



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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FROM STATUTORY INDULGENCE TO CONSTITUTIONAL ENTITLEMENT: THE ESCALATING JUDICIAL DOCTRINE OF MATERNITY RIGHTS IN INDIA

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I. THE CURVE OF JUDICIAL ESCALATION

Three decisions delivered between August 2022 and March 2026 have reconstituted the doctrinal basis of maternity entitlement in India, and the interest of the sequence lies less in what each held than in the escalating remedial force each was willing to deploy. In *Deepika Singh v. PGIMER, Chandigarh*, the Court construed a leave rule against the grain of its literal text, leaving the rule undisturbed.¹ In *K. Umadevi v. Government of Tamil Nadu*, it announced that maternity benefit is a facet of the reproductive right traceable to Article 21, yet disposed of the dispute by harmonising a State population-control instruction rather than testing its validity.² In *Hamsaanandini Nanduri v. Union of India*, it declared a limb of a freshly commenced central enactment unconstitutional and judicially recast the residue.³ Purposive construction, then constitutional characterisation, then invalidation: the ladder is climbed rung by rung, and what is *obiter dicta* in one decision furnishes the operative premise of the next.

Beneath the judicial curve runs a statutory one. The Maternity Benefit Act, 1961 was legislation of the factory floor, preoccupied with wage continuity during confinement. The 2017 Amendment enlarged the period of leave and, for the first time, admitted adoptive and commissioning mothers to the scheme, on visibly inferior terms. The Code on Social Security, 2020, in force from 21 November 2025, folded that scheme into Section 60(4) and renewed the

¹ *Deepika Singh v. Postgraduate Institute of Medical Education & Research, Chandigarh*, (2023) 13 SCC 681.

² *K. Umadevi v. Government of Tamil Nadu*, (2025) 8 SCC 263 : 2025 INSC 781 (decided 23 May 2025) (Oka & Bhuyan, JJ.).

³ *Hamsaanandini Nanduri v. Union of India*, 2026 INSC 246, Writ Petition (Civil) No. 960 of 2021 (decided 17 March 2026) (Pardiwala & Mahadevan, JJ.).

precise defect the Amendment had introduced. *Nanduri* is therefore not a judgment about a superannuated statute but about a provision in operation for under four months.

The paradox pursued here is structural rather than incidental. As the doctrine has grown more emphatic — from an indulgence conferred by an employer to an entitlement guaranteed by the Constitution — the class of beneficiaries has remained almost perfectly constant: women in formal, documented, standing employment, arrayed against an identifiable and regulable obligor. Escalation has sharpened the right without widening its reach.

II. STATUTORY ARCHITECTURE: THE PASSAGE TO THE CODE ON SOCIAL SECURITY

The operative provisions of the 1961 Act — twelve weeks' entitlement, payment at the average daily wage, notice requirements, nursing breaks, protection against dismissal during the benefit period — were addressed to the employer of a woman who had completed eighty days of work in the preceding twelve months.⁴ Judicial reception was generous: in *B. Shah* the Court brought rest days within the computation of the benefit, a beneficent enactment falling to be read so as to advance the wage-earning mother's interest rather than to husband the employer's purse.⁵ Liberality of construction did not disturb the design. Unlike the International Labour Organisation's instruments, which envisage compulsory insurance or public funds precisely so that the cost of maternity is not visited upon an individual employer, the Indian statute imposed a direct and unfunded liability upon that employer.⁶ The consequence has proved durable: the entitlement subsists only where a regulable employer can be identified.

The 2017 Amendment was substantial in scale and timid in principle. The period rose to twenty-six weeks for the first two surviving children, receding to twelve thereafter; a crèche obligation was fastened upon establishments with fifty or more employees; and, by the insertion of Section 5(4), women who legally adopt a child below three months, together with commissioning mothers, were admitted to a benefit of twelve weeks.⁷ That admission carried two inequalities *ex facie*: a duration less than half of that available to a biological mother of a first child, and an age threshold with no analogue in the biological limb of the section.

