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EDITORIAL ANALYSIS

The Case for Paternity Leave – SC Nudges India Toward Shared Parenting



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 The Hindu

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INTERVIEW ANGLE

"Should India mandate paternity leave by law? How does the absence of such a law reflect on gender equality in Indian workplaces?"

The Case for Paternity Leave — SC Nudges India Toward Shared Parenting

*The Supreme Court, in its March 17, 2026 judgment in *Hamsaanandini Nanduri v. Union of India* (2026 INSC 246), struck down Section 60(4) of the Code on Social Security, 2020, and urged the Union government to frame a comprehensive law recognising paternity leave as a social security benefit, observing that “proximity is not identical to presence” and that fathers compelled by professional obligations cannot truly participate in the formative experiences of a child’s infancy.*

The Supreme Court Observation

The bench of Justices J.B. Pardiwala and R. Mahadevan delivered a landmark ruling that went beyond the immediate question of adoptive mothers’ maternity leave. While holding that Section 60(4) — which restricted maternity benefit for adoptive mothers to cases where the adopted child was below three months of age — violated Articles 14 and 21 of the Constitution, the Court made a broader institutional call: India needs a statutory framework for paternity leave.

The Court observed that a father who remains physically near his child yet is bound by professional obligations remains fundamentally disengaged from early caregiving. This distinction between physical proximity and meaningful presence is critical — it challenges the deeply embedded assumption that childcare is primarily a maternal responsibility. The judgment referenced Sections 43-A and 43-AA of the Central Civil Services (Leave) Rules, 1972, which grant male government servants 15 days of paternity leave, and noted that this limited provision does not extend to the private sector at all.

The Court emphasised that paternity leave serves multiple purposes: enabling fathers to participate meaningfully in the early stages of a child’s life and development, helping dismantle gendered caregiving roles, and promoting substantive gender equality within both family and workplace structures.

Current Legal Position in India

India’s legal framework on parental leave remains profoundly **asymmetric**. The Maternity Benefit Act, 1961 (as amended in 2017) provides 26 weeks of paid maternity leave for women employees in establishments with 10 or more workers — one of the most generous maternity leave provisions globally. The Code on Social Security, 2020, consolidates these provisions under Chapter VI (Sections 56-64), though the rules for most states remain unnotified.

However, paternity leave has no statutory foundation in Indian labour law. The position varies sharply by sector:

| SECTOR | PROVISION | LEGAL BASIS |
|-------------------------------|--|-------------------------------------|
| Central Government employees | 15 days paid paternity leave | CCS (Leave) Rules, 1972 — Rule 43-A |
| Central Government (adoption) | 15 days within 6 months of adoption (child below 1 year) | CCS (Leave) Rules — Rule 43-AA |
| State Government employees | Varies — most states follow 15-day model | State service rules |
| Private sector | No statutory entitlement whatsoever | Employer discretion only |
| Unorganised sector | No provision | Not covered |

The Paternity Benefit Bill, 2017 — a private member bill introduced in the Lok Sabha by Congress MP Rajeev Satav — proposed 15 days of paternity leave extendable up to three months for all workers, including those in the private and unorganised sectors. The bill estimated it would benefit over 32 crore men. It was never passed. With Satav’s untimely death in 2021, the bill lost its primary legislative champion and has not been reintroduced.

The Code on Social Security, 2020, despite consolidating nine labour laws including the Maternity Benefit Act, contains no provision for paternity leave — a **conspicuous** legislative silence that the Supreme Court has now flagged.

Global Best Practices

The OECD reports that as of 2024, 35 out of 38 OECD countries provide some form of paid leave specifically for fathers. The average duration of paid father-specific leave across OECD nations is approximately 13 weeks. The Nordic countries pioneered the “use-it-or-lose-it” father’s quota — leave reserved exclusively for fathers that cannot be transferred to the mother.

| COUNTRY | PATERNITY LEAVE | PARENTAL LEAVE (FATHER-SPECIFIC) | KEY FEATURE |
|-----------------------|--|---|---|
| Iceland | — | 6 months per parent (total 12 months) | Equal non-transferable quota since 2021 |
| Norway | — | 15 weeks father's quota (out of 49 weeks total at 100% pay) | First country to introduce father's quota (1993) |
| Sweden | 10 days at birth | 90 days reserved for each parent (out of 480 days total) | Gender-neutral parental insurance since 1974 |
| Spain | 16 weeks fully paid (increased to 17 weeks from July 2025) | — | Equal to maternity leave; longest paternity leave in OECD |
| South Korea | 20 days paid (increased from 10 days, effective Feb 2025) | Up to 18 months childcare leave per parent | 37% of parental leave users are now fathers (2025) |
| Japan | 4 weeks within 8 weeks of birth | Up to 52 weeks childcare leave | Target: 85% uptake by male workers |
| United Kingdom | 2 weeks | Shared parental leave (up to 50 weeks, transferable) | Low uptake due to low pay replacement rate |
| United States | None (unpaid FMLA: 12 weeks) | None | Only OECD country with no federal paid parental leave |
| India | 15 days (central govt only) | None | No statutory provision for private sector |

Globally, 121 out of 186 countries with data in the ILO Care Policy Portal offered a right to paternity leave as of 2024, with 37 countries introducing paternity leave entitlements in the preceding decade alone. India remains in the minority of countries with no universal statutory paternity leave.

