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EDITORIAL ANALYSIS

Equal Mothers – The Supreme Court's Maternity Leave Ruling and the Rights of Adoptive Parents

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 The Indian Express

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GS2



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MAINS RELEVANCE:

GS Paper 2



INTERVIEW ANGLE

"The Supreme Court ruled that adoptive mothers are entitled to the same maternity leave as biological mothers. What does this reveal about how law can either reinforce or challenge social assumptions about motherhood, gender, and parenthood?"

WHY IN NEWS

The Supreme Court of India ruled that adoptive mothers are constitutionally entitled to the same maternity leave as biological mothers under the Maternity Benefit Act, 1961, invoking Articles 14 and 21 of the Constitution. The ruling challenges service rules that explicitly excluded adoptive mothers from full maternity benefits.

THE RULING — WHAT THE COURT SAID

The Supreme Court bench held that **denying adoptive mothers maternity leave equivalent to that given to biological mothers violates Articles 14 and 21** of the Constitution:

Article 14: Right to Equality — treating biological and adoptive mothers differently, when both are engaged in the same act of nurturing a new child, constitutes **unreasonable classification** without intelligible differentia linked to the object of the law

Article 21: Right to Life — includes the right to **motherhood, dignified parenthood**, and the child's right to bonding — none of which differ based on how the parent-child relationship was formed

The court's reasoning: **Maternity leave is not compensation for physical childbirth — it is time for parent-child bonding and child welfare.** An adopted child needs the same early care and attention as a biological child. Denying leave to adoptive mothers effectively says: the adopted child's developmental needs matter less.

LEGAL FRAMEWORK — MATERNITY BENEFIT ACT, 1961

The **Maternity Benefit Act, 1961** is the central legislation governing maternity rights in India:

Current provisions after the 2017 amendment (Maternity Benefit (Amendment) Act, 2017):

Category	Leave entitlement
Biological mother (first 2 children)	26 weeks paid maternity leave
Biological mother (3rd child onwards)	12 weeks paid maternity leave
Adoptive mother (child under 3 months)	12 weeks (added by 2017 Amendment)
Commissioning mother (surrogacy)	12 weeks (added by 2017 Amendment)
Miscarriage / medical termination	6 weeks

The gap the SC ruling addresses: Adoptive mothers of children over 3 months were excluded from the 12-week provision entirely under many state and central government service rules. The court's ruling effectively mandates that this gap be filled — and that the 12-week entitlement for adoptive mothers must be equalised with biological mothers.

WHY THIS MATTERS — THE STRUCTURAL ARGUMENT

1. BIOLOGY VS. PARENTING AS THE LEGAL BASIS OF LEAVE

The traditional legal architecture treats maternity leave primarily as:

Pre-natal health protection (6 weeks before delivery)

Post-natal recovery (12–18 weeks after birth)

This framework is biologically grounded — it was designed for the physical experience of pregnancy and childbirth. The SC's ruling **reframes the purpose of leave** from physical recovery to **parent-child bonding** — a shift with profound implications for all parental leave policy.

If the purpose is bonding, then:

Adoptive mothers need equal leave ✓

Fathers need substantial leave too (paternity leave reform)

Commissioning mothers (surrogacy) need equal leave ✓ (already addressed in 2017)

Same-sex couples adopting need equal leave (next frontier)

2. THE ADOPTION POLICY DIMENSION

India has a **declining legal adoption rate** — a counterintuitive fact given the number of children in institutional care:

Central Adoption Resource Authority (CARA): Registered children awaiting adoption in 2024: ~4,000

Prospective adoptive parents (PAPs) waiting: ~30,000+ (8:1 ratio of parents to children)

Average wait time: 3–5 years (for domestic adoption)

Intercountry adoption: Heavily restricted since 2015 after CARA tightened norms

Denying adoptive mothers equivalent workplace protections was a **structural disincentive** to legal adoption. Employers — particularly in the private sector — had no obligation to provide full leave, making adoption a career penalty. The SC ruling removes one layer of this structural barrier.

3. ARTICLE 15(3) AND PROTECTIVE DISCRIMINATION

Article 15(3) allows the State to make special provisions for women and children. The Maternity Benefit Act is one such provision. The SC ruling extends its **protective ambit** to adoptive mothers, reading Article 15(3) expansively.

The editorial notes the paradox: a law meant to protect women was, through under-inclusion, **punishing** a specific category of women (adoptive mothers) by excluding them from the very protection it created.

