadian parents share today to use at their discretion, the non-transferable period is only five weeks, and this parental leave is in addition to the fifteen weeks reserved exclusively for birth mothers.

<sup>75</sup>Föräldraledighetslag (Parental Leave Act) (1995:584).

<sup>76</sup>Act on Maternity/Paternity Leave and Parental Leave No 144/2020, s 8.

<sup>77</sup>Ley del Estatuto de los Trabajadores 2015 (BOE-A-2015-11430), s 48(4).

<sup>78</sup>Meil et al (n 62) 220.

<sup>79</sup>Marian Baird & Margret O'Brien, 'Dynamics of Parental Leave in Anglophone Countries: The Paradox of State Expansion in Liberal Welfare Regimes' (2015) 18 Community, Work & Family 198, 206.

<sup>80</sup>ibid 200–201. It is important to note, however, that in 1979 and 1980 respectively, Australia and New Zealand introduced twelve weeks of paid maternity leave, but only for federal public servants.

<sup>81</sup>ibid 201.

<sup>82</sup>Vijeyarasa, 'Does Law Matter?' (n 74) 712.

There remains a tendency in the literature to refer to leave that falls within this model as ‘daddy weeks’<sup>83</sup> or ‘daddy days’.<sup>84</sup> However, it is important to acknowledge that such language is both a heteronormative approach and risks glorifying or romanticising care by fathers. Generally, in this article, I refer to ‘quotas for fathers’ and seek to make clear that these models largely see such paid leave for fathers as an add-on to leave taken by mothers. Moreover, as discussed in the following section, the majority of these Model B nations do not recognise same-sex relationships and some criminalise consensual sex between same-sex individuals. These characteristics negatively reflect both the nations’ approaches to family diversity and their legal frameworks in terms of rights and entitlements.

### *Model C: No paid leave for fathers: Freezing parenting as women’s domain*

Model C represents those countries that offer no leave for fathers. A surprising seven countries in the region remain in this category. While one would expect this lack of any paid paternity leave to be rare, research by UNICEF found in 2018 that ninety-two countries worldwide had no national policies to facilitate even one day of paid leave for fathers to care for newborns.<sup>85</sup> However, this is a rapidly changing landscape and countries that previously fell in this category – such as Switzerland, Mexico, and Ireland – no longer do. Based on relatively recent reforms, both Ireland<sup>86</sup> and Switzerland<sup>87</sup> offer fourteen days of paternity leave, alongside 182 days of maternity leave in Ireland<sup>88</sup> and 98 days of maternity leave in Switzerland.<sup>89</sup>

Numerous factors will affect the extent to which policies on family leave will make nations more gender equal. Probably the starkest among them is the extent to which laws are implemented and monitored. Yet in the context of parental leave schemes, the questions of who is eligible, whether policies are actually accessible to all, and whether the leave schemes are adequately resourced by governments are all fundamental. The ways in which countries have split responsibility for paying for such leave between the public sector, the private sector, and individuals through social security contributions have a significant influence on the impact of such provisions. These realities go beyond the neat and somewhat simplistic models offered above.

In particular, it is important to flag the relevance of wage replacement levels, which are widely acknowledged as a key factor in the take-up and effectiveness of paternity leave.<sup>90</sup> Wage replacement rates have been provided in the figures below. Other factors – particularly other drivers of flexibility – are given less attention in these three broad overarching models, but they are nonetheless important to consider. These include whether leave can be taken full-time or part-time, in several blocks of time, for a shorter period with higher compensation or, conversely, for a longer period with lower compensation, and whether the leave can be taken partly or fully at the same time as the other partner.<sup>91</sup>

## *Mapping Asian Trends: The Consequences for Equality, Care, and the Labour Force*

### *The State of play: Maternity leave, paternity leave, and paid transferable leave in Asia*

First, when it comes to maternity leave, every one of the twenty-one nations provides some entitlement to paid maternity leave for mothers. The average number of paid maternity leave days legally

<sup>83</sup>Albrecht, Fichtl & Redler (n 57) 49.

<sup>84</sup>Sanchez Salcedo (n 51).

<sup>85</sup>Georgina Diallo, ‘2 in 3 Infants Live in Countries Where Dads Are Not Entitled to a Single Day of Paid Paternity Leave’ (UNICEF, 13 Jun 2018) <<https://www.unicef.org/press-releases/2-3-infants-live-countries-where-dads-are-not-entitled-single-day-paid-paternity>> accessed 22 Aug 2023.

<sup>86</sup>Paternity Leave and Benefit Act 2016 (No 11 of 2016), s 6.

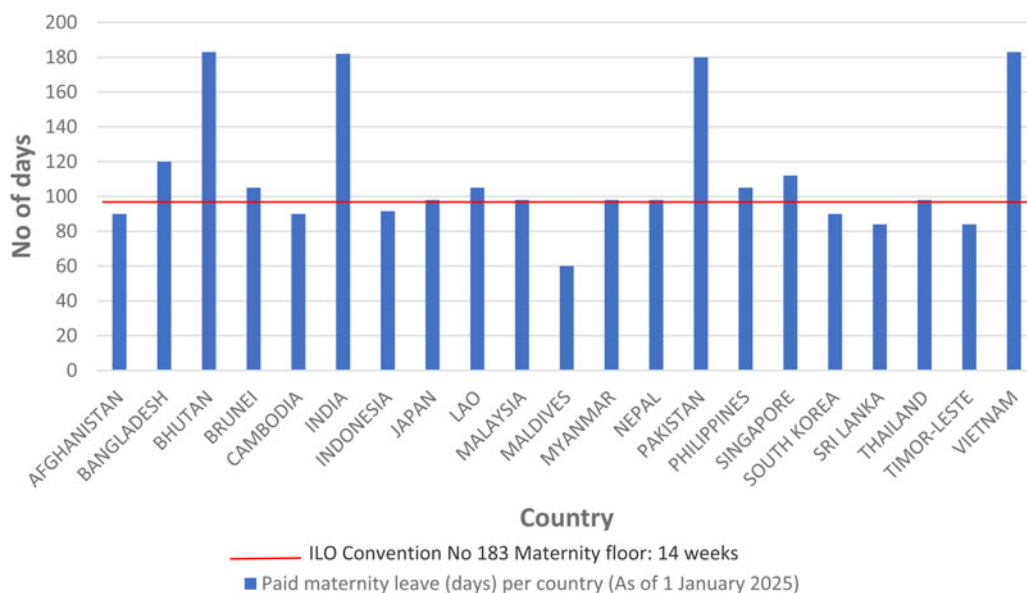
<sup>87</sup>Federal Act on the Amendment of the Swiss Civil Code 1911 (No 220), art 329(g).

