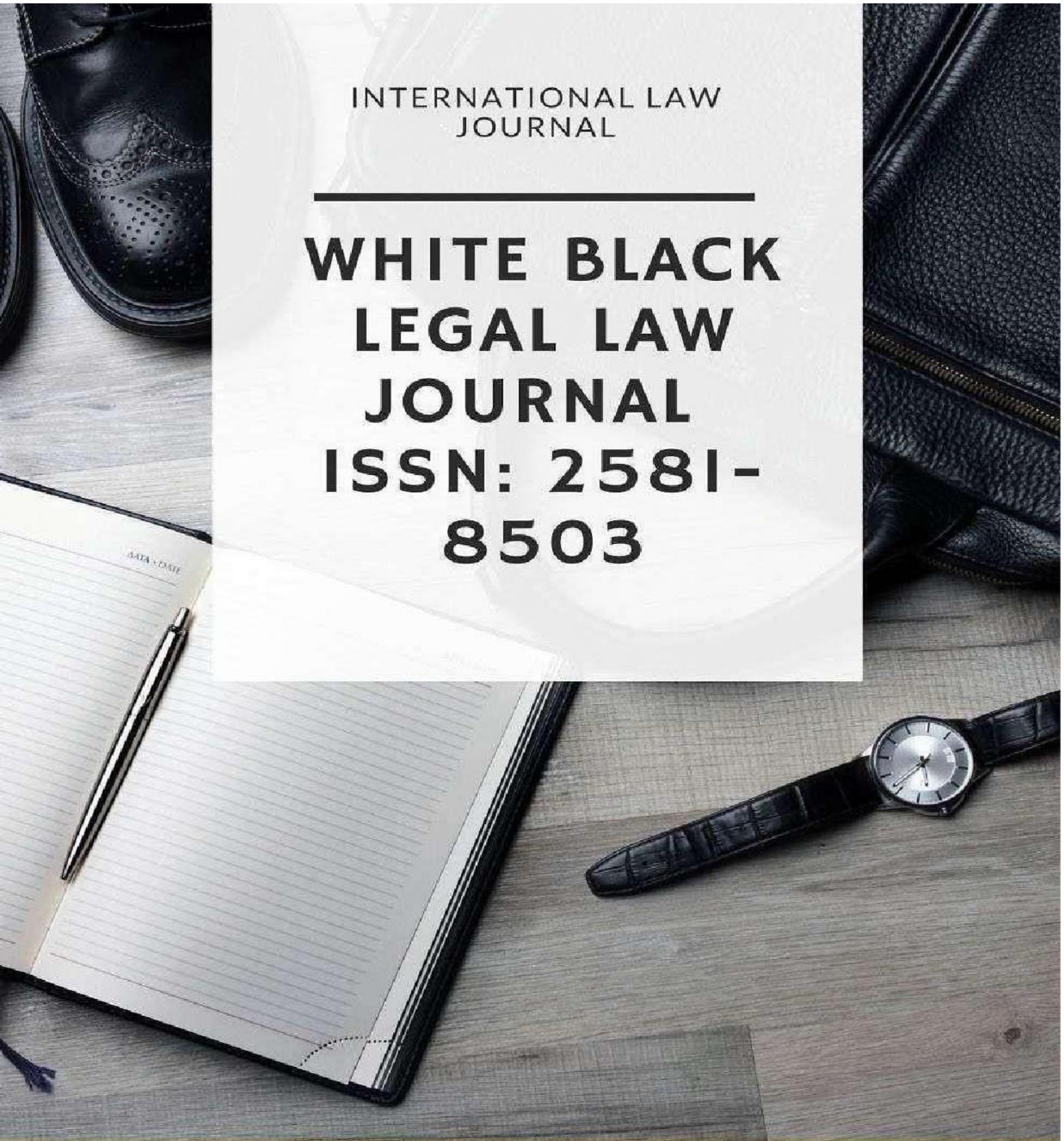




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MATERNITY BENEFIT IN INDIA: CONSTITUTIONAL MANDATE, STATUTORY EVOLUTION, THE NEW LABOUR CODES, AND THE ROAD AHEAD