Arguments For Mandatory Paternity Leave

Gender equality and dismantling stereotypes: The absence of paternity leave legally entrenches the assumption that childcare is exclusively a maternal responsibility. When only mothers are entitled to leave, employers view women of childbearing age as liabilities — this contributes directly to the “motherhood penalty” in hiring, promotions, and pay. Mandatory paternity leave signals that caregiving is a shared obligation, not a gendered one.

Female labour force participation: India’s Female Labour Force Participation Rate (FLFPR) stood at 41.7% in usual status (age 15+) during July 2023 - June 2024 (PLFS Annual Report), significantly below the global average of approximately 47%. Research across OECD countries consistently demonstrates that countries with generous paternity leave policies record higher female LFPR. When fathers share caregiving, mothers can return to work sooner and sustain career continuity.

Child welfare and development: Developmental psychology research consistently shows that active paternal involvement in early childhood — not merely physical proximity — improves cognitive, emotional, and social outcomes for children. The Supreme Court’s observation that “proximity is not identical to presence” captures this distinction precisely. Paternity leave creates the structural conditions for fathers to bond with their children during the critical early weeks.

Constitutional mandate: Article 21 (right to life and dignity) protects not only the mother but also the father’s right to participate in the upbringing of a child. Article 15(3) empowers the State to make special provisions for women and children — paternity leave directly serves child welfare. Article 39(f) of the Directive Principles requires the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of dignity.

Economic productivity: Studies from Sweden and Norway indicate that fathers who take paternity leave show higher long-term engagement in household and caregiving tasks, reducing the total caregiving burden on women and enabling dual-income households — a positive externality for GDP growth and household economic security.

Arguments Against and Challenges

Cost burden on employers: Mandatory paid paternity leave imposes a direct cost on employers, particularly in the Micro, Small and Medium Enterprises (MSME) sector, which employs over 11 crore people. Small firms with thin margins may resist additional leave mandates. The Maternity Benefit Act, 2017, already faced criticism from employer bodies for potentially discouraging the hiring of women — adding paternity leave costs could compound employer resistance.

Low uptake even where available: Japan offers up to one year of childcare leave for fathers, yet the uptake rate reached only 40% in 2024 — after years of aggressive government campaigns. Cultural norms around masculinity and the “ideal worker” who does not take leave remain powerful deterrents. Legislating a right does not automatically change behaviour.

Implementation challenges in the unorganised sector: Over 90% of India’s workforce is in the informal/unorganised sector, where even basic labour protections (minimum wages, social security) are poorly enforced. Extending paternity leave to informal workers requires a funding mechanism — employer-mandated leave is meaningless for self-employed workers, daily wage labourers, and gig workers.

Fiscal implications: If paternity leave benefits are to be funded through social insurance (as ILO Convention 183 recommends for maternity benefits — to avoid placing the burden solely on employers), the Employees State Insurance Corporation (ESIC) or a new fund would need to absorb the cost. The financial viability of such a scheme requires actuarial assessment.

Risk of tokenism: A 15-day leave — the current central government standard — is arguably too short to meaningfully change caregiving patterns. But extending it substantially (to 8-16 weeks as in Nordic countries) faces political resistance and cost concerns. There is a real risk that India adopts a minimal provision that looks progressive on paper but changes nothing in practice.

Way Forward

Statutory recognition as a first step: The Code on Social Security, 2020, must be amended to include a dedicated chapter on paternity benefit — not as a discretionary employer policy but as a statutory right. The rules, when notified, should mandate a minimum of 15 days extendable to 8 weeks, with a phased implementation schedule for different enterprise sizes.

Social insurance funding model: Following the ILO recommendation and the model used for maternity benefits under ESIC, paternity leave costs should be socialised through the Employees State Insurance scheme rather than borne solely by individual employers. This removes the *perverse* incentive for employers to discriminate against young male employees.

Non-transferable father’s quota: Learning from the Nordic experience, India should consider a “use-it-or-lose-it” design — a portion of total parental leave that only the father can take. Norway introduced this in 1993 and saw father’s participation jump from 4% to over 70% within a decade. Transferable leave tends to default to mothers; non-transferable quotas are the most effective policy lever.

Phased rollout: Begin with the formal sector (establishments with 10+ employees) and extend progressively to smaller enterprises. For the unorganised sector, link paternity benefits to the e-Shram portal registration and fund through a combination of government contribution and employer cess.

Incentive structures: Tax incentives for MSMEs that comply with paternity leave norms, combined with naming-and-shaming mechanisms for large corporations that do not, could accelerate private sector adoption. The Companies Act, 2013, Section 135 (CSR reporting) could include parental leave policies as a disclosure metric.

Cultural shift through institutional signalling: The judiciary, armed forces, police services, and central government must lead by example. The Supreme Court’s recommendation that all courts grant paternity leave (made in 2024) should be formalised through a direction to all High Courts and tribunals.

