

Paternity Leave as a Constitutional Entitlement: Reconceptualising Fatherhood, care work and Gender Justice in India

Dr. Khushboo Natholia¹, Dr. Komal Dahiya²

^{1,2} Bennett University

ABSTRACT

The legal architecture of parental leave in India has historically been constructed around the biological and caregiving role of women, while the role of fathers in early childcare has remained comparatively invisible. Although maternity benefits are statutorily recognised and paternity leave is available to certain categories of government employees, India has no comprehensive statutory framework guaranteeing paid paternity leave to fathers across the workforce. This asymmetry has implications extending beyond employment policy. It raises important constitutional questions concerning equality, dignity, privacy, family life, reproductive autonomy, child welfare and the right to participate meaningfully in family life. The issue has acquired renewed constitutional significance following the Supreme Court's decision in *Hamsaanandini Nanduri v. Union of India* (2026), wherein the Court, while examining maternity benefits for adoptive mothers, highlighted the importance of paternity leave and urged the Union Government to introduce a provision recognising it as a social-security benefit. This paper examines paternity leave through the constitutional framework of Articles 14, 15, 19(1)(g), 21, 39, 42 and 47 of the Constitution of India, alongside the principles of substantive equality, gender justice, reproductive autonomy, dignity, best interests of the child and workers' family responsibilities. It argues that paternity leave should not be conceptualised merely as a workplace concession granted to men. Rather, it should be understood as a family-rights and social-security measure capable of advancing gender equality by redistributing unpaid care work and challenging the traditional breadwinner-caregiver division. The paper undertakes a doctrinal and comparative analysis of Indian law, international labour standards and selected comparative practices. It proposes a gender-responsive but gender-neutral parental-leave framework consisting of a mandatory period of paid paternity leave, non-transferable father-specific leave, parental leave that may be shared between parents, employment protection, coverage of adoptive and commissioning fathers, and public financing mechanisms for smaller employers. The paper concludes that statutory recognition of paternity leave is increasingly necessary to give substantive meaning to constitutional equality and the best interests of the child.

Keywords: Paternity leave, fatherhood, Article 14, Article 21, gender equality, parental leave, care work, social security, child welfare, constitutional rights.

INTRODUCTION

The birth or adoption of a child is simultaneously a biological, social, emotional and legal event. Yet the law has traditionally responded to this event by assigning differentiated responsibilities to mothers and fathers. Women have been understood primarily as caregivers, while men have been positioned as economic providers. This binary has influenced employment legislation, social-security policies and workplace practices across jurisdictions. In India, maternity protection has consequently developed considerably further than paternity protection.

The statutory recognition of maternity benefits is undoubtedly necessary. Pregnancy, childbirth and post-natal recovery involve physiological consequences that cannot be equated with fatherhood. However, the biological distinction between motherhood and fatherhood cannot justify the complete legal invisibility of fathers as caregivers. The fact that a father does not undergo pregnancy or childbirth does not mean that he has no responsibility towards the newborn child or the mother during the post-natal period. Nor does it mean that caregiving is exclusively a maternal function.

The contemporary understanding of equality requires a shift from formal differentiation based upon biological sex towards substantive equality that recognises social realities. Paternity leave is therefore not simply the male equivalent of maternity leave. It performs a different, though complementary, function. While maternity leave primarily protects

the health, dignity and employment of the woman who gives birth, paternity leave enables the father to assume caregiving responsibilities and supports the equal distribution of family responsibilities.

The constitutional significance of this issue has recently become particularly pronounced. In *Hamsa Nandini Nanduri v. Union of India* (2026), the Supreme Court considered the constitutional validity of the restriction governing maternity benefits for adoptive mothers under the Social Security Code, 2020. During its judgment, the Court discussed the institutional invisibility of household and care work and expressly highlighted the importance and need for paternity leave. It noted that paternity leave can dismantle gendered roles, encourage fathers to participate actively in childcare, promote gender equality in the workplace and family, and advance the best interests and welfare of the child. The Court ultimately urged the Union Government to formulate a provision recognising paternity leave as a social-security benefit, with its duration to be determined in a manner responsive to the needs of parents and children (*Hamsa Nandini Nanduri v. Union of India*, 2026).