<sup>88</sup>Maternity Protection Act, 1994 (No 34 of 1994), s 8.

<sup>89</sup>Federal Act on the Amendment of the Swiss Civil Code 1911 (No 220), art 329(f).

<sup>90</sup>Ray, Gornick & Schmitt (n 64) 5; Miriam Rocha, ‘Promoting Gender Equality through Regulation: The Case of Parental Leave’ (2021) 9 The Theory and Practice of Legislation 35, 54.

<sup>91</sup>Rocha (n 90) 52.



**Figure 1.** Paid maternity leave (days) per country (as of 1 January 2023)

**Note 1:** Where legislation specifies leave entitlements in months, the calculation has been based on an average of 30.5 days per month.

**Note 2:** Female civil servants in Bhutan are entitled to 183 days of paid maternity leave under the *Bhutan Civil Services Rules and Regulations* 2018. This is not included in the chart as it does not apply to private sector employees.

**Note 3:** Wage replacement is an important consideration but is not included in the graph. In Myanmar, maternity leave is calculated at 70 per cent of the employee's average earnings, while in Cambodia it is calculated at 50 per cent. In all other countries, the wage replacement level is 100 per cent of the employee's average earnings. In Brunei, the 100 per cent wage replacement only applies for up to eight weeks, in Nepal only for the first 60 days, and in Thailand only for the first 45 days.

available to eligible mothers across the region as of 1 January 2023 was 100.5 days. Vietnam (183 days) and India (182 days) both drive up the regional average (Figure 1).

Yet there is an evident and stark contrast between the legal entitlements of mothers and fathers: the average number of paid maternity leave days – 106 days – is vastly more generous than the average number of paid paternity leave days for eligible fathers – just 7.3 days. Moreover, a number of countries offer no paid paternity leave whatsoever as of 1 January 2023: Afghanistan (despite relatively generous maternity leave of ninety days),<sup>92</sup> Bangladesh, Bhutan, Cambodia, India, Sri Lanka, and Thailand (Figure 2). Pakistan is a regional leader, with thirty days of paid paternity leave.

When placed side by side (Figure 3), India's and Vietnam's relatively positive pictures of maternity leave prove problematic. India offers relatively generous paid maternity leave alongside no paid paternity leave, with the exception of workers in the public sector. Vietnam offers only five days of paid paternity leave. Here again, Pakistan appears to perform *relatively* well, although the number of paid paternity leave days allocated for fathers is one-sixth of what is offered to mothers.

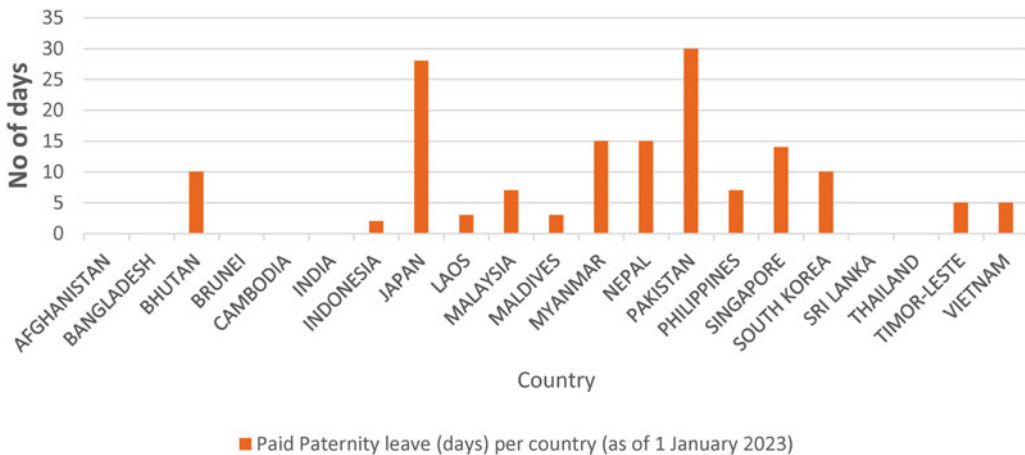
Five countries in the region (Figure 4) offer paid transferable parental leave. However, they can largely be categorised into two forms of shared transferable leave. Both Singapore<sup>93</sup> and the Philippines<sup>94</sup> allow mothers to allocate 28 days and 7 days respectively of their own (maternity) leave to fathers. Yet this approach represents a reduction in maternity leave and may create a penalty calculus for parents who face the decision of whether or not to re-allocate leave to fathers from mothers.

A different model of transferable leave can be seen in Japan and South Korea. In both countries, in addition to paid maternity and paternity leave, parental leave is available for either parent. In the

<sup>92</sup>Labour Code 2007, s 54.

