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## LEAVE GRANTED, PROGRESS DENIED: Maternity Benefits, Hiring Hesitation and Post-Maternity Discrimination under India's Labour Code.

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### 1. Abstract

The consolidation of labour laws under the Code on Social Security, 2020, implemented in November 2025, represents a significant advancement in statutory maternity protection in India. The framework provides 26 weeks of paid maternity leave, crèche facilities, work-from-home options, and medical benefits. In a landmark decision, the Supreme Court in *Hamsanandini Nanduri v. Union of India* expanded the scope of maternity benefits by striking down the three-month age restriction under Section 60(4), extending 12 weeks of benefits to adoptive mothers irrespective of the child's age, and grounding maternity protection within the framework of reproductive rights under Articles 14 and 21.

Notwithstanding these developments, maternity protections must be understood within India's socio-cultural context. Early Vedic literature, including the *Rig Veda* and *Taittiriya Upanishad*, articulated a reverential conception of motherhood through *Matru Devo Bhava*, portraying women as embodiments of nurturing शक्ति (*Shakti*), with intellectual contributions from Gargi Vachaknavi and Maitreyi. However, later texts such as the *Ramayana*, *Mahabharata*, and *Manusmriti* institutionalised a patriarchal framework, confining women to reproductive and caregiving roles, producing a duality where motherhood is both idealised and regulated.

In contemporary labour markets, this duality manifests in the treatment of maternity as an economic liability. Employers often hesitate to hire women of childbearing age, while working mothers face post-maternity discrimination, including delayed promotions, biased evaluations, role downgrading, contractualization, and workforce exit. These challenges are intensified in private, informal, and gig sectors, with intersectional factors such as caste and class exacerbating vulnerabilities.

This paper adopts a doctrinal and empirical approach to assess whether enhanced maternity protections create unintended disincentives for hiring and retention. It advocates complementary reforms, including state-funded benefits, shared parental leave, stronger anti-discrimination enforcement, and effective childcare infrastructure, to transform maternity rights into substantive instruments of gender equality.

Keywords: Maternity Benefits, Code on Social Security 2020, Reproductive Rights, Gender Equality, Maternity Discrimination, Adoptive Mothers

## 2. Introduction

India's labour market has made progress in women's participation, but working mothers still face hiring hesitation, stalled careers, and discrimination after maternity. Even though the Code on Social Security, 2020, strengthens maternity entitlements through 26 weeks of paid leave, crèche facilities, work-from-home options, and medical benefits, these protections have not fully translated into equality at work.

The Supreme Court's decision in *Hamsaanandini Nanduri v. Union of India*<sup>1</sup> further expanded maternity protection by striking down the age restriction for adoptive mothers and recognising motherhood as part of reproductive autonomy and dignity. This was an important constitutional victory, especially under Articles 14 and 21. However, the gap between legal rights and workplace reality remains wide.

In practice, many employers still see maternity as a cost rather than a social responsibility. Women of childbearing age often face reluctance at the hiring stage, and those who return from leave may encounter delayed promotions, biased evaluations, reduced responsibilities, contractualization, and even exit from the workforce. These problems are worse in the private sector, informal economy, and gig work, where enforcement is weak, and women from marginalised caste and class backgrounds are most vulnerable.

This paper examines whether India's improved maternity framework, though progressive in law, may unintentionally contribute to discrimination in the labour market. It studies the evolution of maternity benefits, the impact of the COSS 2020 and the *Hamsaanandini* judgment, and the real-world effects on hiring, retention, and career progression. It also proposes reforms such as shared parental leave, stronger enforcement, better childcare infrastructure, and state-supported funding mechanisms so that maternity rights lead to genuine equality rather than hidden penalties.

## 3. Historical & Socio-Cultural Context: From Matru Devo Bhava to Manusmriti

India's conception of motherhood reflects a deep historical duality. On one hand, motherhood has been revered as shakti, symbolising creation, nurturing, and social continuity. On the other, it has long been shaped by patriarchal norms that confine women to reproductive and caregiving roles, turning motherhood into both a moral ideal and an economic burden. This

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<sup>1</sup> *Hamsaanandini Nanduri v. Union of India*, 2026 INSC 246 (Supreme Court, 17 March 2026).

tension continues to influence modern labour markets, where maternity is often treated as a liability rather than a shared social good.