The judgment is significant because it moves the discussion of paternity leave from the realm of human-resource policy into the constitutional discourse of equality, dignity, family and social security.

This paper therefore examines whether paternity leave in India should be regarded merely as a policy choice or whether the Constitution provides a normative foundation for recognising it as an enforceable statutory entitlement.

Research Questions

The paper addresses the following research questions:

1. What is the existing legal framework governing paternity leave in India?
2. Can paternity leave be constitutionally linked with Articles 14, 15, 19 and 21 of the Constitution?
3. How does paternity leave contribute to substantive gender equality and redistribution of unpaid care work?
4. What is the relationship between paternity leave, the best interests of the child and family rights?
5. What lessons can India draw from international labour standards and comparative parental-leave systems?
6. What legislative framework should India adopt to recognise paternity leave as a social-security entitlement?

Objectives of the Study

The principal objectives of this research are:

- to examine the existing legal status of paternity leave in India;
- to analyse paternity leave through the lens of fundamental rights;
- to establish the connection between paternal caregiving and substantive gender equality;
- to examine the relevance of Articles 39, 42 and other Directive Principles;
- to examine paternity leave as a component of family life, dignity and child welfare;
- to analyse international and comparative approaches to fathers' leave; and
- to propose a rights-based statutory framework for paternity and parental leave in India.

RESEARCH METHODOLOGY

The paper adopts a doctrinal legal research methodology. Primary sources include the Constitution of India, relevant labour and social-security legislation, judicial decisions and international instruments. Secondary sources include reports of the International Labour Organization (ILO), OECD, UN Women and relevant academic literature.

A comparative approach is also adopted to examine selected international approaches to father-specific and parental leave. The objective is not to transplant foreign models mechanically but to identify principles that may assist in developing an Indian framework compatible with constitutional values and India's socioeconomic realities.

Existing Legal Position on Paternity Leave in India

India presently lacks a universal statutory right to paid paternity leave applicable to all employees. The principal formal provision is found in the Central Civil Services (Leave) Rules, 1972.

Rule 43-A permits a male Central Government servant having fewer than two surviving children to avail himself of 15 days of paternity leave during the confinement of his wife for childbirth, either up to 15 days before delivery or within six months after delivery. The leave is paid, is not debited against the leave account and may be combined with other forms of leave. Rule 43-AA separately provides paternity leave in cases of valid adoption of a child below one year of age (Central Civil Services [Leave] Rules, 1972).

The Supreme Court in *Hamsaanandini Nanduri* expressly referred to these provisions while examining the broader legal vacuum. The Court recognised that the existing framework provides 15 days of paternity leave to eligible Central Government employees but simultaneously indicated that a broader statutory framework is required.

The problem is therefore not that India has absolutely no recognition of paternity leave. The problem is its fragmented and occupationally restricted character.

The Maternity Benefit Act, 1961, as amended in 2017, provides extensive maternity protection to eligible women. Section 5 provides maternity benefits and, following the 2017 amendment, permits up to 26 weeks of maternity benefit in specified circumstances. The Social Security Code, 2020 similarly incorporates maternity benefit provisions. However, these statutory schemes do not create a corresponding universal entitlement for fathers.

Consequently, two employees in substantially similar family circumstances may experience dramatically different legal protection merely because one is employed by the Central Government and the other by a private establishment, State Government institution or informal-sector employer.

This creates a significant policy gap.

The absence of a universal entitlement also means that the availability of paternity leave frequently depends upon the goodwill and human-resource policies of individual employers. Some organised-sector employers voluntarily provide paternity leave, while millions of workers remain outside such arrangements.