<sup>93</sup>Child Development Co-Savings Act 2001.

<sup>94</sup>Implementing Rules and Regulations of the 105-Day Expanded Maternity Leave Law 2019, s VIII(1).



**Figure 2.** Paid Paternity leave (days) per country (as of 1 January 2023)

**Note 1:** Where legislation specifies leave entitlements in months, the calculation has been based on an average of 30.5 days per month.

**Note 2:** As of 2012, male employees in the public sector in Thailand are entitled to 15 days of paid paternity leave. This has not been included in the chart as it does not apply to the private sector.

**Note 3:** Male employees in the public sector in India are entitled to 15 days of paid paternity leave under the *Central Civil Services (Leave) Rules 1972*. This has not been included in the chart as it does not apply to the private sector.

**Note 4:** Male employees in the public sector in Indonesia are entitled to one month of paid paternity leave under the *National Civil Service Agency Regulation No 24/2017*. Only the two days of paid leave that men are entitled to in the private sector have been included in the chart.

**Note 5:** As of 2016, male civil servants in Bhutan are entitled to 10 days of paid maternity leave under the *Bhutan Civil Services Rules and Regulations 2018*. This has not been included in the chart as it does not apply to private sector employees.

**Note 6:** In Myanmar, paternity leave is paid at 70 per cent of the employee's average earnings. All other paid leave indicated is paid at 100 per cent of the employee's average earnings.

**Note 7:** In Sri Lanka, only men in the public sector are entitled to three days of paid paternity leave. This has not been included in the chart as it does not apply to private sector employees.

case of Japan, mothers and fathers are entitled to parental leave up until when their child reaches the age of one. The first six months are paid at 67 per cent of the base rate of pay, while the subsequent six months are paid at 50 per cent of the base rate of pay. In the case of South Korea, a pregnant employee or their partner can apply for childcare leave, which can be taken for a duration of up to one year and can be enjoyed until the child reaches the age of eight, including adopted children. However, this is unpaid.<sup>95</sup> The Maldives follows the same system as South Korea, with one year of unpaid shared leave after the end of maternity and paternity leave.<sup>96</sup>

### *Additional dimensions of inequality: Adoption leave and parental leave for same-sex couples*

Parental leave for adopting parents presents a particular opportunity to examine socio-legal attitudes towards the distribution of care. In these instances, there has been no birth by the mother taking leave. Yet the models that exist regionally reflect the utmost projection of the maternalistic model, where the adopting mother is still viewed as the primary or even sole carer of children. Adoption leave is offered in six nations in the region (Figure 5) and yet, with the exception of Vietnam, a disparity remains in the leave allocated for eligible adopting mothers and adopting fathers.

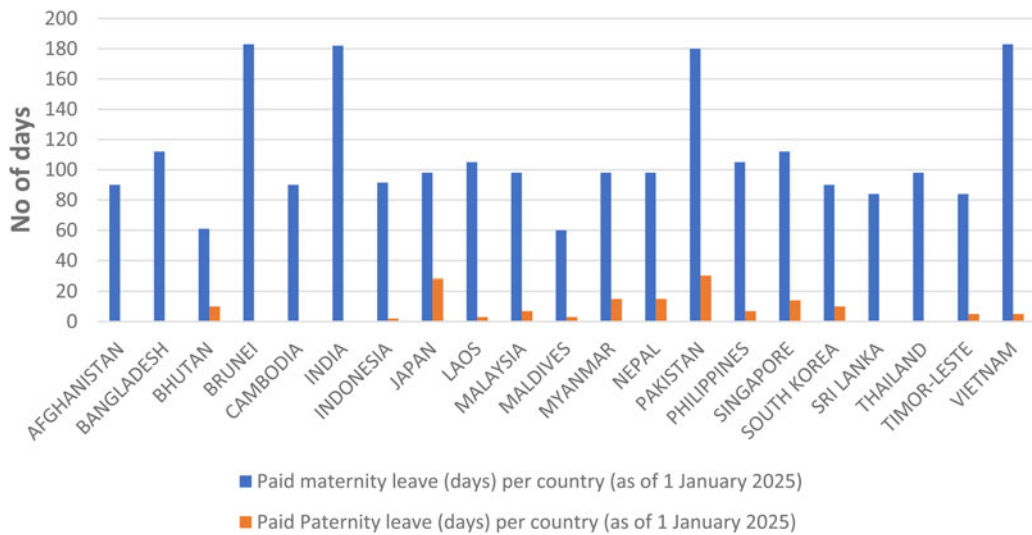
In India, paid adoption leave appears only in the 1972 *Central Civil Services (Leave) Rules*, which provide 180 days of paid leave for adopting mothers of children under three months of age,<sup>97</sup> and yet only fifteen days of paid adoption leave for fathers.<sup>98</sup> This means that, in addition to the vast

<sup>95</sup>Equal Employment Opportunity and Work-Family Balance Assistance Act (Act No 18178, 18 May 2021), s 19(1).

<sup>96</sup>Employment Act 2008 (No 2/2008), s 46(a).

<sup>97</sup>Central Civil Services (Leave) Rules 551(A) 1972, s 43(B).

<sup>98</sup>ibid s 43(AA).