In the early Vedic period, motherhood and femininity were associated with reverence and dignity. The Rig Veda, especially Mandala 10, Hymn 85, portrays the bride as entering her new home with honour, authority, and responsibility. The famous exhortation to “be vigilant to rule thy household” reflects an image of women as active participants in family and social life, not merely passive child bearers. The idea of shakti also emerges here as a source of creative and sustaining power, later developed more fully in Shakta traditions. Likewise, the Taittiriya Upanishad’s injunction *matru devo bhava* elevates the mother to a position of divinity, reflecting a worldview in which motherhood stands for nurturing, moral guidance, and dharma.

This early respect for women also appears in the intellectual lives of figures such as Gargi Vachaknavi and Maitreyi. Gargi’s philosophical debates with Yajnavalkya show that women had access to advanced knowledge and metaphysical inquiry. Maitreyi similarly pursued spiritual and philosophical understanding beyond domestic roles. Their presence demonstrates that in the Vedic period, motherhood coexisted with intellectual agency rather than replacing it.

This idealised vision changed in later texts. While the Ramayana and Mahabharata still celebrate devoted mothers like Kausalya and Kunti, they increasingly place women within roles of reproduction, chastity, and family service. The Manusmriti marks a sharper patriarchal turn, presenting women as dependent on male guardianship throughout life and valuing them mainly for producing legitimate offspring. Motherhood is respected only when it serves patrilineal continuity and caste purity. The emphasis on controlling female sexuality to prevent Varna Sankara links motherhood directly to social hierarchy.

This duality helped create a long-standing cultural framework in which women’s identities were tied to domesticity and reproduction. Motherhood was praised in rhetoric, but childcare and household labour were imposed almost entirely on women. As a result, women’s participation in public and economic life was restricted.

Uma Chakravarti, in *Gendering Caste*,<sup>2</sup> shows that this pattern is closely tied to caste. Control over women’s sexuality and reproduction was central to preserving caste boundaries. Upper-caste norms idealised the self-sacrificing mother while enforcing domestic confinement and endogamy. For Dalit and Adivasi women, the burden was even greater: they often combined unpaid reproductive labour with harsh productive labour in the informal economy, without social reverence or economic security. Romila Thapar’s work also helps explain how the transition from early Vedic society to settled agrarian and state formations strengthened patriarchal control over women<sup>3</sup>.

In the modern labour market, this historical duality remains visible. Employers often assume that motherhood means primary caregiving, leading them to see women of childbearing age as temporary or high-risk employees. This creates hiring hesitation, especially in the private sector. Women who return after maternity leave often face the motherhood penalty through delayed promotions, biased appraisals, role downgrading, and pressure to exit work. The effects

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<sup>2</sup> Uma Chakravarti, *Gendering Caste: Through a Feminist Lens* (Sage, 2003/2018 reprint).

<sup>3</sup> Romila Thapar, *Early India: From the Origins to AD 1300* (Penguin, 2002)

are harsher for Dalit, Adivasi, poor, rural, and gig workers, who face layered disadvantage and limited access to statutory benefits.

The legal framework has evolved in response. Maternity benefit law in India has moved from a narrow protective model to a broader social security approach, reflecting a stronger recognition of women's reproductive rights and workplace equality. The Code on Social Security, 2020 is the latest step in that evolution, but implementation gaps remain severe, especially for informal and gig workers.

#### 4. Maternity benefit under the Indian Labour Code

##### 4.1. Development of Maternity Benefits: Framework Before 2020

Maternity protection in post-independence India originated with the Maternity Benefit Act, 1961, which aimed to regulate women's employment around the time of childbirth. The initial Act granted 12 weeks of paid leave, with a cap of six weeks before the anticipated delivery date, along with a medical bonus, nursing breaks, and safeguards against dismissal during maternity leave. A woman was qualified if she had worked at least 80 days in the establishment in the 12 months before her expected delivery date. The benefit equalled her average daily wage and was wholly employer-financed.