The ILO's comparative research demonstrates that paternity and parental leave are increasingly recognised internationally as components of family-friendly employment policies. Its research covering 185 countries emphasises that effective legislation must extend beyond maternity protection to workers with family responsibilities.

Paternity Leave and Article 14: Equality Beyond Formal Symmetry

Article 14 guarantees equality before the law and equal protection of the laws. At first glance, the argument for paternity leave under Article 14 may appear problematic because maternity and paternity are biologically different. The constitutional requirement of equality does not require identical treatment of persons who are differently situated.

However, this does not mean that fathers can be excluded from caregiving rights.

The constitutional principle of equality has evolved from formal equality towards substantive equality. The Supreme Court has repeatedly emphasised that constitutional equality is concerned not merely with treating everyone identically but with identifying and eliminating structures that produce disadvantage and stereotypes.

Paternity leave fits within this transformative conception of equality in two ways.

First, denying fathers any statutory caregiving entitlement reinforces the stereotype that women are naturally responsible for childcare while men are responsible for earning. Such a division disadvantages women by making them disproportionately responsible for unpaid care and disadvantages men by restricting their socially recognised role as caregivers.

Secondly, the absence of paternity leave can indirectly discriminate against women in employment. If only women are expected to take extended leave following childbirth, employers may perceive female employees as having greater anticipated employment interruptions. A father-specific leave entitlement can distribute the employment consequences of parenthood more evenly between men and women.

Thus, paternity leave can be understood as an equality-enhancing measure rather than preferential treatment for men.

The OECD's 2025 analysis similarly identifies evidence that paid leave for fathers can increase fathers' participation in unpaid household and childcare work, improve mothers' labour-market outcomes and strengthen family well-being. The constitutional objective should therefore not be to make maternity and paternity leave mathematically identical. Instead, it should be to ensure that both parents have meaningful and legally protected opportunities to participate in family life.

Article 15 and the Problem of Gender Stereotyping

Article 15(1) prohibits discrimination on grounds including sex. Article 15(3), however, permits special provisions for women and children. This provision forms an important constitutional foundation for maternity protection. Yet Article 15(3) should not be interpreted as constitutionally authorising a rigid gender division of caregiving responsibilities.

Maternity benefits may legitimately be designed around the biological realities of pregnancy and childbirth. Paternity leave, on the other hand, addresses the social and caregiving responsibilities associated with parenthood. Such an approach is consistent with international understandings of care work. UN Women has emphasised the need to recognise, reduce and redistribute unpaid care work between women and men rather than reinforcing care as an exclusively female responsibility.

Paternity leave can therefore operate as an anti-stereotyping mechanism. It legally communicates that fatherhood is not limited to economic provision and that caregiving is a legitimate responsibility of men.

Article 19(1)(g): Right to Work and Parenthood

Article 19(1)(g) guarantees the freedom to practise any profession or carry on any occupation, trade or business. Although this right is subject to reasonable restrictions, employment policy must be interpreted in a manner consistent with dignity and equality.

Parenthood should not become an implicit penalty imposed disproportionately upon women.

Where workplace systems provide substantial maternity protection to women but no meaningful caregiving protection to men, employers may rationally perceive women as more likely to experience extended employment interruptions. This can contribute to discriminatory hiring, promotion and retention practices. Paternity leave can partially neutralise this structural disadvantage by making the employment consequences of parenthood more evenly distributed.

The argument is not that employers should be prohibited from making legitimate business decisions. Rather, the law should prevent the social cost of reproduction and caregiving from being assigned predominantly to female employees. Family-friendly labour policies are increasingly recognised as important to women's economic participation. UN Women describes paid maternity, paternity and parental leave as essential components of gender equality and women's economic empowerment.

Thus, paternity leave indirectly strengthens women's Article 19(1)(g) interests by reducing the gendered employment penalty associated with parenthood.