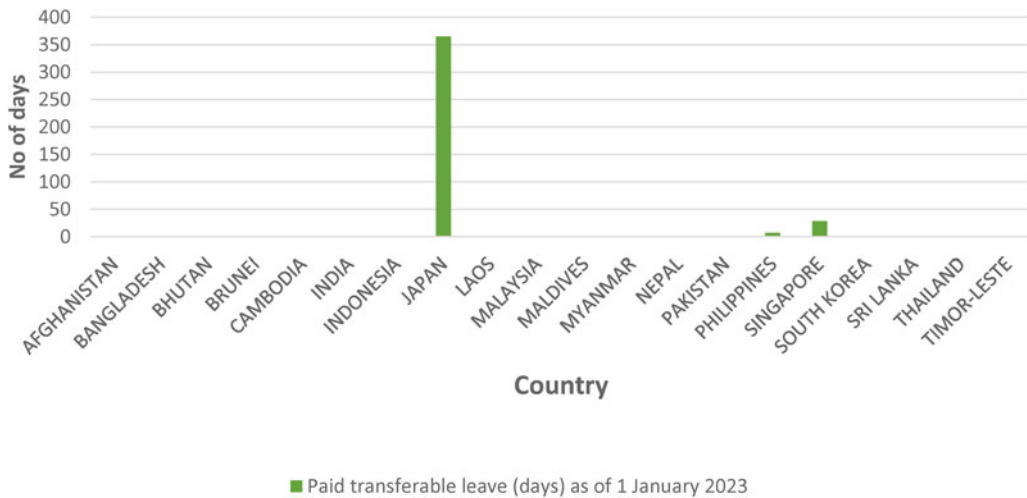
**Figure 3.** Paid maternity and paternity leave (days) per country (as of 1 January 2023)  
**Note:** Where legislation specifies leave entitlements in months, the calculation has been based on an average of 30.5 days per month.

difference in paid leave available to mothers and fathers, adoption leave is also only available to civil servants and therefore, like paid paternity leave, discriminates between workers inside and outside of the public sector. Singapore’s approach to adoption leave also mirrors its approach to paid paternity and maternity leave – there are significant gaps between adoption leave for men and women, with much more generous paid adoption leave for mothers (twelve weeks) if the child is under twelve months of age, but just two weeks for fathers.<sup>99</sup> Similarly, Japan’s adoption leave entitlements – falling under the category of general ‘childcare leave’ – are the same as the transferable leave available to couples giving birth, with either parent entitled to one year of leave, paid at 67 per cent of base pay for the first six months and fifty per cent for the remaining time.<sup>100</sup> One might imagine the same challenges in encouraging mothers and fathers to share adoption leave as witnessed in the case of birth parents, introduced to readers at the outset of this article. In Myanmar, adoption leave of eight weeks’ paid leave is available if the child is under one year of age, but it is only available to mothers.<sup>101</sup> In South Korea, while numerous sources suggest that adopting parents receive the same level of leave as birth parents,<sup>102</sup> a deeper reading of the law suggests that this leave entitlement for adopting parents consists of only one year of *unpaid* leave.<sup>103</sup>

Vietnam is the only nation in the region offering adoption leave in a way that allows for equal sharing of care responsibilities between parents. According to the law, adoption leave can be taken until the child reaches six months, with up to 183 days available to either parent, but not both.<sup>104</sup> Nevertheless, this model is likely to see the majority of leave taken by mothers, as the law does not create non-transferable leave allocations.

Finally and notably, no law in the region recognises leave entitlements for same-sex partners. The rights of same-sex couples to adopt or share care and enjoy the legal entitlement to paid leave are absent from the law. This reality presents a massive legal hurdle for same-sex couples to overcome

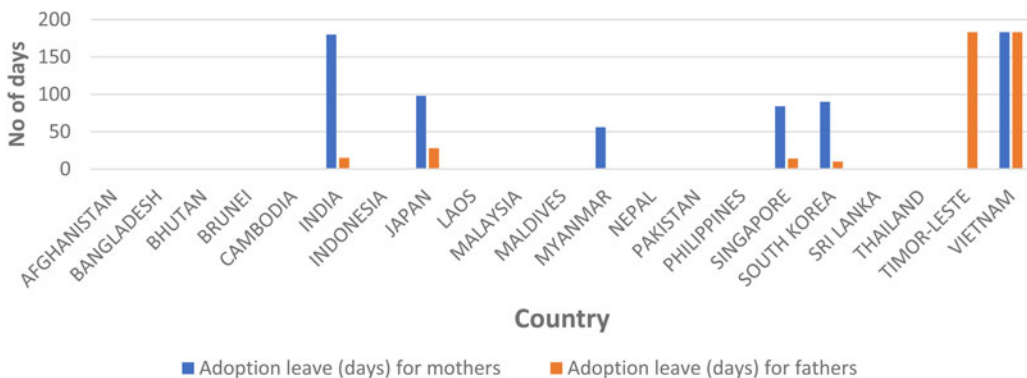
<sup>99</sup>Child Development Co-Savings Act 2001, s 12AA.  
<sup>100</sup>Childcare and Family Care Leave Act, art 2(i).  
<sup>101</sup>Social Security Law 2012, s 25(f).  
<sup>102</sup>Hyunsook Kim and others, ‘Korea’ <[https://www.leavenetwork.org/fileadmin/user\\_upload/k\\_leavenetwork/annual\\_reviews/2023/Korea2023.pdf](https://www.leavenetwork.org/fileadmin/user_upload/k_leavenetwork/annual_reviews/2023/Korea2023.pdf)> accessed 15 Apr 2023.  
<sup>103</sup>Equal Employment Opportunity and Work-Family Balance Assistance Act, arts 19(1), 19(2).  
<sup>104</sup>Law on Social Security 2014 (No 58/2014/QH13), s 36.



**Figure 4.** Paid transferable leave (days) (as of 1 January 2023)

**Note 1:** Where legislation specifies leave entitlements in months, the calculation has been based on an average of 30.5 days per month.

**Note 2:** Both the Maldives and South Korea have an additional year of transferable leave, but in both instances this is unpaid leave and is therefore not included in this figure.