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Abstract

Maternity benefit law occupies a unique position at the intersection of labour rights, constitutional guarantees and gender justice. This paper traces the trajectory of maternity protection in India from its colonial-era origins in the Bombay Maternity Benefit Bill, 1929, through the consolidating Maternity Benefit Act, 1961 and its transformative 2017 Amendment, to its most recent incarnation under Chapter VI of the Code on Social Security, 2020. It situates the Indian framework within the international law of maternity protection developed by the International Labour Organisation, the United Nations and CEDAW, and examines the constitutional foundations under Articles 14, 15, 15(3), 16, 21, 39 and 42 of the Constitution of India. Particular attention is paid to the four Labour Codes notified with effect from 21 November 2025, the ongoing central rule-making process, and the landmark 2026 judgment of the Supreme Court in *Hamsaanandini Nanduri v. Union of India*, which struck down the age ceiling on adoptive maternity benefit and urged Parliament to legislate on paternity leave. The paper concludes with a set of policy suggestions aimed at extending coverage to the unorganised and gig workforce, introducing statutory paternity and shared parental leave, and strengthening enforcement mechanisms.

1. Introduction

The status of women has changed considerably as more women have entered the labour market, and women today play an important role as men in national prosperity and in raising the standard of living in society. Notwithstanding this progress, the social protection and social security available to working women remains insufficient and continues to be a matter of concern. Childbirth is among the most significant events in a woman's life, yet pregnancy and maternity remain a source of professional vulnerability for working women and their families. Expectant and nursing mothers require adequate time to give birth, recover, and nurse their newborn while also attending to their own health, and they are simultaneously entitled to an assurance that they will not lose their employment merely because of pregnancy or maternity leave.

Historically, maternity was treated as a condition that restricted women from working in the weeks preceding and following childbirth, and as wage labour became common in industrial establishments, many employers preferred to dismiss women workers on learning of their pregnancy, on the assumption that pregnancy hampered the performance of regular duties. Women also bore considerable work pressure to retain their jobs during pregnancy, with adverse consequences for the health of both mother and child. To reduce this burden of health risk and income loss, the idea of statutory maternity benefit developed — one that would allow women to continue in employment without compromising family responsibilities. Maternity benefit is thus properly understood as part of the wider corpus of labour law that, together with the Employees' State Insurance Act, 1948 and allied statutes, protects women's economic interests and focuses on job protection and care of the mother and newborn.

Although the quantum of paid leave in India has been progressively extended, several obstacles continue to affect implementation. Employers often perceive the employment of women as an added financial responsibility because the cost of maternity benefit is, under Indian law, borne solely by the employer. Further, because only women are statutorily entitled to leave for the birth and care of a child, the father's role in caregiving remains almost entirely unrecognised in central legislation. A just social order requires the removal of such inequalities so that every stakeholder i.e. mother, father and child receives what is legally due. Recent amendments have extended maternity leave and introduced work-from-home options, but informal-sector workers and non-biological caregivers have largely been left outside the protective net, limiting both the legal scope and the gender-equality objective of the law. Synthesising these developments underscores the need for comprehensive, context-sensitive reform that recognises care labour and addresses the socio-legal discrimination that persists within India's evolving economic landscape.

2. International Legal Framework on Maternity Protection

Several United Nations human-rights bodies treat maternity protection as a core element of women's health and human rights, requiring that maternity care be respectful, dignified and non-discriminatory.

2.1 The International Labour Organisation (ILO)

The ILO, the specialised UN agency for social justice and decent work, treats maternity rights as core labour rights and has adopted successive conventions to establish global standards in

1919, 1952 and, most recently, the Maternity Protection Convention, 2000 (No. 183).¹ The 1919 convention was among the earliest instruments adopted by the ILO. Convention No. 183 covers maternity leave and leave for illness or complications, cash and medical benefits, health protection at work, employment protection and non-discrimination, and breastfeeding arrangements; it is supplemented by the Workers with Family Responsibilities Convention, 1981 (No. 156), which addresses² family-friendly working conditions, reintegration, and childcare services. ILO Recommendation No. 191 further recommends a minimum of eighteen weeks of maternity leave.³