Article 21: Dignity, Family Life and Reproductive Autonomy

Article 21 has become the principal constitutional source for the protection of dignity, autonomy, privacy, family life and decisional freedom.

The Supreme Court's jurisprudence has progressively expanded Article 21 to protect intimate personal choices, including reproductive autonomy and family-related decisions.

In *Suchita Srivastava v. Chandigarh Administration* (2009), the Court recognised reproductive autonomy as an important facet of personal liberty. In *K.S. Puttaswamy v. Union of India* (2017), privacy was recognised as intrinsic to dignity and autonomy.

These principles have important implications for fatherhood.

The right to decide to become a parent is incomplete if the legal system treats the resulting caregiving relationship as primarily the responsibility of one parent. Parenthood necessarily involves relational dimensions of autonomy and family life.

In *Hamsaanandini Nanduri*, the Supreme Court explicitly situated adoption within reproductive autonomy and recognised the best interests of the child as a central constitutional consideration. More significantly for the present discussion, the Court observed that paternity leave helps fathers participate actively in childcare and promotes balanced parenting.

Paternity leave may therefore be conceptualised as facilitating a father's meaningful participation in family life.

It also supports the dignity of the mother. A mother recovering from childbirth should not be legally or socially expected to carry the entire burden of newborn care merely because she is the parent who gave birth.

The dignity dimension is consequently relational: protecting the father's opportunity to care can simultaneously protect the mother's dignity and the child's welfare.

Paternity Leave and the Best Interests of the Child

The strongest argument for paternity leave may not be derived from the father's rights at all. It may arise from the rights and interests of the child.

The child is not merely an incidental beneficiary of maternity or paternity policy. The child is the central subject around whom parental leave should be structured.

The early months of a child's life involve feeding, medical care, emotional bonding, sleep disruption, routine formation and extensive caregiving. When both parents are legally enabled to participate in this period, caregiving responsibility can be distributed more effectively.

The Supreme Court in *Hamsaanandini Nanduri* expressly linked the importance of paternity leave with the best interests and welfare of the child. It observed that the interests of children are better served when both parents are enabled to play meaningful and complementary roles in the child's development.

This distinction also has consequences for adoptive parents, commissioning parents and non-traditional families. A child entering a family through adoption may have the same need for bonding, stability and parental care as a biological child.

Consequently, a future Indian parental-leave law should be child-centred rather than exclusively birth-centred.

Paternity Leave as Recognition of Unpaid Care Work

Care work has historically remained economically invisible despite being essential to the functioning of families and economies.

The Indian Time Use Survey recognises the importance of measuring paid and unpaid activities and specifically identifies unpaid caregiving and domestic work as important categories of time use. (Ministry of Statistics and Programme Implementation [MoSPI], 2020).

The legal invisibility of care creates a paradox. A parent may perform several hours of unpaid childcare each day, yet that work does not ordinarily appear as economically productive labour.

The gendered distribution of unpaid care magnifies this problem for women.

Paternity leave can function as an institutional mechanism for **redistributing care**. It does not monetise all unpaid care, but it recognises that caregiving constitutes a legitimate social responsibility requiring protected time.

The ILO's 2022 report on care at work emphasises that maternity, paternity, parental and other care-related leave policies are central to building more gender-equal systems of work and care.

This has particular significance in India, where traditional family structures coexist with rapidly increasing urbanisation, nuclear families and dual-income households.

A legal system that assumes the availability of grandparents or extended family members cannot adequately respond to contemporary family realities.

Paternity Leave as a Gender-Justice Measure

Paternity leave is sometimes portrayed as a “men's rights” issue. Such framing is incomplete.

Paternity leave is fundamentally a gender-justice issue. The objective is not to transfer benefits from women to men. It is to redistribute caregiving responsibilities between parents.

