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CASE COMMENTARY: HAMSAANANDINI NANDURI V. UNION OF INDIA

~*Sneha Sethi*

CITATION

2026 SCC OnLine SC 402

BENCH

Justices J. B. Pardiwala and R. Mahadevan

INTRODUCTION

Parenthood, particularly motherhood, is a concept that is much more than the biological process of giving birth to a child. It also includes the continuing bond between a child and a parent. Maternity leave is essential not only for the welfare of the child but also for providing adequate support to mothers and ensuring that their career aspirations are not sacrificed. It is further important that such benefits are provided not only to biological mothers but also to adoptive, commissioning, and surrogate mothers, who deserve equal treatment. The right to maternity leave has been recognised as a part of the right to reproductive autonomy under Article 21.¹ However, when it comes to adoptive mothers, the Maternity Benefit Act² and the Code on Social Security³ place an unreasonable restriction, preventing adoptive mothers of children who are three months or older from availing maternity leave. The statutory intent behind the same is that children older than three months are not as dependent on their mothers as compared to children who are younger. However, such classification fails to consider the fact that, after adoption, no matter how old the child is, he or she requires the attention and care of his or her new parents to assimilate into the new family. It is also unfair that adoptive mothers are denied maternity benefits in an arbitrary manner simply because they are not the biological parents of

¹ K. Umadevi v. State of T.N., (2025) 8 SCC 263.

² Maternity Benefit Act, 1961, § 5(4), No. 53, Acts of Parliament, 1961.

³ Code on Social Security, 2020, § 60(4), No. 36, Acts of Parliament, 2020.

the child. Such measures may also discourage people from adopting children, especially older children who already face difficulties in finding their forever home. In this context, the validity of Section 60(4) of the Code on Social Security, 2020, which restricts the right to maternity leave for adoptive mothers of children above a certain age, was questioned before the Supreme Court.

FACTS

In 2021, the petitioner, an adoptive mother of two children, filed a public interest petition under Article 32 challenging the constitutionality of Section 5(4) of the Maternity Benefit Act, 1961, as amended by the Maternity Benefit (Amendment) Act, 2017. Subsequently, in 2025, the Code on Social Security, 2020, was brought into force, of which Section 60(4) is *pari materia* to Section 5(4) of the Maternity Benefit Act. The PIL was, therefore, converted into a writ petition challenging Section 60(4) of the Code on Social Security. As per the aforementioned provisions, only adoptive mothers having a child less than three months old were qualified for paid maternity leave for a period of twelve weeks, starting from the date on which the child is handed over to the adoptive mother. The petitioner, therefore, argued that the provision pursuant to which a differentiation is created between adoptive mothers having a child younger than three months old and those having a child who is three months or older is discriminatory and thereby violative of Articles 14, 19(1)(g), and 21 of the Constitution.

ISSUES

- Whether the three-month age criterion for paid maternity leave under Section 60(4) of the Code on Social Security, 2020, is violative of Article 14.
- Whether the three-month age criterion for paid maternity leave under Section 60(4) of the Code on Social Security, 2020, is violative of the right to dignity and liberty of adoptive mothers and children envisaged under Article 21.

JUDGEMENT

INTERNATIONAL CONVENTIONS ON MATERNITY LEAVE

The Supreme Court, while determining the validity of Section 60(4) of the Code on Social Security, took into consideration the various international instruments wherein maternity leave has been recognised as a fundamental human right. Article 25(2) of the Universal Declaration

of Human Rights (UDHR) ⁴ states that mothers and children are entitled to special care and assistance, and that all children must enjoy the same social protection regardless of the marital status of their parents. Article 10(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ⁵ stipulates that governments are obligated to provide paid maternity leave before and after childbirth. Further, Article 12 of the ICESCR recognises the role of the government in ensuring the healthy development of children. Under the Maternity Protection Conventions of the International Labour Organisation⁶, the right to fourteen weeks of maternity leave, protection against termination from the workplace, cash benefits, and daily nursing breaks were stipulated for women working in industrial, non-industrial, and agricultural jobs. Further, India is a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁷, which places an obligation on the State to prevent discrimination against mothers. Lastly, the Convention on the Rights of the Child (CRC)⁸ stipulates that the State shall ensure that its actions reflect the best interests of the child.