2.2 The United Nations and CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) treats maternity protection as part of its broader commitment to eliminating discrimination against women, and requires states to ensure that women are not disadvantaged because of pregnancy or childbirth, including through paid maternity leave, protection from dismissal, and comparable social benefits.⁴ The Universal Declaration of Human Rights, 1948, recognises that motherhood and childhood are entitled to "special care and assistance,"⁵ reinforced by the Declaration's principle of non-discrimination. The International Covenant on Economic, Social and Cultural Rights, 1966 similarly recognises the importance of the family and the special protection owed to mothers during and after childbirth, calling for paid leave for a reasonable period and for social security including social insurance.⁶

Across jurisdictions, certain patterns recur despite policy diversity: paid maternity leave is available in most countries, though its duration and wage-replacement rate vary; several developed economies encourage shared parental leave between mother and father; and the cost of maternity leave is frequently funded, wholly or partly, by the state rather than the individual employer — a model India has yet to adopt.⁷

3. Evolution of Maternity Benefit Laws in India

The Bombay Maternity Benefit Bill, drafted by Dr B.R. Ambedkar, N.M. Joshi and M.K. Dixit

¹ International Labour Organisation, Maternity Protection Convention, 2000 (No. 183).

² International Labour Organisation, Workers with Family Responsibilities Convention, 1981 (No. 156).

³ International Labour Organisation, Recommendation Concerning Maternity Protection, 2000 (No. 191).

⁴ Convention on the Elimination of All Forms of Discrimination Against Women, 1979, arts. 11(2)(a), 12.

⁵ Universal Declaration of Human Rights, 1948, art. 25(2).

⁶ International Covenant on Economic, Social and Cultural Rights, 1966, arts. 9, 10.

⁷ R. Amirthavarshini, "Comparative Analysis: Maternity Benefit Laws in India with Selected Countries," 6(4) International Journal of Research Publication and Reviews 7046 (2025).

and placed before the Bombay Legislative Council in 1929, was India's first legislative attempt to specifically address maternity benefit. It was a direct response to the exploitation of women workers in Bombay's cotton mills, who were denied protection of their reproductive rights. The 1931 Karachi Resolution of the Indian National Congress recognised maternity relief within the definition of "labour," and, informed by ILO conventions, the Constitution of India directed the State to make provision for maternity relief.⁸

The Mines Maternity Benefit Act, 1941 extended protection to women employed in mines, and maternity benefit was subsequently incorporated into the Employees' State Insurance Act, 1948 and the Plantations Labour Act, 1951. Several State legislatures also enacted their own maternity benefit laws, but the qualifying conditions, rate of benefit and duration of leave differed from state to state. To remove these disparities and provide a uniform code, Parliament enacted the Maternity Benefit Act, 1961, which repealed the Mines Maternity Benefit Act, 1941 and the Bombay Maternity Benefit Act, 1929, and was extended to the whole of India in 1972.⁹ The Act applied to every government establishment except those already covered by the Employees' State Insurance Act, 1948. Its most significant amendment, in 2017, increased paid maternity leave from twelve to twenty-six weeks, extended benefit to adoptive and commissioning mothers, and introduced crèche facilities and work-from-home options.¹⁰

4. Maternity Benefit under the Constitution of India

The Constitution guarantees several rights relevant to the betterment of women: the right to equality (Article 14), the right against discrimination (Article 15), the right to equality of opportunity in public employment (Article 16), the right to adequate means of livelihood (Article 39(a)), the right to equal pay for equal work (Article 39(d)), the right that the health and strength of workers, men and women, are not abused (Article 39(e)), the right to just and humane conditions of work and to maternity relief (Article 42), and the right to improvement in employment opportunities and conditions of working women (Article 46).¹¹ Article 15(3) further empowers the State to make special provisions for women and children which is a form of protective discrimination justified by women's distinct physiological and maternal

⁸ K. Ramesha & K.S. Kariyanna, "Legal Provisions on Maternity Benefits in India," 8(6) International Journal of Creative Research Thoughts (2020).

⁹ The Maternity Benefit Act, 1961 (Act 53 of 1961).

¹⁰ The Maternity Benefit (Amendment) Act, 2017 (Act 6 of 2017).