The traditional breadwinner-caregiver model imposes costs on both sexes. Women face the motherhood penalty, while men may experience the fatherhood provider expectation. Fathers may be discouraged from taking leave because workplace cultures equate masculinity with uninterrupted employment.

A properly designed paternity-leave system therefore has a dual function:

1. it enables men to become active caregivers; and
2. it reduces the concentration of caregiving costs upon women.

The ILO has recognised that supporting workers with family responsibilities can facilitate greater participation by fathers in childcare and a more equal sharing of household responsibilities.

Paternity leave therefore challenges the gender stereotype that caregiving is intrinsically feminine.

Directive Principles and the Constitutional Foundation of Social Security

Although Directive Principles are not directly enforceable in the same manner as Fundamental Rights, they are fundamental to governance and provide interpretative guidance for legislation.

Article 39 directs the State towards securing adequate means of livelihood and equal pay principles. Article 42 specifically requires the State to make provision for securing just and humane conditions of work and maternity relief. The express reference to maternity relief in Article 42 does not necessarily imply constitutional silence regarding fathers.

The constitutional vision of social justice is broader than the literal language of a particular provision. Article 38, Article 39, Article 42 and Article 47 collectively demonstrate the Constitution's commitment to social welfare and humane working conditions.

Paternity leave can therefore be regarded as a contemporary extension of the constitutional philosophy of family-sensitive labour regulation.

Moreover, Article 51A(e), which calls upon citizens to renounce practices derogatory to the dignity of women, provides an additional normative foundation. A social structure that assumes women alone should bear the caregiving burden after childbirth may perpetuate gender stereotypes inconsistent with the constitutional commitment to women's dignity. The constitutional framework thus supports an integrated model in which maternity protection and paternity protection work together.

International Labour Standards

International labour standards provide useful guidance for understanding parental responsibility.

ILO Convention No. 156 concerning Workers with Family Responsibilities recognises that both men and women have responsibilities towards dependent children and that such responsibilities should not constitute a ground for discrimination in employment.

The ILO has emphasised that parental benefits should increasingly reflect shared responsibility for children rather than treating childcare as exclusively maternal. Its work on maternity and paternity at work highlights the importance of family-friendly employment policies and the effective implementation of leave entitlements. Similarly, the broader international human-rights framework recognises family responsibilities and the need to eliminate stereotyped gender roles. The international approach therefore supports a move from maternity protection alone towards a broader care-and-parenthood framework.

Comparative Perspective

Comparative experience demonstrates that father-specific leave has become increasingly common.

According to the OECD's 2025 analysis, as of April 2024, 35 of 38 OECD countries provided paid leave for fathers either through paternity leave or parental leave specifically earmarked for fathers. The average paid paternity leave was approximately 2.4 weeks, although substantial variation exists. Spain, for example, provided 16 weeks of paid paternity leave.

The comparative lesson is not that India should simply replicate the longest foreign entitlement. Rather, three policy principles emerge.

First, father-specific leave matters.

Where leave is entirely shareable, families may rationally allocate leave to mothers because of existing wage disparities and gender norms. A non-transferable entitlement for fathers creates an incentive for actual paternal participation.

Second, payment matters.

An unpaid right may formally exist but remain inaccessible to workers who cannot afford to forego wages. Therefore, paternity leave must ordinarily be paid.

Third, employment protection matters.

A father may technically possess a right to leave but refrain from using it if taking leave risks dismissal, demotion or career stagnation.

Comparative experience therefore supports a comprehensive model consisting of leave, payment, employment protection and cultural acceptance.

Challenges in the Indian Context

A universal paternity-leave law must nevertheless account for India's socioeconomic diversity.

Informal employment

A significant proportion of Indian workers operate outside formal employment structures. A statutory entitlement enforceable only against registered employers would exclude precisely those workers who may have the weakest social protection.

Financial burden on employers

Small and medium enterprises may find extended paid leave difficult to finance. A system that places the entire financial burden on individual employers could generate unintended employment consequences.