The Maternity Benefit (Amendment) Act, 2017<sup>4</sup>, brought significant reforms to promote gender equity and align with global standards. It increased paid maternity leave to 26 weeks for women having up to two living children, with a maximum of eight weeks permitted before delivery. For women with two or more living children, the leave remained 12 weeks. Importantly, the Amendment extended coverage to adoptive mothers and commissioning mothers in surrogacy, providing 12 weeks of benefit from the date the child was entrusted to them. It further introduced work-from-home arrangements post-leave where practicable and required establishments with 50 or more employees to set up crèche facilities. These measures sought to encourage women's continued labour force participation while acknowledging varied routes to motherhood.

##### 4.2. Consolidation Through the Code on Social Security, 2020

The Code on Social Security, 2020, merged nine central labour statutes, including the Maternity Benefit Act, 1961, and was enforced from 21 November 2025 through a Labour Ministry notification. Chapter VI, comprising Sections 59–72, addresses maternity benefits and largely preserves the progressive elements of the 2017 Amendment while embedding them within a wider social security framework.

Major provisions under Section 60 provide:

Right to maternity benefit payment (Section 60(1)): Each eligible woman shall receive maternity benefit at her average daily wage rate for the actual period of absence immediately before and after delivery.

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<sup>4</sup> Maternity Benefit (Amendment) Act, 2017, No. 6 of 2017.

Eligibility (Section 60(2)): The woman should have worked in the establishment for at least eighty days in the twelve months preceding the expected delivery date, counting lay-off days and holidays.

Maximum period (Section 60(3)): Twenty-six weeks for women with up to two surviving children, with no more than eight weeks before delivery. For women with two or more surviving children, the period is twelve weeks.

Adoptive and commissioning mothers (Section 60(4) as originally enacted): Twelve weeks of maternity benefit from the date the child is handed over.

Other safeguards include:

Protection from dismissal during maternity leave (Section 68): Employers are barred from terminating a woman for absence due to maternity, miscarriage, or related medical conditions.

Crèche facility (Section 67): Establishments with 50 or more employees must provide suitable crèche facilities for children under six years. Mothers may visit the crèche four times daily, including rest periods.

Work-from-home option: Employers must consider work-from-home requests after maternity leave if the job nature allows.

Nursing breaks (Section 66): Two breaks each day until the child reaches fifteen months of age.

Medical bonus and leave for miscarriage/termination of pregnancy (Sections 64 and 65).

The employer continues to bear primary liability for paying maternity benefit, though the Code contemplates future social security schemes with contributory models.

#### 4.3. Constitutional Basis

The maternity benefit regime rests on firm constitutional grounds. Article 15(3) allows the State to create special measures for women and children, forming the basis for differential provisions aimed at substantive equality. Article 21, guaranteeing life and personal liberty, has been broadly construed to cover health, dignity, reproductive choice, and safe motherhood. Article 42, a Directive Principle, obligates the State to ensure “just and humane conditions of work” and provide maternity relief. Additional support flows from Articles 39 (equal pay and adequate livelihood), 43 (living wage and decent conditions of work), and 14 (equality before law), which collectively require non-discriminatory yet protective steps for working mothers.

Courts have repeatedly affirmed these provisions as central to gender justice and reproductive rights.

Despite progress, substantial gaps persist. The Code seeks to bring gig workers, platform workers, and unorganised workers under social security via dedicated schemes (Chapter IX). With gig and platform workers now defined, the Code authorises Central and State Governments to design schemes for health, maternity, and other welfare benefits, potentially financed by aggregator contributions. Implementation, however, is limited. These workers often lack a distinct employer-employee relationship, making employer-funded benefits like crèches or work-from-home difficult to enforce. Registration hurdles and the absence of fully notified schemes also restrict access.

The informal sector, employing roughly 90% of India's women workers, faces the sharpest exclusion. Many units are below the 50-employee threshold for mandatory crèches, and both awareness and enforcement are poor. Even within the organised sector, adherence to crèche and work-from-home requirements is inconsistent, with smaller private enterprises frequently citing cost constraints.

The employer-liability structure, while securing direct payment, creates a perceived financial disincentive to hire women of childbearing age. This conflict between strong legal rights and practical market behaviour is the central paradox this paper explores.