UPSC Angle

This issue sits at the intersection of constitutional law, labour policy, gender justice, and child welfare — making it relevant across multiple GS papers and highly likely as an interview or essay topic.

- **GS1 (Society):** Gender roles in Indian society; impact of parental leave on family structures; women’s empowerment and the care economy
- **GS2 (Polity and Governance):** Fundamental rights (Articles 14, 15, 21); Supreme Court’s role in nudging legislative reform; Code on Social Security, 2020; Centre-State implementation of labour codes; comparison with global labour standards
- **Essay:** “The measure of a society is found in how it treats its weakest members” — connect paternity leave to child welfare and gender justice
- **Interview:** Be prepared to articulate a nuanced position — acknowledge both the rights-based argument and the practical implementation challenges

UPSC RELEVANCE

Code on Social Security 2020 (Section 60), Maternity Benefit Act 1961 (amended 2017 — 26 weeks), CCS Leave Rules (15-day paternity leave — Rule 43-A), four Labour Codes (Wages 2019, IR 2020, SS 2020, OSH 2020), ILO Convention 183, Article 14, Article 21, Article 39(f).

MAINS GS1:

Gender roles and caregiving; impact of paternity leave on female LFPR; Nordic model of shared parenting; cultural barriers to male caregiving in India.

MAINS GS2:

SC judgment in *Hamsaanandini Nanduri v. UoI* (2026); **judicial activism** vs. legislative reform; social security as a fundamental right; four Labour Codes — status of implementation; Centre-State coordination on labour reform.

★ FACTS CORNER — KNOWLEDGEPEDIA

SUPREME COURT JUDGMENT — HAMSAANANDINI NANDURI V. UNION OF INDIA (2026 INSC 246):

Date: March 17, 2026

Bench: Justices J.B. Pardiwala and R. Mahadevan

Struck down: Section 60(4), Code on Social Security, 2020

Constitutional violation: Articles 14 and 21

Held: Adoptive mothers entitled to 12 weeks maternity leave regardless of child's age

Key observation: "Proximity is not identical to presence" — urged Centre to frame paternity leave law

MATERNITY LEAVE IN INDIA:

Maternity Benefit Act, 1961 (amended 2017): 26 weeks paid leave for first two children; 12 weeks for third child onwards

Applies to establishments with 10+ employees

Code on Social Security, 2020: consolidates maternity provisions under Chapter VI (Sections 56-64)

CCS Leave Rules: 180 days maternity leave + 730 days Child Care Leave (central government)

Creche facility mandatory for establishments with 50+ employees (from 2017 amendment)

PATERNITY LEAVE IN INDIA:

Central government: 15 days paid leave (CCS Leave Rules, Rule 43-A)

Private sector: no statutory provision — employer discretion only

Unorganised sector: no provision at all

Paternity Benefit Bill, 2017: introduced by MP Rajeev Satav; proposed 15 days extendable to 3 months; never passed

Code on Social Security, 2020: contains no paternity leave provision

GLOBAL PATERNITY LEAVE DATA (OECD, 2024):

35 out of 38 OECD countries provide paid father-specific leave

Average duration: ~13 weeks of paid father-specific leave across OECD

Average paid paternity leave specifically: 2.4 weeks

Spain: 16 weeks (longest paternity leave in OECD; increased to 17 weeks from July 2025)

South Korea: 20 days (increased from 10 days, effective February 2025)

Norway: 15 weeks father's quota (first country to introduce father's quota, 1993)

Iceland: 6 months per parent (equal non-transferable quota)

Japan: 4 weeks paternity + up to 52 weeks childcare leave; 40% father uptake in 2024

121 out of 186 countries globally offer some form of paternity leave (ILO, 2024)

INDIA'S FEMALE LABOUR FORCE PARTICIPATION RATE (PLFS):

FLFPR (usual status, age 15+): 41.7% (July 2023 - June 2024)

Rural FLFPR nearly doubled: from 23.5% (2017-18) to 42.8% (2023-24)

Global average female LFPR: approximately 47%

FOUR LABOUR CODES:

Code on Wages, 2019 (replaces 4 Acts)

Industrial Relations Code, 2020 (replaces 3 Acts)

Code on Social Security, 2020 (replaces 9 Acts including Maternity Benefit Act, EPF Act, ESI Act)

Occupational Safety, Health and Working Conditions Code, 2020 (replaces 13 Acts)

Status: all passed by Parliament; rules not yet notified by most states

OTHER RELEVANT FACTS:

ILO Convention 183 (Maternity Protection, 2000): minimum 14 weeks maternity leave; Recommendation 191 suggests 18 weeks

ILO recommends social insurance funding for maternity/parental benefits (not sole employer liability)

Article 39(f) of Indian Constitution: State to ensure children develop in conditions of dignity

ESIC coverage: approximately 3.7 crore insured persons (2024)

MSME sector employs over 11 crore people in India

e-Shram portal: 30+ crore unorganised workers registered

Sources: [The Hindu](#), [LiveLaw](#), [OECD](#), [PIB](#), [ILO](#)



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