¹¹ The Constitution of India, arts. 14, 15, 16, 39(a), 39(d), 39(e), 42, 46.

responsibilities, intended to secure their fuller participation in the workforce.¹²

The rights of a pregnant woman are also protected under the right to life and personal liberty in Article 21, which the Supreme Court has interpreted to extend well beyond mere physical survival to encompass the right to live with dignity.¹³ The Directive Principles of State Policy in Part IV, particularly Articles 41 and 42, require the State to make effective provision for securing the right to work, humane conditions of work, and maternity relief. A woman's right to work is meaningfully secured only where paid maternity leave is coupled with an assurance of re-employment, and the State is correspondingly obliged to ensure a safe workplace environment and adequate financial support around childbirth.

In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*¹⁴, the Supreme Court held that the object of the Maternity Benefit Act, 1961 is to enable women to embrace motherhood without fear or anxiety over job security, and to ensure dignified working conditions during the period surrounding childbirth.

5. The Maternity Benefit Act, 1961, as amended in 2017

The Maternity Benefit Act was enacted on 12 December 1961 and substantially amended by the Maternity Benefit (Amendment) Act, 2017, which received presidential assent on 27 March 2017 and came into force from 1 April 2017 (the crèche provision under Section 11A took effect from 1 July 2017). The Act extends to every factory, mine, plantation and circus, and to shops and commercial establishments employing ten or more persons, but excludes establishments already covered by the Employees' State Insurance Act, 1948.

5.1 Salient Features

- The employer is prohibited from knowingly employing a woman during the six weeks immediately following delivery, miscarriage, or medical termination of pregnancy (Sections 4(1) and 4(2)).
- A pregnant woman may request that she not be assigned work likely to cause miscarriage, adversely affect her pregnancy, or interfere with foetal development (Section 4(3)).

¹² The Constitution of India, art. 15(3).

¹³ The Constitution of India, art. 21. See also *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

¹⁴ AIR 2000 SC 1274.

- Every woman is entitled to maternity benefit at the rate of her average daily wage for the period of actual absence, subject to having actually worked for at least eighty days in the twelve months immediately preceding her expected delivery date (Sections 5(1) and 5(2)).
- Maternity leave is available for twenty-six weeks, of which not more than eight weeks may be taken before the expected delivery date; women with two or more surviving children are entitled to twelve weeks, of which at least six weeks must fall after delivery (Section 5(3)).
- Adoptive mothers (of a child below three months) and commissioning mothers in surrogacy are entitled to twelve weeks of maternity benefit.
- Where the nature of work permits, an employer and employee may mutually agree to a work-from-home arrangement following the exhaustion of maternity leave (Section 5(5)).
- Benefit must be paid in advance on production of proof of pregnancy, with the balance payable within forty-eight hours of proof of delivery (Section 6(5)).
- In case of miscarriage, medical termination of pregnancy, or tubectomy, a woman is entitled to six weeks of paid leave, with an additional month available for illness arising from these conditions (Sections 9 and 9A).
- Dismissal or variation of service conditions to a woman's disadvantage during pregnancy or maternity leave is prohibited, and a woman is entitled to two nursing breaks daily until the child is fifteen months old (Sections 11 and 12).
- Establishments with fifty or more employees must provide crèche facilities within a reasonable distance, and permit up to four visits a day, including nursing time (Section 11A).
- A medical bonus which is revised over time and currently ₹3,500, subject to further government revision is payable where the employer does not provide free pre- and post-natal care.

5.2 Adverse and Unintended Effects of the 2017 Amendment

While the 2017 Amendment reflects legislative goodwill, it has also generated certain unintended consequences for women's employability. Employers, particularly in the private sector, may perceive women of child-bearing age as an added financial and administrative burden, since the entire cost of twenty-six weeks' paid leave is borne by the employer alone — a position that is comparatively rare internationally. This has, in some sectors, translated into a

preference for hiring male workers, denial of promotions, informal pressure to resign, and the elimination of a woman's post during her leave under the guise of restructuring.¹⁵ The ILO has recommended shifting at least part of this financial burden from individual employers to the State, a reform India has yet to fully adopt outside of the ESI framework.¹⁶

6. Maternity Benefit under Allied Statutes and Schemes

6.1 The Employees' State Insurance Act, 1948

The Employees' State Insurance Act, 1948 provides cash and medical benefits to insured employees in the event of sickness, maternity and employment injury, alongside dependants', disablement and funeral benefits. Section 46(b) specifically defines "maternity benefit" as periodical payments to an insured woman in case of confinement, miscarriage, or sickness arising from pregnancy, confinement, premature birth, or miscarriage, on certification by the prescribed authority.¹⁷ Women covered under the ESI scheme (broadly, those earning wages up to the prescribed ceiling) receive maternity benefit through the ESI Corporation rather than directly from the employer, somewhat mitigating the employer-cost concern noted above.