**Figure 5.** Adoption leave (days) (as of 1 January 2023)

**Note 1:** Where legislation specifies leave entitlements in months, the calculation has been based on an average of 30.5 days per month.

**Note 2:** The adoption leave shown in India is only provided for government employees in the civil service.

**Note 3:** Vietnam's adoption leave is available to either parent, but not both at the same time. Both 183 days for mothers and 183 days for fathers are included in the chart.

in order to enjoy equal access to paid leave in the region. We face, too, vast gaps in our knowledge about the extent to which same-sex couples in Asia have attempted to access paid leave within the parameters of the existing laws, which calls for further research. In this sense, future studies must examine both what is available on paper and what leave same-sex couples have been able to obtain in practice.<sup>105</sup>

For instance, a female same-sex couple may include one parent who gives birth. In such cases, the birth mothers in same-sex female couples may be able to access paid maternity leave in amounts that parallel single mothers. However, given the lack of recognition of same-sex unions, it seems virtually impossible for her female partner to access any form of paid parental leave.

<sup>105</sup>See the invaluable study of Wong et al (n 20) 527.

Additionally, in some countries in the region, fathers in a same-sex male partnerships have adopted children.<sup>106</sup> In these cases, one adopting father may be eligible for paid parental leave in the countries listed in Figure 5 that extend adoption leave to fathers. This is reflected in Wong et al's 2020 study of OECD nations, which included South Korea. Wong et al indicated, albeit with limited explanation,<sup>107</sup> that paid leave is available to same-sex female couples and same-sex male couples despite their lack of legal recognition at the time of their study,<sup>108</sup> but at significantly lower levels than for different-sex couples.<sup>109</sup> In contrast to Wong et al, my data suggests a significantly bigger gap between the entitlements of same-sex and different-sex couples. In South Korea, for instance, my data suggests that fathers in same-sex couples could access, at best, ten days of paid paternity leave<sup>110</sup> and one year of unpaid adoption leave, compared to different-sex couples who are entitled to ninety days of paid maternity leave and ten days of paid paternity leave.<sup>111</sup> There is therefore also an important nexus between paid parental leave for same-sex couples and adoption leave. Even this cursory data reveals a clear point of discrimination in the extent to which parents in same-sex unions have been able to enjoy the benefits of paid leave.

### Emerging trends

The above data covers a vast number of countries with evident geographic, political, and socio-economic similarities, but also differences. Yet three obvious trends emerge.

First, the region is lagging behind. No country in the study meets the Model A standards of generous parental leave schemes that may be more familiar in some Global North countries. In countries that adopt Model A, the legislative approach to parental leave allows both parents to take paid leave in connection with childbirth, with a guaranteed right to return to work, made possible by a high level of public daycare provision.<sup>112</sup>

By contrast, as demonstrated by Figure 6, a significant number of countries in the region continue to fall under Model C, offering no paid paternity leave. Such a status quo model will, if maintained, continue to reinforce gender gaps and women's inequality. Moreover, despite the fact that the majority of the region's jurisdictions fall under Model B, paid paternity leave is rarely generous, with the number of days of paid paternity leave, on average, only 6.9 per cent of the amount of paid maternity leave offered across the twenty-one countries. Japan is a standout example, where paid paternity amounts to 28.6 per cent of available paid maternity leave days. In this respect, Japan, *in law*, is the regional leader, offering a further year of paid transferable leave. Yet its transferable nature is a notable concern and goes a long way to explaining Japan's struggles in encouraging fathers to take leave, as noted at the outset of this article.

Research suggests that fathers who wish to take some leave in jurisdictions that offer no paid leave seek a way around the system, taking 'casual' or 'sick leave' for one or two days or even

<sup>106</sup>Sharon A Bong, 'Negotiating Resistance/Resilience through the Nexus of Spirituality-Sexuality of Same-Sex Partnerships in Malaysia and Singapore' (2011) 47 *Marriage & Family Review* 648, 654, 659.

<sup>107</sup>Wong et al do not provide a list of the legislation studied, nor an explanation of how the figures presented were calculated. It appears that the table comparing *paid* leave entitlements between same-sex and different-sex couples actually includes both *paid* and *unpaid* leave.

<sup>108</sup>A decision by the Seoul High Court at the time of going to print potentially reflects a shift towards greater recognition of the rights of same-sex couples in South Korea. See Lina Yoon, 'South Korea Court Recognizes Equal Benefits for Same-Sex Couple' (Human Rights Watch, 22 Feb 2023) <<https://www.hrw.org/news/2023/02/22/south-korea-court-recognizes-equal-benefits-same-sex-couple>> accessed 19 March 2024.

<sup>109</sup>Wong et al (n 20) 534.

<sup>110</sup>Equal Employment Opportunity and Work-Family Balance Assistance Act (Amendment Act no 16558, 27 Aug 2019). art 18(2).

<sup>111</sup>Labor Standards Act 2012 (Act No 11270, 1 Feb 2012), art 74(1); Equal Employment Opportunity and Work-Family Balance Assistance Act 2021, art 18-2(1).

<sup>112</sup>Nabanita Datta Gupta, Nina Smith & Mette Verner, 'Child Care and Parental Leave in the Nordic Countries: A Model to Aspire To?' (IZA Discussion Paper No 1014, Mar 2006) <<https://papers.ssrn.com/abstract=890298>> accessed 1 Jun 2023.

