

Maternity Leave for Adoptive Mothers - Supreme Court Redefining Parenthood Rights

March 18, 2026 • vajiramandravi.com



Maternity Leaves for Adoptive Mothers Latest News

- The Supreme Court of India has read down provisions of the Code on Social Security, 2020 to extend **12 weeks** of maternity leave to all **adoptive mothers** irrespective of the child's age.
- Simultaneously, it has urged the Union Government to recognise **paternity leave** as a social security benefit.
- The judgment also intersects with an ongoing constitutional challenge to Section 5(4) of the Maternity Benefit Act, 1961, which restricts maternity benefits for adoptive mothers based on the age of the child.

Key Highlights of the Judgment

- **Removal of age restriction for adoptive mothers:**
 - The Court read down Section 60(4) of the Code on Social Security, 2020.

- It held that all adoptive mothers are entitled to 12 weeks of maternity leave, regardless of whether the child is above or below 3 months.
- It declared the earlier restriction violative of Articles **14** (Right to Equality) and **21** (Right to Life and Personal Liberty).
- **Motherhood beyond biological childbirth:**
 - The Court clarified maternity benefit is linked to motherhood, not childbirth.
 - Adoptive mothers have similar caregiving responsibilities as biological mothers.
 - Adoption recognised as part of reproductive and decisional autonomy under **Article 21**.
- **Maternity leave as a human right:** The judgment termed maternity protection as a “basic human right”, ensuring economic security, workplace inclusion of women, and freedom to exercise reproductive choices without employment penalty.
- **Emphasis on role of fathers:**
 - The Court highlighted early childhood care requires both parents.
 - Absence of paternity leave reinforces gender stereotypes, limits father’s participation in caregiving, and urges the government to frame a paternity leave policy as part of social security.

Legal and Policy Background

- **Maternity Benefit Act, 1961:**
 - It aims to regulate employment of women before and after childbirth.
 - Key provisions are paid maternity leave (the period of such leave could not exceed twelve weeks), protection from dismissal, etc.
- **2017 Amendment:**
 - Increased paid maternity leave to 26 weeks for biological mothers.
 - Introduced, 12 weeks leave for adoptive mothers (only if child < 3 months), work-from-home provision, mandatory crèche facilities (in establishments having 50 or more employees).
- **Code on Social Security, 2020:** It consolidates labour laws, and retains similar restrictive provision for adoptive mothers (which is now read down by SC).

Pending Constitutional Challenge

- A PIL challenges Section 5(4) of the Maternity Benefit Act, 1961 as discriminatory and arbitrary, and violative of Part III (Fundamental Rights) of the Indian Constitution.
- **Key issues:**
 - Denial of benefits to adoptive mothers of older children.
 - Discrimination against orphaned and abandoned children.
 - Conflict with the Juvenile Justice Act, 2015, and the adoption procedures that delay early adoption.

Key Issues and Challenges

- **Discrimination in existing framework:** Unequal treatment between biological and adoptive mothers, adoptive mothers based on child’s age.

- **Structural barriers in adoption:** Lengthy procedures make adoption of infants (<3 months) rare, legal requirements (e.g., declaration of child as “legally free”) cause delays.
- **Lack of paternity leave:** India lacks a comprehensive statutory paternity leave policy, leading to gender imbalance in caregiving, and reinforcement of traditional roles.
- **Limited impact on women’s workforce participation:** Evidence suggests that decline in women’s participation in several sectors post-2017 amendment, as a result of employer bias due to increased costs and lack of childcare support.
- **Implementation gaps:** Weak enforcement in the **unorganised sector**. Limited access to crèche facilities, work-from-home flexibility.

Way Forward

- **Gender-neutral parental leave policy:** Introduce statutory paternity leave, and move towards shared parental leave framework.
- **Harmonisation of laws:** Align the Maternity Benefit Act, Code on Social Security, and the Juvenile Justice Act. Remove inconsistencies affecting adoptive parents.
- **Strengthening adoption ecosystem:** Simplify procedures, reduce delays in declaring children legally free for adoption.
- **Incentivising employers:** Government support/subsidies to offset maternity costs, promote women-friendly workplace policies.
- **Focus on unorganised sector:** Expand social security schemes, ensure portability and accessibility of benefits.

Conclusion

- The SC’s intervention marks a progressive shift from a biology-centric to a **care-centric** understanding of parenthood.
- By recognising adoptive motherhood as equal to biological motherhood and advocating for paternity leave, the judgment advances **substantive** equality and gender **justice**.
- However, meaningful transformation will depend on legislative action, policy coherence, and effective implementation, ensuring that parental rights translate into real social security for all families.

Source: **IE** | **IE**

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