In short, the Code on Social Security, 2020 is a progressive consolidation that builds on the 1961 Act and the 2017 Amendment by offering extended maternity leave, crèche facilities, work-from-home options, and medical benefits. Rooted in constitutional principles of equality and dignity, it seeks to reconcile women's reproductive and economic roles. However, the exclusion of gig and informal sector workers, weak enforcement, and the employer-funded model show that legal rights alone cannot secure substantive gender equality in employment. The following chapters examine how judicial responses have sought to remedy some of these constraints and assess the real-world impact of these provisions.

## 5. Challenges in Practice: Hiring Hesitation & Post-Maternity Discrimination

The Code on Social Security, 2020<sup>5</sup> And *Hamsaanandini Nanduri v. Union of India* have strengthened maternity rights, but they have not fully improved women's position in the labour market. In practice, enhanced maternity benefits often create a backlash: employers view maternity as a cost, not a social responsibility. This leads to hiring hesitation and post-maternity discrimination, especially in the private, informal, and gig sectors.

A major unintended effect of the 26-week leave policy has been reduced hiring for women of childbearing age. One study of IT-sector job applications found that women were about 22% less likely to get interview calls from smaller, less profitable firms after the longer leave mandate. Employers fear the direct cost of paid leave and related adjustments, along with indirect costs such as temporary staffing and productivity loss.

For women who do return after maternity leave, the "motherhood penalty" is severe. Aon's 2024 study found that 75% of working mothers experienced a career setback of one to two years.<sup>6</sup> Many also faced lower pay, weaker performance ratings, missed promotions, and less desirable roles. These effects are strongest where enforcement is weak and where caste and class deepen existing exclusion.

These penalties manifest in multiple forms:

- Biased performance evaluations: Managers often unconsciously (or consciously) penalize mothers for reduced "Visibility" during leave or for perceived divided attention due to childcare responsibilities.

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<sup>5</sup> Code on Social Security, 2020, Chapter VI

<sup>6</sup> Aon Voice of Women Study 2024 (Business Standard, 10 Aug 2024)

- Role downgrading: Women returning from maternity are frequently shifted to less challenging or lower-responsibility positions, stalling career growth.
- Delayed promotions and pay cuts: Promotion cycles are disrupted, and salary increments are withheld or reduced under the guise of performance gaps.
- Contractualisation: There is a documented shift from permanent or regular salaried roles to fixed-term contracts or casual employment to limit long-term liability.

Saheli Bose's research (ISID, 2023/2024) on the impact of the 26-week mandate confirms this trend. Women became 4.3 percentage points less likely to be employed as regular salaried workers post-policy, with a corresponding increase in unpaid family labor or casual wage work. The effects were strongest among married and younger women, confirming the operation of a motherhood penalty in contractual arrangements.<sup>7</sup>

An AEA conference paper (2024) by Shatakshi Gupta further argues that the extension of paid maternity leave has led to a 1-2 percentage point decline in the share of female employees in the formal sector, with no significant positive impact on wages or hours worked<sup>8</sup>. The study suggests the policy may be “doing more harm than good” by pushing women into informal employment, unpaid domestic work, or out of the labor force altogether, especially in the absence of equivalent paternity leave.

Statistics paint a grim picture of retention. Numerous studies indicate that a high proportion of women, often cited in the range of 48-73% in different contexts, exit the workforce within months of childbirth or struggle to return to formal jobs. Only 19-27% successfully re-enter formal employment, with many shifting to informal or self-employment roles that offer lower pay and no benefits. PLFS data from 2023-2025 shows that while overall female LFPR has risen (Driven by rural self-employment and unpaid family work), urban formal sector retention for mothers remains weak<sup>9</sup>. The World Bank's Women, Business and the Law 2025 underscores that employer-funded models without complementary childcare infrastructure limit the effectiveness of leave policies in sustaining long-term participation.

### 5.1. Sectoral Variations and Gig/Informal Economy Challenges

The challenges are uneven across sectors. Large, organized firms, especially MNCs, comply better with leave, crèche, and work-from-home rules, though subtle bias still exists. Private-sector SMEs, however, show more hiring hesitation and higher post-maternity attrition. The situation is worse in the informal sector, where most women workers are employed, and statutory protections are rarely enforced. In agriculture, domestic work, and small units, paid leave and crèche access are minimal. Gig and platform workers face even weaker protection because the employment relationship is unclear, making maternity benefits and flexible work inaccessible.