6.2 Central Civil Services Rules and Surrogacy

The Central Civil Services (Leave) Rules, 1972 provide maternity benefit to women in government service and have been amended to extend 180 days of maternity leave to commissioning and surrogate mothers, together with fifteen days of paternity leave for the commissioning father in the case of central government employees. This remains, however, confined to government service and has not yet been mirrored by a corresponding entitlement for private-sector employees.¹⁸

7. The Labour Codes and the Reorganisation of Maternity Benefit Law

India's labour law framework has undergone its most significant structural reform since independence with the consolidation of twenty-nine central labour statutes into four Labour Codes: The Code on Wages, 2019; the Industrial Relations Code, 2020; the Occupational Safety, Health and Working Conditions Code, 2020; and the Code on Social Security, 2020.

¹⁵ L. Dadwal & K. Chauhan, "Maternity Rights for Working Women and Law in India: A Critical Analysis," 3(12) International Journal of Social Science and Economic Research (2018).

¹⁶ S. Uma & A. Kamath, "Gamechanger or a Trojan Horse? Some Reflections on the Maternity Benefit Act, 1961," 55 Economic and Political Weekly 59 (2020).

¹⁷ The Employees' State Insurance Act, 1948 (Act 34 of 1948), s. 46(b).

¹⁸ Central Civil Services (Leave) Rules, 1972, r. 43-B, as amended.

All four Codes were brought into force with effect from 21 November 2025, repealing, among other enactments, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' State Insurance Act, 1948, the Payment of Gratuity Act, 1972, the Employees' Compensation Act, 1923, the Unorganised Workers' Social Security Act, 2008, and — critically for this paper the Maternity Benefit Act, 1961 itself. The Code on Wages absorbs wage-related legislation and introduces a uniform definition of "wages" requiring that basic pay, dearness allowance and retaining allowance together constitute at least fifty percent of an employee's total remuneration; any shortfall is deemed "wages" for the purposes of statutory calculations, including maternity benefit, provident fund, gratuity and bonus. This has the incidental effect of increasing the wage base on which maternity benefit is computed for many employees whose compensation structures rely heavily on allowances.¹⁹

7.1 Chapter VI of the Code on Social Security, 2020

Maternity benefit is now governed by Chapter VI of the Code on Social Security, 2020, which consolidates and substantially reproduces the framework of the erstwhile Maternity Benefit Act, 1961, while extending its architecture in three important respects.²⁰ First, eligibility continues to require that a woman have worked for at least eighty days in the twelve months preceding her expected delivery date, and the substantive entitlements are carried forward largely unchanged: twenty-six weeks of paid leave for the first two children (with a maximum of eight weeks pre-delivery), twelve weeks for women with two or more surviving children, and twelve weeks for adoptive and commissioning mothers, computed from the date the child is handed over. Second, payment during leave is calculated on the new, uniform definition of "wages" under the Code on Wages, 2019, rather than the narrower definition previously used. Third, and most significantly, the Code on Social Security formally recognises gig workers and platform workers for the first time in Indian labour law and creates a statutory mechanism — a dedicated Social Security Fund financed by aggregator contributions of between one and two percent of annual turnover, together with government and CSR contributions — through which the Central Government may frame schemes extending life, health, disability, old-age and maternity benefits to workers who fall outside the traditional employer-employee relationship.

¹⁹ The Code on Wages, 2019 (Act 29 of 2019).

²⁰ The Code on Social Security, 2020 (Act 36 of 2020), ch. VI, ss. 60–73.