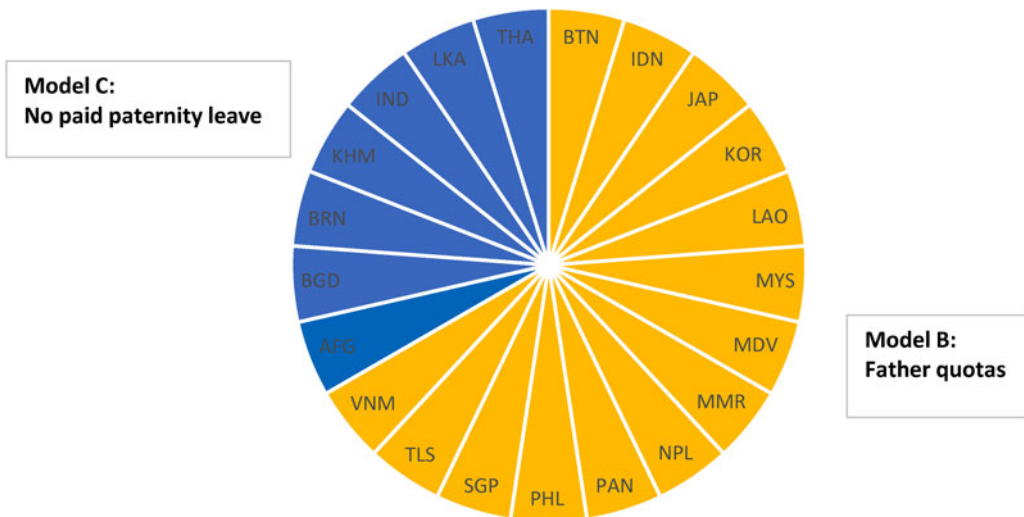


Figure 6. Models of paternity leave across Asia (as of 1 January 2023)

just a few hours,<sup>113</sup> or unpaid leave.<sup>114</sup> What results from a legislative approach of this kind is a cost-benefit exercise where the desire to take leave has to compete with income and affordability concerns. In Cambodia, for instance, with no specific entitlements to paternity leave, a worker may request seven days of special leave for the birth of a child, but that leave may be deducted from annual leave; and when annual leave is exhausted, an employee can be requested by employers to work longer hours to make up for the leave.<sup>115</sup>

Second, the region follows the global trend of countries increasing the number of days of leave available, over a number of years, in increments. India doubled its maternity leave entitlement from twelve weeks to twenty-four weeks in 2017, which has been described as ‘rain[ing] in good news’ for Indian women in the organised sector.<sup>116</sup> This statement is, however, a reminder of the lack of accessibility of such leave for informal workers. This is an endemic issue across much of Asia, with many workers ineligible for any form of leave because they are casual, temporary, or part-time workers. Bangladesh in 2013 amended its 2006 *Labour Act* to increase the total number of weeks available to some categories of *private* sector female employees to sixteen weeks, or four months, although the Act excludes managerial-level female employees and those women working in charitable organisations, such as hospitals or educational institutions<sup>117</sup> – sectors where we know women dominate at certain levels of employment.

Based on such trends of incremental law reform, we can assume the number of allocated weeks of paid paternity leave will increase over time, and it is likely that countries that do not currently offer paternity leave may begin to offer some form of paid leave in the (near) future. Nonetheless, progress is not a guarantee. In Indonesia, for instance, the House of Representatives enacted the *Maternal and Child Welfare Bill* on 4 June 2024 (and signed it into law on 2 July 2024), which extends the three months of maternity leave by a further three months for medical reasons but

<sup>113</sup>Anam (n 29) 76.

<sup>114</sup>Zakir Hosse, Marufa Rahman & Sajal Roy, ‘Paternity Leave: An Emerging Issue in Bangladesh’, in Debasish Nandy (ed), *Connecting Asia: Understanding Foreign Relations, Organizations and Contemporary Issues* (Kunal Books 2020) 283.

<sup>115</sup>Labour Law 1997 (Royal Order No CS/RKM/0397/01), ss 169, 171.

<sup>116</sup>A Bharathy, ‘India’s Landmark Maternity Bill: Getting Ready for a Working-Mother-Friendly Workplace’ (2018) 3 *Bonfring International Journal of Industrial Engineering and Management Science* 130.

<sup>117</sup>Anam (n 29) 75.

rejected the proposed increase from two to forty days of paternity leave.<sup>118</sup> Bangladesh provides another illustrative case: a 2014 policy proposal for fifteen days of paternity leave was unsuccessful;<sup>119</sup> it was only in March 2022 that the Government of Bangladesh hinted that it would introduce paternity leave,<sup>120</sup> but as of 1 January 2023, this had not yet come into force. Bhutan's *Regulation on Working Conditions* presently provides for two months of maternity leave<sup>121</sup> and ten days of paternity leave,<sup>122</sup> although the Cabinet of Bhutan has already endorsed six months of paid maternity leave, along with six months of flexi-time for women in the civil service,<sup>123</sup> an amendment that also received Royal Assent in 2016,<sup>124</sup> yet has not come into force. Cambodia too has a bill under consideration that would increase paid maternity leave from ninety to 183 days and paid paternity leave from zero to forty.<sup>125</sup>

Moreover, even if the global trend is one of progress, amendments may also be accompanied by other seemingly progressive but potentially detrimental changes. For instance, India's 2017 reform included a provision that made crèche facilities mandatory for every establishment employing fifty or more employees, with female employees permitted to visit the crèche four times a day.<sup>126</sup> This is the type of amendment that Ray et al suggest could increase gender equality in the short run, enabling and encouraging women to return to the workforce rather than exit it altogether.<sup>127</sup> However, such a provision specifically for women could potentially reduce gender equality in the long run, compared to doing nothing,<sup>128</sup> as it reinforces the expectation that childcare remains primarily a mother's responsibility rather than a father's, even in the workplace, creating an expectation that the worker-mother can do both simultaneously. Furthermore, in the case of India, employers are responsible for compensating a person's maternity leave, making women 'more expensive' – an approach that is likely to push women out of the workforce.<sup>129</sup> Similarly, in Singapore, employers are responsible for paying for the first eight weeks of maternity leave; the last eight weeks are reimbursed by the government.<sup>130</sup>