⁴ *Maternity Benefit Act, No. 53 of 1961, §§ 4–6, 11–12 (India).*

⁵ *B. Shah v. Presiding Officer, Labour Court, Coimbatore, (1977) 4 SCC 384, ¶¶ 16–19.*

⁶ *Maternity Protection Convention (Revised), 1952 (No. 103), art. 4(4)–(8), Int'l Labour Org.; Maternity Protection Convention, 2000 (No. 183), arts. 4, 6(8), Int'l Labour Org.*

⁷ *Maternity Benefit (Amendment) Act, No. 6 of 2017, §§ 2–5 (India) (substituting § 5(3) and inserting §§ 5(4)–(5) and 11A).*

The Code on Social Security, 2020 subsumed the scheme without reconsidering it. Chapter VI reproduces the 1961 architecture, Section 60(4) reproduces Section 5(4) in substance, and Section 67 carries forward the fifty-employee crèche threshold.⁸ On commencement — consolidation presented as reform — the flaw was re-enacted rather than repaired.⁹ The drafting idiom throughout remains that of concession: the statute speaks in the register of employers' liabilities rather than of mothers' rights, and calibrates the benefit to establishment size, wage records and continuity of service. *Air India v. Nergesh Meerza*, condemning as arbitrary a regulation that terminated an air hostess upon her first pregnancy, marks how far that idiom once travelled.¹⁰

III. STAGE ONE: PURPOSIVE READING AND THE ATYPICAL FAMILY

The appellant in *Deepika Singh*, a nursing officer at a central institute, sought maternity leave upon the birth of her first biological child. It was refused because Rule 43 of the Central Civil Services (Leave) Rules, 1972 confines the benefit to a female government servant with fewer than two surviving children, and her husband had two children of a previous marriage.¹¹ Neither the Tribunal nor the High Court found difficulty in the arithmetic. The Supreme Court did, and its technique was interpretive rather than constitutional: “surviving children” was read in the light of the object of the provision, which is to secure the continued participation of women in the workforce and to treat childbirth as a natural incident of working life, not a derogation from employment.¹² Children she had not borne, and for whom she had claimed no earlier benefit, could not be counted against her first confinement.

The celebrated passages of the judgment concern something else. The Court observed that the law's conception of the family as a stable unit of one mother, one father and their children fails to describe domestic arrangements as they exist — unmarried partnerships, queer relationships, single and adoptive parenthood and that a construction blind to atypical families withholds equal protection from those within them.¹³ That reasoning is expansive and much quoted. It is nevertheless *obiter dictum*. The *ratio decidendi* is narrow, and the two-child ceiling emerged

⁸ Code on Social Security, No. 36 of 2020, §§ 59–62, 67 (India).

⁹ Notification of the Ministry of Labour and Employment bringing the Code on Social Security, 2020 into force with effect from 21 November 2025.

¹⁰ *Air India v. Nergesh Meerza*, (1981) 4 SCC 335, ¶¶ 79–84.

¹¹ Central Civil Services (Leave) Rules, 1972, r. 43 (India).

¹² *Deepika Singh*, *supra* note 1, ¶¶ 21–27.

¹³ *Id.* ¶¶ 26–31 (on non-normative and atypical familial arrangements).

intact: a woman with two surviving children of her own stood, after *Deepika Singh*, precisely where the rule had placed her before.

This is the baseline move of the escalation: enlargement of the statutory boundary from within, without invoking Article 14 against the classification. The Court expanded who might benefit while leaving unexamined whether the provision could constitutionally say what it said.

IV. STAGE TWO: CONSTITUTIONAL GROUNDING WITH STATUTORY PRESERVATION

K. Umadevi concerned an English teacher in Tamil Nadu government service. Two children had been born of a marriage dissolved in 2017, their custody lying with the former husband. She remarried in 2018, conceived, and applied for maternity leave, refused under the Instructions to Fundamental Rule 101(a) restricting the benefit to those with fewer than two surviving children.¹⁴ A learned Single Judge granted relief; the Division Bench reversed, holding in terms that maternity leave is not a fundamental right. The Supreme Court repudiated that proposition. Drawing upon *Suchita Srivastava*, it held maternity leave to be a facet of the reproductive right of a woman, traceable to Article 21 and informed by the mandate of Article 42, with Articles 39, 43 and 51(c) supplying the surrounding directive obligations.¹⁵ Reproductive choice cannot be conditioned upon an employment penalty, and the participation of women in the workforce is not a privilege dispensed by a model employer but a constitutional entitlement.¹⁶

The remedy, however, was resolutely statutory. The Court did not declare the two-child norm *ultra vires*; it harmonised. The objects of population stabilisation and of maternity protection, it reasoned, are not incompatible and must be reconciled purposively. The parent statute served as the yardstick: Section 5(3) reduces the period of benefit for a third child but does not extinguish it, whereas the State instruction extinguished it altogether, and the mechanical reading adopted by the authorities was for that reason unsustainable.¹⁷ “Surviving children” was accordingly construed to exclude children not in the appellant's custody and in respect of whom she bore no subsisting caregiving obligation; the child then expected was her first of the subsisting marriage.¹⁸

¹⁴ *Tamil Nadu Fundamental Rules, r. 101(a)*, read with the Instructions issued thereunder.

¹⁵ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, ¶ 22.

¹⁶ *INDIA CONST. arts. 39(e)–(f), 42, 43, 51(c)*.