7.2 Implementation Timeline and Status

Although the four Codes formally commenced on 21 November 2025, the central rules necessary to operationalise several of their provisions were only published in draft form by the Ministry of Labour and Employment on 30 December 2025, with a thirty-day comment window for the Industrial Relations Code and a forty-five-day window for the remaining three Codes, including the Code on Social Security. As of mid-2026, the Central Government had indicated that final central rules would be notified around 1 April 2026, at which point the operational framework including the detailed scheme rules for gig and platform worker maternity benefit was expected to become fully concrete.²¹ A number of States, including Maharashtra, Karnataka, Tamil Nadu, Uttar Pradesh, Gujarat, Rajasthan, Madhya Pradesh and Telangana, have already notified their own State-specific rules, while several smaller States and Union Territories remain in the process of finalisation. Because labour is a subject in the Concurrent List, employers are required, during this transition, to comply with whichever set of rules, Central or State, is more favourable to the employee. Draft rules published in December 2025 propose that gig and platform workers become eligible for benefits after ninety to one hundred and twenty days of engagement on a platform, though the specific maternity sub-scheme for this category awaited final notification at the time of writing.

For employers and practitioners, the net effect of this transition is that the substantive content of maternity entitlement has, for regular employees, changed comparatively little in the short term; what has changed is the statutory location of that entitlement (from a standalone Maternity Benefit Act to a chapter within a consolidated social security code), the wage base on which it is calculated, and prospectively the population of workers to whom some version of maternity protection may extend.

8. New Developments and Judicial Trends (2025–2026)

8.1 Hamsaanandini Nanduri v. Union of India (2026 INSC 246)

On 17 March 2026, a two-judge Bench of the Supreme Court comprising Justices J.B. Pardiwala and R. Mahadevan delivered judgment in *Hamsaanandini Nanduri v. Union of India*, striking down Section 60(4) of the Code on Social Security, 2020 to the extent that it restricted maternity benefit for adoptive mothers to cases²² where the adopted child was below three months of age. The Court held that the classification violated Article 14, since a woman

²¹ Ministry of Labour and Employment, Government of India, Draft Central Rules under the Labour Codes (Gazette Notification, 30 December 2025).

²² *Hamsaanandini Nanduri v. Union of India*, 2026 INSC 246 (17 March 2026).

adopting an older child is similarly situated, in terms of caregiving obligations, to one adopting a younger child, and that the restriction also offended Article 21 by treating adoption as a lesser expression of motherhood than biological birth. The Court accordingly read down Section 60(4) to entitle every woman who lawfully adopts a child to twelve weeks of maternity benefit, computed from the date the child is handed over to her, regardless of the child's age at adoption. Significantly, while declining to issue a binding direction, the Court also urged the Union Government to introduce a statutory provision recognising paternity leave as a social security benefit, observing that fathers currently have no central entitlement to paid paternity leave, and that such leave promotes shared caregiving, dismantles gendered parenting roles, and serves the best interests of the child.²³

8.2 The Paternity and Parental Benefit Bill, 2025

Parliament has not yet enacted a general paternity leave law, though the issue has repeatedly been raised, beginning with the unsuccessful Paternity Benefit Bill, 2017. A subsequent private member's bill, the Paternity and Parental Benefit Bill, 2025, introduced in the Lok Sabha, proposes eight weeks of paid paternity leave together with a further eight weeks of shared parental leave, available to either parent within eighteen months of the child's birth.²⁴ As a private member's bill it has not yet been taken up for substantive discussion, but the Supreme Court's observations in *Hamsaanandini Nanduri* increase the likelihood that some form of paternity or shared-parental entitlement will be formally legislated in the near term, whether through amendment of the Code on Social Security or through standalone legislation.

8.3 The Two-Child Ceiling and Reproductive Autonomy

A related judicial development concerns the ceiling on maternity leave for women with two or more surviving children. In *K. Umadevi v. Government of Tamil Nadu*, the constitutionality of conditioning maternity leave entitlement on the number of surviving children was challenged²⁵ as arbitrary and violative of reproductive autonomy; more recently, in 2025, the Supreme Court observed that placing a cap on maternity benefit based on the number of children a woman already has undermines both reproductive rights and the constitutional guarantee of equality. Read together, these decisions signal a broader judicial trend toward treating maternity and parental entitlements as facets of reproductive autonomy and dignity

²³ *Hamsaanandini Nanduri v. Union of India*, supra note 23, para. 41.

²⁴ The Paternity and Parental Benefit Bill, 2025 (Bill No. 2025, Lok Sabha).