Third, even among those nations guaranteeing an entitlement to paid leave for men, the region is far from the 'gold standard' of equal care, failing to perceive caring responsibilities in truly equal terms. The language of the law – directly or indirectly – frames care as the responsibility and role of mothers. Even where paternity leave is available, the legislative language too often fails to craft a caring role for men that is independent of women; rather, the entitlement is one that emerges when one's 'wife gives birth', language that can be seen in both Vietnam<sup>131</sup> and Laos.<sup>132</sup>

<sup>118</sup>I Wayan Gde Wiryawan, 'The Rights of Paternity Leave for Husbands in Indonesian Legal Renewal' (2023) 18 *International Journal of Criminal Justice Science* 132.

<sup>119</sup>Hosse, Rahman & Roy (n 114) 287.

<sup>120</sup>'ILO Welcomes Bangladesh's Plan to Introduce Paternity Leave' (The Financial Express, 7 Mar 2022) <<https://www.proquest.com/docview/2636346118/citation/976C07C7B2844625PQ/1>> accessed 8 Feb 2025.

<sup>121</sup>Regulation on Working Conditions 2022, s 202.

<sup>122</sup>ibid.

<sup>123</sup>Ritu Verma & Karma Ura, 'Gender Differences in Gross National Happiness: Analysis of the First Nationwide Wellbeing Survey in Bhutan' (2022) 150 *World Development* 105714, 5.

<sup>124</sup>MB Subba, 'Six-Month Maternity Leave Is Now Real' (Kuensel Online, 2 Mar 2016) <<https://kuenselononline.com/six-month-maternity-leave-is-now-real/>> accessed 8 Feb 2025.

<sup>125</sup>Nur Janti, 'New House Bill Spells Progress for Working Mothers' (The Jakarta Post, 18 Jun 2022) <<https://www.thejakartapost.com/paper/2022/06/17/new-house-bill-spells-progress-for-working-mothers.html>>.

<sup>126</sup>Bharathy (n 116) 131.

<sup>127</sup>Ray, Gornick & Schmitt (n 64).

<sup>128</sup>ibid.

<sup>129</sup>Saumya Dubey, 'Gender (In)Equality in India: Analysing Maternity Benefits and Parental Leaves' (Lokniti, 13 Jan 2021) <<https://mpp.nls.ac.in/blog/gender-inequality-in-india-analysing-maternity-benefits-and-parental-leaves/>> accessed 29 Aug 2023.

<sup>130</sup>Government of Singapore, Ministry of Manpower, 'Maternity Leave Eligibility and Entitlement' <<https://www.mom.gov.sg/employment-practices/leave/maternity-leave/eligibility-and-entitlement>> accessed 30 Aug 2023.

<sup>131</sup>Law on Social Security, s 31(1)(e).

<sup>132</sup>Labour Law 2013 (No 43/NA) s 58(4).

The region's approach to parental leave continues to be hinged on 'traditional' family models. Legislation across the region reinforces the value that it is only acceptable to have children as a married couple. Indeed, in several instances, leave is only available to parents in a marital relationship. For instance, the Philippines' seven days of paternity leave for a 'married male employee'<sup>133</sup> is replicated in Brunei Darussalam's Guide to Employment Laws, which provides for fifteen weeks of maternity leave, but only if the woman is 'lawfully married'.<sup>134</sup> Such laws discriminate against what one study of Cambodia describes as the 'new family model', disadvantaging single mothers<sup>135</sup> who may want to share care with their co-habitant, and, I would add, fathers in non-marital relationships who would wish to take leave. For many countries in the region, the enactment of paid paternity leave and parental leave for fathers is an affront to traditional practices. For Bhutan, for example, maternity and paternity leave are often seen as examples of Western modernity that arrived before an 'emerging Bhutanese modernity'.<sup>136</sup>

Policy messaging about appropriate family behaviour is also evident in Bangladesh's denial of paid leave for the third child: by withholding benefits from women with more than two surviving children, the law discourages larger families.<sup>137</sup> Further disparities in access to parental leave – even to maternity leave, such as for self-employed or independent contract workers in Malaysia<sup>138</sup> – demonstrate that the battle is more complex than merely 'adding' men and same-sex couples to the paid leave environment.

Another relevant factor in some Asian contexts is that paid paternity leave is only available for public sector employees, such as in India (fifteen days)<sup>139</sup> and Indonesia (one month).<sup>140</sup> This creates a situation where workers in the private sector have to depend on the willingness of employers to offer leave. While beyond the scope of this analysis, this raises a question about the role of the private sector. In India, for instance, the private sector has taken the lead in offering paid paternity leave, ranging from five days (Infosys) to twenty-six weeks (eg, Zomato and Novartis).<sup>141</sup> However, in the absence of legislation requiring the private sector to offer such paid leave equally to both parents, such private sector schemes remain rare,<sup>142</sup> creating an equality gap between public and private sector employees.

## Conclusion

It may come as a surprise that there have been no attempts to date to quantify and compare progress across the Asia region towards the goal of more equal sharing of childcare and child-rearing by parents. Indeed, interrogating the slow rate of progress, off-hand political remarks about fathers' take-up of leave, and embedded norms around the division of domestic labour across nations in the region may lead us to question whether an equal division of care responsibilities is a common

<sup>133</sup>Paternity Leave Act of 1996, s 3 <<https://www.officialgazette.gov.ph/1996/06/11/republic-act-no-8187/>> accessed 17 Jul 2023.