### 5.2. Intersectionality: Caste and Class Amplification

Intersectional factors significantly exacerbate these vulnerabilities. Women from Dalit, Adivasi, and other backward class backgrounds, who are over-represented in informal and gig

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<sup>7</sup> Saheli Bose & Somdeep Chatterjee, “Motherhood Penalty Revisited” (Journal of Development Studies, 2024).

<sup>8</sup> Shatakshi Gupta, AEA Conference Paper (2024)

<sup>9</sup> PLFS 2023–25 and World Bank, Women, Business and the Law 2025

work, face compounded discrimination. Upper-caste cultural norms that idealize motherhood as the primary domestic role combine with employer biases to push marginalized women into low-paid, unprotected jobs. Class further stratifies outcomes: educated, urban, middle-class women may negotiate some flexibility or return to formal roles (albeit with penalties) while poor and rural women often exit the workforce permanently due to unaffordable childcare and lack of family support networks.

### 5.3. The Economic Argument: Employer Cost vs Social Benefit

At its core, the problem arises from an employer-liability model that privatizes the cost of public good (healthy motherhood and future human capital). Employers bear the full financial and operational burden of 26 weeks' leave without adequate state support or risk-sharing mechanisms. This creates a rational incentive to minimize exposure by hiring fewer women of reproductive age or by restructuring roles post-maternity. The result is an unintended disincentive that undermines the very objectives of gender equality and workforce participation enshrined in the Constitution and labor codes.

News reports and tribunal judgments frequently document cases of maternity discrimination, including wrongful termination, denial of promotion or forced resignation upon return from leave. While some women succeed in legal challenges, the process is lengthy, costly, and deterrent for most.

The legal framework grants leave, but market realities deny progress. Without addressing these practical disincentives, enhanced maternity protections risk becoming performative rather than transformative. The following chapter offers a doctrinal critique and gap analysis, paving the way for targeted reforms.

## 6. Critique & Gap Analysis

The Code on Social Security, 2020, together with the Supreme Court's expansive ruling in *Hamsaanandini Nanduri v. Union of India*, marks a major doctrinal step forward in maternity protection. Yet the framework still falls short of translating legal rights into substantive equality. Four main gaps explain this failure: employer-funded maternity liability, weak enforcement, the absence of meaningful paternity or shared parental leave, and inadequate childcare infrastructure. These gaps continue to produce the same outcomes that the law seeks to prevent hiring hesitation, post-maternity discrimination, and workforce exit.

### 6.1. Why the framework falls short

The employer-liability model lies at the centre of the problem. Under Section 60 of the COSS, the full cost of 26 weeks paid maternity benefit, along with related obligations such as crèche access and work-from-home arrangements, falls directly on the employer. This makes the cost of a public good, healthy motherhood and future human capital fall on private employers alone. Unsurprisingly, many employers, especially in the private sector and among SMEs, respond by becoming cautious in hiring women of childbearing age or by restructuring roles after maternity through downgrading, contractualization, or subtle bias in evaluations.

Weak enforcement worsens the problem. Labour inspectors are under-resourced, workers in informal and gig sectors often lack awareness of their rights, and legal proceedings are slow

and expensive. Many establishments below the 50-employee threshold evade the crèche requirement altogether. Gig and platform workers are especially vulnerable because, despite nominal coverage under the Code, the absence of a clear employer-employee relationship makes maternity-related claims difficult to enforce. As a result, the protections exist on paper, but not consistently in practice.

The framework is also gender-specific in a way that reinforces traditional caregiving norms. India still has no meaningful national statutory paid paternity leave. That means the burden of early childcare remains largely on mothers, which deepens the “motherhood penalty” and signals to employers that women are more likely to have career interruptions. Without shared parental responsibility, employers continue to perceive women as higher-risk employees.

Childcare infrastructure is another serious gap. The crèche mandate under Section 67 applies only to larger establishments and is often poorly implemented even there. Affordable, quality public childcare remains limited, forcing many mothers either to leave the workforce or to rely on unstable family arrangements. This problem is especially severe for lower-income women and those in informal work, where support systems are weakest.