THE PURPOSE OF MATERNITY LEAVE

The Supreme Court, while analysing the nature of maternity leave, held that its purpose is three-fold:

- It is provided to allow the physical recovery of the mother after the birth of her child, as well as to ensure the well-being of the newborn.
- It is necessary to allow the development of a mental and emotional relationship between the mother and the child.
- It is provided to ensure that the mother is able to fulfil the physical and emotional needs of her child and to allow the integration of the child into the family, a process which is aided by the mother.

While the first element is absent in the case of adoption or surrogacy, the latter two are very much present. The Court held that the fact that the Code on Social Security contains provisions relating to adoptive and commissioning mothers is a testament to the same. Adoptive children, irrespective of their age, require time, effort, and support to enable them to feel safe in their

⁴ Universal Declaration of Human Rights, art. 25(2), G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁵ International Covenant on Economic, Social and Cultural Rights, art. 10(2), Dec. 16, 1966, 993 U.N.T.S. 3.

⁶ Maternity Protection Convention (No. 183), arts. 4,6,8,10, June 15, 2000, 2133 U.N.T.S. 233.

⁷ Convention on the Elimination of All Forms of Discrimination Against Women art. 11(2), Dec. 18, 1979, 1249 U.N.T.S. 13.

⁸ Convention on the Rights of the Child, art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3.

new home. In such cases, institutional support in the form of paid maternity leave is essential for all adoptive mothers and their children.

RIGHT TO EQUALITY UNDER ARTICLE 14

In *State of West Bengal v. Anwar Ali Sarkar*⁹, the Supreme Court held that a reasonable classification is not violative of Article 14 if the following conditions are satisfied:

- The classification must be founded on an intelligible differentia which distinguishes those who are grouped together from others.
- Such differentia must have a rational relation to the object sought to be achieved by the Act.

The Court observed that mothers who adopt a child who is younger than three months and those who adopt a child older than three months, as well as biological and commissioning mothers, are in a similar position in the sense that they require institutional support to ensure the welfare of both the mother and the child. The classification created under the Act, therefore, is unreasonable and has no nexus with the legislative intent of the Act, which is to provide maternity benefits to women.

RIGHTS OF ADOPTIVE MOTHERS AND CHILDREN UNDER ARTICLE 21

The right to reproductive autonomy is not limited to the biological process of giving birth. Adoption is another facet of the right to reproductive and decisional autonomy under Article 21 of the Constitution. Further, institutional support for mothers is also essential to ensure that the best interests and welfare needs of the child are met.

THE NEED FOR A PATERNITY LEAVE POLICY

The Court held that, in addition to maternity leave, it is also essential to recognise the need for developing a paternity leave policy. It would be cruel and unjust to reinforce the idea that only mothers should assume the role of caretakers of children. Not only does it perpetuate patriarchal stereotypes, but it also prevents fathers who are willing to care for their children from receiving adequate institutional support. The Central Civil Services (Leave) Rules, 1972¹⁰, mandate fifteen days of paid paternity leave for government employees for up to two children who are below the age of one year. While recognition of paternity leave is a step in the right direction, fathers who adopt a child older than one year, those having more than two children, and private

⁹ *State of West Bengal v. Anwar Ali Sarkar*, (1952) 1 SCC 1.

¹⁰ Central Civil Services (Leave) Rules, 1972, Gazette of India, pt. II, § 3(i), Rules 43A, 43AA (June 1, 1972).

employees are still excluded. However, recently, a Private Member's Bill called the Paternity and Parental Benefit Bill, 2025¹¹, was introduced, which stipulates eight weeks of paternity leave for government and private employees, including adoptive fathers.

CONCLUSION

Hamsaanandini Nanduri v. Union of India is a pivotal judgment within the realm of maternity rights as it struck down the three-month limit under Section 60(4) of the Code on Social Security, which discriminates against adoptive mothers. That being said, there are still a number of women, such as contractual workers and employees in organisations with less than ten employees¹², who are categorically exempted from availing the benefit of paid maternity leave. Further, the absence of paternity leave is another obstacle which negatively impacts women and children. This is because, in such cases, maternity leave, which is supposed to ensure the social security of women, is used as a weapon of discrimination against them. Women are often denied employment on the basis of their maternity plans or demoted after they return from their leave. The rationale is that when we reinforce the belief that childcare is the responsibility of only women, male employees become more desirable for companies as they do not have to provide similar benefits to them. In this context, implementing a nationwide paternity leave policy is imperative.

¹¹ The Paternity and Parental Benefits Bill, 2025, Bill No. 82 of 2025.

¹² *Annweshha Deb v. DSLSA*, 2023 SCC OnLine Del 7891.