<sup>134</sup>Employment Order 2009 (No 37); Government of Brunei Darussalam, Department of Labour, Legal and Prosecution Division, 'Guide to Brunei Darussalam Employment Laws' (Oct 2015) <<https://www.labour.gov.bn/Download/GUIDE%20TO%20BRUNEI%20EMPLOYMENT%20LAWS%20-%20english%20version-3.pdf>> accessed 19 Feb 2025.

<sup>135</sup>Nina Weimann-Sandig & Chenda Sem, 'Towards Gender Equality in The Cambodian Labor Market – Gender Gaps Prevent Females from Stable Income Generation' (2022) 7 Malaysian Journal of Social Sciences and Humanities e001534, 11.

<sup>136</sup>Kandy Dayaram & David Pick, 'Entangled between Tradition and Modernity: The Experiences of Bhutanese Working Women' (2012) 7 Society and Business Review 134.

<sup>137</sup>Bangladesh Labor Act 2006 (XLII of 2006), s 46(2).

<sup>138</sup>Jashpal Bhatt, 'Pregnancy and Maternity Entitlements under the Employment Act 1955 - Are Women Workers in Malaysia Beign Short-Changed?' (2015) 5 Malayan Law Journal lxxxiii.

<sup>139</sup>Central Civil Services (Leave) Rules 551(A), s 43A.

<sup>140</sup>Civil Service Agency (Regulation No 24/2017).

<sup>141</sup>Gummadi (n 37) 425.

<sup>142</sup>Ananya Mukherjee, 'Analysis of "Paternity Leave" in India' (2022) 5 International Journal of Law Management & Humanities 600; Rishi Saraf, 'Paternity Leave – Amending Article 42' (2021) 4 International Journal of Law Management & Humanities 2902, 2904–2905.

goal among Asian nations. This comparative study, by unpacking how far the Asia region is from model standards when it comes to paid family leave, would certainly challenge the assumption that there is a universally accepted end goal.

By the end of this article, we have a much stronger appreciation – not without controversy – that truly shared care, underpinned by a legislative system of gender-responsive parental leave, may require removing ‘women’ from the centre of the debate, and perhaps even from the law altogether, in favour of this more ‘neutral’ model. I make this argument with one disclaimer: all legal systems must ensure that parents who give birth receive the necessary time for ‘post-birth recovery’.

Moving towards equal practices of shared care under Model A requires the disentangling of pregnancy from parenting, in order to establish an equal role for male and female parents in different-sex and same-sex relationships. If we are afraid of such an approach, we risk reifying the view that the vast majority of the roles entailed in care – from the initial pregnancy, to labour, breastfeeding, and upbringing – are the responsibility of women, all lumped into the single category of ‘motherhood’. Gender and constitutional law scholar Ruth Rubio-Marín notes that this dominant view persists despite the fact that there has indeed been a ‘proliferation of diverse forms of parenting’, including through adoption, but also through artificial reproductive technologies.<sup>143</sup> Hence, pregnancy and parenthood need to be disentangled conceptually.

Model A, which is common across Nordic nations and in several other countries in the Global North, including Spain, achieves such as a disentanglement by situating the roles of pregnant people in almost equal measure alongside that of other non-pregnant parents. It should therefore come as no surprise that many studies of Asia take the European or Nordic model as the ultimate goal,<sup>144</sup> with numerous studies comparing an Asian nation with a non-Asian one.<sup>145</sup> As countries like Japan, South Korea, and Singapore grapple with their declining birth rates<sup>146</sup> and growing elderly populations, such leaps will be necessary. They will have the multiple benefits of increasing women’s ability to stay in the labour force, narrowing gender pay gaps, and advancing the shared responsibility for care that international law has envisaged.

In conclusion, it is impossible to say how far the region is away from a Model A majority. The various bills under discussion in Bhutan, Bangladesh, and Cambodia offer hope that progress is pending. Yet we must acknowledge that human rights developments rarely follow a simple, linear path of improvement. Perhaps this is precisely why comparative and data-driven studies of this kind are so essential. While avoiding a ‘naming and shaming’ approach to human rights advocacy, which indeed has a mixed track record,<sup>147</sup> it does put on the table those nations that are surging ahead and those that are lagging far behind. At the very least, advocates for change will have relevant regional examples to draw upon in pushing for legislative reform, helping to guide nations slowly but consistently along the trajectory towards equal care.

<sup>143</sup>Ruth Rubio-Marín, ‘Global Gender Constitutionalism and Women’s Citizenship’, in Ruth Rubio-Marín (ed), *Global Gender Constitutionalism and Women’s Citizenship: A Struggle for Transformative Inclusion* (Cambridge University Press 2022) 261.

<sup>144</sup>Datta Gupta, Smith & Verner (n 111); Guðný Björk Eydal et al (n 46) 167; Shirley Hsiao-Li Sun, ‘Re-Producing Citizens: Gender, Employment, and Work-Family Balance Policies in Singapore’ (2009) 14 *Journal of Workplace Rights* 351, 352.

<sup>145</sup>Nakazato (n 70).

<sup>146</sup>See, eg, Jolene Tan, ‘Perceptions towards Pronatalist Policies in Singapore’ (2023) 40 *Journal of Population Research* 14.

<sup>147</sup>Emilie M Hafner-Burton, ‘Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem’ (2008) 62 *International Organization* 689; Gina Heathcote, ‘Naming and Shaming: Human Rights Accountability in Security Council Resolution 1960 (2010) on Women, Peace and Security’ (2012) 4 *Journal of Human Rights Practice* 82; Cullen S Hendrix & Wendy H Wong, ‘When Is the Pen Truly Mighty? Regime Type and the Efficacy of Naming and Shaming in Curbing Human Rights Abuses’ (2013) 43 *British Journal of Political Science* 651.