## 6.2. ILO benchmark

India’s approach looks weaker when compared with ILO Convention No. 183, the Maternity Protection Convention, 2000<sup>10</sup>, which India has not ratified. The Convention requires maternity cash benefits to be funded through compulsory social insurance or public funds rather than direct employer liability. It specifically states that employers should not be individually responsible for the direct cost of monetary benefits except in limited circumstances. This model spreads the burden across society and reduces the risk that women will be treated as financially costly employees.

ILO reports also show that employer-liability systems tend to produce lower coverage, weaker enforcement, and negative labour-market effects for women. The ILO framework also emphasises coverage for informal workers, workplace health protection, employment security, and breastfeeding support. In that sense, the COSS makes some progress through longer leave and crèche provisions, but it still falls short on funding design, universal coverage, and practical non-discrimination.

## 6.3. Comparative lessons

A brief comparative view highlights how different design choices affect outcomes. Sweden, for example, uses a shared parental leave system that treats caregiving as a social responsibility. Parents are entitled to 480 days of paid parental benefit per child, with 240 days allotted to each parent. Ninety days are reserved exclusively for each parent and cannot be transferred, which encourages fathers to take leave.<sup>11</sup> The system is mainly funded through social insurance, and it is supported by universal childcare. This reduces employer disincentives and helps sustain high female labour force participation.

Other Nordic countries follow similar models of shared, state-supported leave and strong childcare systems, and they consistently rank among the world’s best on gender equality in

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<sup>10</sup> ILO Maternity Protection Convention, 2000 (No. 183), Art. 6(8).

<sup>11</sup> Sweden: Parental Benefit provisions as per official Nordic/ Swedish Social Insurance Agency guidelines.

employment. These systems work because they do not treat motherhood as a private burden carried only by women.

The United States offers a contrasting example. The Family and Medical Leave Act provides only 12 weeks of unpaid, job-protected leave for eligible employees in firms with 50 or more workers<sup>12</sup>. Paid leave is available only through voluntary employer policies or limited state programs. This leaves many women without income security and shows the weakness of relying heavily on employer discretion or fragmented state schemes.

The COSS 2020 and Hamsaanandini Nanduri rightly frame maternity as a constitutional issue tied to dignity, equality, and reproductive rights. But the operational structure of the law, especially employer liability, weak enforcement, gendered leave, and inadequate childcare, undermines those goals in practice. Without reform, the protections remain symbolic and may even reinforce the old duality in which motherhood is praised but burdensome. The strongest lessons come from the ILO and Nordic models, which treat parenthood as a shared social investment rather than an individual or employer burden.

## 7. Recommendations & Way Forward

The doctrinal and empirical analysis reveals a paradox: despite the Code on Social Security, 2020 (COSS) and Hamsaanandini Nanduri v. Union of India expanding maternity rights, factors such as employer-funded costs, hesitation, and post-maternity discrimination persist. To make maternity protection a tool for substantive gender equality, complementary reforms are needed. These are structured into short-term, medium-term, and long-term measures, drawing on ILO best practices, labour ministry consultations (2024-2025), and academic support for shared parental leave in India

### 7.1.Short- Term Measures (0-2 Years)

- a. Establishment of a central maternity benefit fund. The most urgent reform is shifting from a purely employer liability model to a hybrid social insurance system. A central maternity benefit fund should be created under the COSS with contributions from the central /state government and employees (where feasible). This fund would reimburse employers for maternity benefits, reducing financial disincentives. International Labour Organisation Convention No. 183 and Recommendation No. 191 support financing maternity benefits through social insurance or public funds rather than solely by employers. ILO reports note that collective funding reduces hiring discrimination and expands coverage, including the informal and gig workers. The mechanism could integrate with the employers' state insurance corporations for organised workers, while extending benefits to unorganised workers through direct transfers or state schemes
- b. Introduction of Mandatory Paid Paternity Leave. To address the gendered burden of caregiving, the COSS should be amended to mandate a minimum of two weeks of paid paternity leave for all eligible fathers (biological, adoptive, and commissioning), non-transferable and usable within the first six months after childbirth or adoption. This leave should be funded through the proposed Central

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<sup>12</sup> US: Family and Medical Leave Act, 1993.

Maternity Benefit Fund or ESIC. Academic papers on shared parental leave in India emphasise that paternity leave promotes equitable division of domestic responsibilities, reduces the motherhood penalty, and signals to employers that caregiving is a shared societal obligation rather than a female - specific risk. Labour Ministry consultations in 2024-25 on labour code implementation have also acknowledged the need for greater male involvement in family responsibilities to improve female workforce retention.