Workplace culture

Legal entitlement alone cannot transform social attitudes. Fathers may be discouraged from taking leave because of perceptions that childcare is women's work.

Misuse

Any leave entitlement can potentially be misused. However, the possibility of misuse should be addressed through reasonable verification mechanisms rather than used as a basis for denying the entitlement itself.

Different family structures

The law should recognise biological fathers, adoptive fathers, commissioning fathers and, where legally recognised, other parental arrangements.

Paternity Leave and the Transformation of Family Law

Traditional family law has often been structured around formal marital relationships, biological parenthood and gendered parental roles. Contemporary family life is considerably more diverse.

Adoption, assisted reproduction, single parenthood, blended families and changing patterns of employment require a legal system that focuses increasingly on caregiving relationships rather than merely biological roles. Paternity leave is part of this transformation.

It recognises that fatherhood is not merely a biological status. It is also a caregiving relationship. This conceptual shift is particularly visible in the Supreme Court's reasoning in *Hamsa Nandini Nanduri*, where the Court connected adoption, reproductive autonomy, child welfare and parental caregiving. The future of Indian family law should consequently move towards a broader concept of shared parental responsibility.

CONCLUSION

Paternity leave occupies a unique position at the intersection of constitutional law, labour law, family law and gender justice. It is tempting to view it as an employment benefit available to men. Such a narrow understanding, however, fails to capture its constitutional significance.

Paternity leave concerns the father's opportunity to participate in family life, the mother's ability to recover from childbirth without bearing the entire burden of newborn care, and the child's interest in meaningful relationships with both parents.

The absence of a universal statutory entitlement creates an inequitable situation in which access to paternal caregiving leave depends heavily upon employment sector and employer policy. The existing 15-day entitlement under the Central Civil Services (Leave) Rules demonstrates that the Indian State already recognises the legitimacy of paternal leave. The problem is that this recognition remains fragmented.

The constitutional framework provides substantial support for legislative expansion. Article 14 supports substantive equality and challenges gender stereotypes. Article 15 permits protective legislation for women but does not require the law to perpetuate women as exclusive caregivers. Article 19(1)(g) is implicated because family responsibilities should not disproportionately impede women's participation in employment. Article 21 protects dignity, autonomy and family life. Articles 38, 39 and 42 provide a broader constitutional foundation for social welfare and humane working conditions.

Most importantly, paternity leave can transform the meaning of gender equality. Equality cannot be achieved merely by enabling women to enter the workforce while leaving the structure of unpaid care unchanged. If women continue to carry the overwhelming burden of childcare while men remain institutionally expected to remain continuously available for paid employment, formal equality will coexist with substantive inequality.

The solution is not to weaken maternity protection. It is to complement maternity protection with meaningful paternal and parental leave. The Supreme Court's decision in *Hamsaanandini Nanduri v. Union of India* represents an important constitutional moment because it expressly connected paternity leave with gender equality, active fatherhood, child welfare and social security. The Court's direction to the Union Government provides an opportunity to move from fragmented workplace practices towards a comprehensive statutory framework.

India should therefore adopt a rights-based parental-leave framework comprising paid father-specific leave, shared parental leave, employment protection, coverage for adoptive and commissioning parents and an appropriate public-financing mechanism. Ultimately, the question is not whether fathers deserve a "benefit" equivalent to maternity leave. The deeper question is whether the Indian legal system is prepared to recognise caregiving as a shared social responsibility.

A constitutional democracy committed to equality cannot ask women to achieve economic independence while simultaneously assigning them disproportionate responsibility for unpaid care. Nor should it confine fathers to the role of economic providers.

Paternity leave is therefore not merely leave from work. It is time legally protected for fatherhood. And when fatherhood is recognised as caregiving, maternity protection becomes stronger, women's workplace equality becomes more meaningful, and the best interests of the child become more effectively realised.

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