THE EDITORIAL'S CORE ARGUMENT

The Indian Express editorial argues that this ruling represents a small but significant **judicial recalibration of what family means in law**:

From biology to intention: The court recognises that legal parenthood is constituted by intention, care, and legal adoption — not just genetics. This has downstream implications for inheritance, custody, and social security.

The gender dimension: It is predominantly women who bear the career costs of parenthood in India (maternal wall discrimination, promotion delays, informal penalties). Expanding maternity protection — however incrementally — is a gender justice measure.

Legislative gap vs. judicial gap-filling: The 2017 Amendment was progressive but incomplete — it created a 12-week tier for adoptive mothers but did not equalise it with biological mothers. The SC is doing what Parliament should have done. The editorial calls for Parliament to revisit the Maternity Benefit Act comprehensively rather than leave incremental rights to litigation.

Private sector exclusion: The Maternity Benefit Act applies to establishments with 10 or more employees. **Gig workers, platform workers, and unorganised sector women** — the vast majority of India's female workforce — are entirely outside this protection ecosystem. The ruling, while

important, benefits a relatively privileged section (salaried women with permanent employment).

COMPARATIVE PERSPECTIVE

Country	Adoptive mother leave	Biological mother leave	Gap
USA	FMLA: 12 weeks unpaid (same for biological)	12 weeks unpaid	None
UK	52 weeks adoption leave (same as maternity)	52 weeks	None
Germany	Adoption leave: 3 years (same as birth)	Elterngeld: 14 months paid	None
India (post-ruling)	12 weeks (SC-mandated floor)	26 weeks	Still exists

The editorial highlights: India still has a **differential** even after the ruling — 26 weeks for biological mothers vs. 12 weeks for adoptive mothers. Full equalisation remains a legislative task.

UPSC RELEVANCE

Maternity Benefit Act, 1961 (and 2017 Amendment), CARA (Central Adoption Resource Authority), maternity leave entitlements (26 weeks biological, 12 weeks adoptive), Articles 14, 15(3), 21, Article 21's expanded scope (right to dignity/motherhood).

Mains GS2: *Constitutional law — Articles 14 and 21, right to equality, judicial activism vs. legislative role, gender justice, child rights (UNCRC, Article 15(3)), adoption policy in India, maternal rights in the unorganised sector, maternity leave reform.*

★ FACTS CORNER — KNOWLEDGEPEDIA

MATERNITY BENEFIT ACT, 1961 (AS AMENDED 2017):

- Biological mother (first 2 children): 26 weeks paid leave
- Biological mother (3rd child+): 12 weeks
- Adoptive mother (child under 3 months): 12 weeks (added by 2017 amendment)
- Commissioning mother (surrogacy): 12 weeks (2017 amendment)
- Miscarriage / MTP: 6 weeks
- Applies to: Establishments with 10+ employees

SC RULING — CONSTITUTIONAL BASIS:

- Article 14: Right to Equality (no unreasonable classification between biological and adoptive mothers)
- Article 15(3): State can make special provisions for women and children
- Article 21: Right to Life — includes right to dignified parenthood and parent-child bonding
- Core reasoning: Purpose of maternity leave = bonding + child welfare, not just physical recovery

CARA — INDIA'S ADOPTION BODY:

- Full form: Central Adoption Resource Authority
- Ministry: Ministry of Women and Child Development (WCD)
- Established: 1990; statutory body under Juvenile Justice Act, 2015
- Domestic adoption wait time: 3–5 years
- Children available for adoption (2024): ~4,000
- Prospective Adoptive Parents waiting: ~30,000+

KEY RELATED LAWS:

- Hindu Adoption and Maintenance Act, 1956: Governs adoption for Hindus (personal law)
- Juvenile Justice (Care and Protection of Children) Act, 2015: Governs legal adoption for all religions
- POCSO Act, 2012: Child protection (relevant to adoption vetting)
- UN Convention on the Rights of the Child (UNCRC): India ratified 1992; child's best interest is paramount

OTHER RELEVANT FACTS:

- Intercountry adoption: CARA tightened norms significantly post-2015; significantly reduced numbers
- Surrogacy (Regulation) Act, 2021: Bans commercial surrogacy; allows altruistic surrogacy; commissioning mother gets 12 weeks leave
- Gig/platform workers: Not covered by Maternity Benefit Act — Rajasthan Platform Workers Act 2023 is a state-level attempt at coverage
- Global comparison: UK gives 52 weeks adoption leave (same as maternity); India 12 weeks (still below 26-week biological standard even after ruling)
- Paternity leave in India: 15 days (central government employees); no statutory private sector paternity leave (gap in law)

Sources: Indian Express, Supreme Court of India, CARA

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