- c. Strengthened Enforcement through Heavy Penalties and Inspector - Led Mechanism. Enforcement must move beyond complaint - based adjudication to proactive compliance. Labour inspectors should be empowered and adequately resourced to conduct regular audits of maternity benefit compliance, creche facilities, and work-from-home provisions. Violations -- such as denial of leave, dismissal during maternity, or failure to provide creche -- should attract heavy penalties, including fines scaled to the size of the establishment and potential debarment from government contracts. A dedicated online grievance portal linked to the Shram Suvidha Portal, with time-bound redressal (within 30-60 days), would enhance accessibility, especially for gig and informal workers.

#### 7.2. Medium- Term Measures (2-5 Years)

- a. Expansion of Creche Facilities and Universal Childcare Section 67 of the COSS, which currently mandates creche facilities only for establishments with 50 or more employees, should be amended to lower the threshold to 10 or more employees. For smaller establishments and informal/ gig sectors, the government should subsidise or partner with local bodies/ NGOs to create community based creche under schemes like the Integrated Child Development Services (ICDS) or new dedicated funds. Tax incentives - such as enhanced deductions under the Income Tax Act for companies providing or contributing to creche facilities would encourage private sector participation. Effective childcare infrastructure is critical for enabling mothers' return to work without career disruption, as repeatedly recommended in ILO good practices on work-family reconciliation.
- b. Tax and Fiscal incentives for Hiring and Retaining Mothers to counter hiring hesitation, the government should introduce performance linked tax rebates or subsidies for firms that maintain a minimum threshold of women employees in the 25-40 age group and demonstrate high retention rates post-maternity. Additional incentives could include skill- upgradation grants for women re-entering the workforce after a career break. These measures would align employer interests with national goals of increasing female labour force participation.

#### 7.3. Long - Term Measures (5+ Years):

- a. India should move towards a gender-neutral parental or caregiver leave framework. A shared parental leave of 12-16 weeks in addition to a portion reserved for each parent, could be introduced. This would promote shared caregiving and reduce employer bias against hiring women, as supported by evidence from Nordic countries showing reduced gender gaps. skill re- entry programmes and intersectional data collection. Skill re-entry and mentorship programmes for mothers after maternity breaks should be institutionalised through the national skill development corporation and state bodies, with a focus on intersectional vulnerabilities. The periodic labour force survey should include caste - class and

sector-wise data on maternity- related exits and re-entry to enable targeted policies for marginalised groups in informal and gig economies.

- b. Proposed Legislative Amendments to the COSS Specific amendments to the Code on Social Security, 2020, could include:
- Insertion of a new section 60-A, creating the Central Maternity Benefit Fund and detailing its financing and reimbursement mechanism.
  - Amendment to section 60 to incorporate mandatory two - week paid paternity leave.
  - Revision of Section 67 to expand the creche mandate to establishments with 10+ employees and authorise government - supported community creches.
  - Addition of a new chapter on " Shared Caregiving and Anti-Discrimination" with provisions for gender- neutral caregiver leave and stricter non-discrimination clauses during and after maternity.

These changes would align Indian law more closely with ILO standards while remaining sensitive to fiscal and administrative realities.

## 8. Conclusion

“Leave is granted, but progress is denied” captures India’s maternity paradox. Although the Code on Social Security, 2020, and Hamsaanandini Nanduri strengthened maternity rights, women still face hiring bias, career setbacks, and post-maternity discrimination. The law recognises motherhood as a matter of dignity, but employers often treat it as a cost, especially in the private, informal, and gig sectors.

The judgment was a major rights victory, extending protection to adoptive mothers and affirming reproductive autonomy. Yet empirical evidence shows the motherhood penalty remains severe, with lower interview calls, delayed promotions, and high workforce exit rates. This reflects a deeper cultural pattern: motherhood is idealised in principle but burdened in practice.

Real progress requires reform. India must shift from employer liability to shared social responsibility through state-funded support, paid paternity leave, stronger enforcement, better childcare, and gender-neutral caregiver policies. Only then can maternity rights become substantive equality.

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