²⁵ *K. Umadevi v. Government of Tamil Nadu*, Civil Appeal No. 2526 of 2025 (2025 INSC 781).

under Article 21, rather than as a purely contractual or discretionary labour benefit.

8.4 Restructuring of the Pradhan Mantri Matru Vandana Yojana

The PMMVY scheme itself has been simplified during this period: disbursement for the first child has been reduced from three instalments to two (₹3,000 on antenatal registration and ₹2,000 after childbirth and completion of the immunisation schedule), while the second-child incentive of ₹6,000, available where the second child is a girl, has been retained as a single instalment.²⁶ These procedural simplifications are intended to reduce delays in disbursement and administrative friction for beneficiaries, particularly in rural areas, though the underlying cash value of the scheme remains modest when set against the wage-replacement available to formally employed women.

9. Implementation Challenges, with Particular Reference to the Private Sector

Neither the Maternity Benefit Act, 1961 nor the Code on Social Security, 2020 distinguishes between women employed in the private and government sectors; in practice, however, implementation in the private sector particularly in small and medium enterprises remains markedly weaker. Employers sometimes adopt informal tactics to avoid conferring the full benefit, and women, apprehensive of losing employment, may agree to demanding work schedules even in the later stages of pregnancy. Women who remain employed after childbirth frequently encounter salary and promotion discrimination, and some are bound by contracts that provide a lesser period of, or no, maternity benefit.

A recurring pattern is constructive retrenchment: rather than dismissing a woman outright during her leave (which the Act/Code prohibits), an employer fills her position on an ad-hoc basis and, on her return, informs her that the post has been abolished a technique that is particularly effective against employees who are less aware of their statutory rights. A related pattern is the pressure toward "voluntary" resignation, where family expectations that childcare be handled principally by the mother, combined with apprehension about employer attitudes, push women out of the workforce altogether. Employers, especially in the private sector, may also simply hesitate to hire women of child-bearing age, since the entire cost of the benefit falls on the individual employer rather than being pooled through a social insurance mechanism, as

²⁶ Ministry of Women and Child Development, Pradhan Mantri Matru Vandana Yojana: Scheme Guidelines, supra note 19 (as revised, 2026).

under the ESI Act.

The Act (and now the Code) is also comparatively silent on ancillary infrastructure: beyond the mandatory nursing breaks under Section 11 (and its successor provision), there is no requirement for dedicated lactation rooms or milk-storage facilities, a gap that discourages breastfeeding during nursing breaks in workplaces that lack such facilities, unlike jurisdictions such as the United States where "lactation rooms" are increasingly common. Because the framework remains almost entirely maternal in orientation, childcare responsibility continues to be allocated overwhelmingly to women, a design several other jurisdictions like France, Sweden and the United Kingdom among them have moved away from by introducing shared, gender-neutral parental leave grounded in the principle that child-rearing is a shared responsibility. Available data suggests that while a majority of women return to work after availing maternity benefit, a meaningful proportion exit the workforce within the following two years, and there is a marked drop in female representation at the senior and mid-managerial levels compared with entry level evidence that the statutory objective of retaining women in the workforce is not yet being fully realised in practice.

10. Suggestions and Recommendations

The following recommendations are organised under four heads: expansion of leave rights and coverage, parental equality, support infrastructure, and enforcement and monitoring.

10.1 Expansion of Leave Rights and Coverage

- Remove any child-number-based ceiling on maternity leave entitlement, consistent with the reasoning in *K. Umadevi* and the Supreme Court's 2025 observations on reproductive autonomy and equality.²⁷
- Extend maternity coverage to unorganised, gig, platform and self-employed women through the Social Security Fund contemplated under the Code on Social Security, with clear, time-bound scheme rules rather than indefinite reliance on enabling provisions.
- Consider extending prenatal leave beyond the current eight-week ceiling in cases of documented medical complication, and permit staggered or part-time return in appropriate cases.
- Mandate free antenatal, delivery and postnatal care at or near the workplace (or reimbursement of the same), supplementing the existing medical-bonus provision, with

²⁷ *K. Umadevi v. Government of Tamil Nadu*, supra note 26.

government-funded supplements for rural areas and small establishments.

- Extend paid lactation breaks and require on-site or shared nursing/pumping facilities in establishments above a defined size, with protection continuing until the child reaches at least one year of age.
- Strengthen enforcement against indirect discrimination and constructive retrenchment through mandatory reinstatement orders, punitive damages, anti-retaliation clauses, and a fast-track labour tribunal for maternity-related disputes.
- Make the existing permissive "work from home" provision an enforceable right, subject to the nature of the work, with a statutorily specified minimum period of phased or part-time return.
- Extend the surrogacy-related maternity leave presently available under the Central Civil Services Rules to private-sector employees on a uniform statutory basis.

10.2 Parental Equality: Paternity and Shared Parental Leave

- Enact a statutory paternity leave entitlement of a defined minimum duration (for instance, in line with the Paternity and Parental Benefit Bill, 2025) across all sectors, with guaranteed pay and job protection, and without conditioning the benefit on the working status of the spouse.
- Consider a non-transferable "father's quota" within any shared parental leave scheme, along the lines of the Nordic model, since comparative evidence indicates that reserved, non-transferable leave meaningfully increases uptake by fathers.
- Extend parental leave, on a non-discriminatory basis, to adoptive parents, commissioning parents in surrogacy arrangements, and same-sex parents were recognised under Indian law.
- Introduce a modest childcare or family-emergency leave (for example, up to thirty days a year) available to either parent for a child's illness or early-childhood needs, to support continuity of employment beyond the immediate post-natal period.

10.3 Support Infrastructure and Social Measures

- Expand the crèche-facility threshold under the Code (currently pegged at fifty employees) to a lower number, with defined quality and staffing standards and subsidy support for smaller enterprises.
- Introduce tax incentives or partial wage-subsidy schemes for employers, particularly small and medium enterprises, to offset the cost of maternity and parental leave, thereby

reducing the incentive to discriminate against women of child-bearing age.

- Coordinate maternity benefit with existing health and nutrition schemes (PMMVY, Poshan Abhiyan, Anganwadi services) so that cash transfer, antenatal care, immunisation and counselling operate as a single, well-publicised bundle rather than parallel, poorly integrated schemes.
- Require employers to inform women employees, in writing, of their maternity and parental entitlements at the time of appointment (building on the existing obligation under the 2017 Amendment), and mandate periodic reporting to labour authorities on maternity and parental leave utilisation.

10.4 Enforcement, Monitoring and Review

- Prescribe stricter penalties and, where appropriate, punitive damages for non-compliance, with enhanced sanctions for repeat offenders and provision for collective or class claims by affected employees.
- Establish fast-track dispute-resolution mechanisms, whether through dedicated labour tribunals or mandatory timelines within existing labour courts, for maternity and parental-leave disputes.
- Maintain a central, disaggregated database on maternity and parental leave utilisation (by sector, region, and employer size) to inform periodic statutory review, ideally at three- to five-year intervals, with structured stakeholder consultation involving women's groups, employer associations and trade unions.
- Expedite the finalisation of central rules under the Code on Social Security, particularly the gig and platform worker maternity scheme, given the extended consultation period already undertaken since December 2025.

11. Conclusion

Maternity benefit in India has travelled a long distance from the Bombay Maternity Benefit Bill of 1929 to its present location within Chapter VI of the Code on Social Security, 2020. The journey reflects a genuine, if incomplete, legislative commitment to the constitutional promise of just and humane conditions of work and maternity relief under Article 42. The consolidation of labour law into four Codes, the extension at least in principle of social security to gig and platform workers, and the Supreme Court's insistence in *Hamsaanandini Nanduri* that both adoptive motherhood and paternal caregiving deserve legal recognition, together

mark a meaningful evolution in the jurisprudence and policy of maternity protection. Yet significant gaps remain: the near-total absence of a general paternity or shared-parental entitlement, the continuing exclusion of large sections of the unorganised workforce pending final scheme rules, the persistence of informal discrimination and constructive retrenchment in the private sector, and the placement of the entire cost of maternity benefit on individual employers rather than a pooled social-insurance mechanism. Addressing these gaps requires not merely the completion of the rule-making process already underway, but a deliberate legislative shift from a maternity-only framework toward one of shared parental responsibility — a shift that would advance gender equality in the workplace, improve outcomes for children, and bring India's domestic law into fuller alignment with the international standards, particularly ILO Convention No. 183, that first inspired its maternity protection regime.