¹⁷ *Maternity Benefit Act, 1961, § 5(3)* (twenty-six weeks for the first two surviving children; twelve weeks thereafter — a reduction, and not an extinction, of the benefit).

¹⁸ *K. Umadevi*, *supra* note 2 (setting aside the judgment of the Division Bench of the Madras High Court dated 14 September 2022 and restoring the order of the learned Single Judge).

The point bears emphasis because much press coverage reported *Umadevi* as having declared maternity leave a fundamental right, full stop. That mistakes constitutional rhetoric for constitutional remedy. Nothing was struck down. Fundamental Rule 101(a) and the two-child norm survived unamended and remain enforceable; the next claimant whose two children are in her own custody will meet the same bar. The Article 21 holding is real, but its function was to justify a beneficial construction, not to void a rule. What the decision did accomplish, and what the reportage missed, is of greater consequence: it placed on the record a constitutional characterisation that a later Bench could deploy as a major premise. Two years on, that is precisely what occurred.

V. STAGE THREE: INVALIDATION AND COMPARATIVE CONVERGENCE

Hamsaanandini Nanduri reached the Court as an original petition under Article 32 and was decided on 17 March 2026. Impugned were the age condition in Section 5(4) of the 1961 Act, carried into Section 60(4) of the Code, and the cognate confinement of child adoption leave under Rule 43-B of the 1972 Rules to a child below one year.¹⁹ The Court held the restriction violative of Articles 14 and 21 insofar as it withheld maternity benefit from an adoptive mother by reference to the child's age at adoption.²⁰

The Article 14 analysis is orthodox and difficult to answer. Measured against the objects of the provision, the mother's recovery, but equally the care, bonding and integration of the child, a woman who adopts an infant of ten weeks and one who adopts a child of ten months are similarly circumstanced. The classification lacks rational nexus with the object sought to be achieved and is under-inclusive in the classical sense, excluding persons indistinguishable from those included, the reasoning proceeding along the familiar lines of *Anwar Ali Sarkar* and *Ambica Mills*.²¹ Sharper is the Court's attention to how the threshold operated in fact. Under the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations, 2022, no child may be declared legally free for adoption until the period for restoration has elapsed, so that legal adoption of a child below three months is a near-impossibility.²² The

¹⁹ *Code on Social Security, 2020*, § 60(4); *Maternity Benefit Act, 1961*, § 5(4) (*pari materia*); *Central Civil Services (Leave) Rules, 1972*, r. 43-B (child adoption leave confined to the valid adoption of a child below one year of age by a female government servant with fewer than two surviving children).

²⁰ *Hamsaanandini Nanduri*, *supra* note 3 (holding § 60(4) of the *Code on Social Security, 2020* unconstitutional and violative of arts. 14 and 21 insofar as it restricts maternity benefit to an adoptive mother of a child below three months of age).

²¹ *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75 : (1952) 1 SCC 1; *State of Gujarat v. Shri Ambica Mills Ltd.*, (1974) 4 SCC 656, ¶¶ 53–56.

²² *Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016*, §§ 32, 35, 37–38 (India); *Adoption Regulations, 2022*, regs. 3, 6–7, 11 (Central Adoption Resource Authority).

entitlement was thus not merely under-inclusive but illusory: beneficial legislation incapable of implementation fails the very class for whose protection it was enacted.

The Article 21 reasoning extends *Umadevi* in two directions. Decisional autonomy in reproduction is held to encompass the choice to become a mother by adoption, motherhood being a relation of care and responsibility rather than of parturition alone. And the frame widens beyond the claimant: the adopted child's interest in integration is treated as a constitutional consideration in its own right, one that grows rather than diminishes with age at placement.

Comparative authority is deployed with unusual candour. The South African Constitutional Court in *Van Wyk* had struck down a two-year age cap on adoption leave under the Basic Conditions of Employment Act, holding that adoption leave answers a broader spectrum of challenges than leave following childbirth.²³ The European Court of Human Rights in *Topčić-Rosenberg v. Croatia* had found the refusal of maternity leave to an adoptive mother to violate Article 14 read with Article 8 of the Convention, the caregiving purpose of the leave placing her in a situation relevantly similar to a biological mother's.²⁴ The House of Lords in *In re P* held that bright-line rules indifferent to the individual child's welfare cannot withstand scrutiny.²⁵

Two features of the disposition invite criticism. First, the remedy is severance coupled with reconstruction rather than excision: having condemned the age condition, the Court recast Section 60(4) as an entitlement of any woman who legally adopts a child to twelve weeks' benefit from the date of handover. The result is unimpeachable in policy, awkward in principle: the residue is now judicial rather than legislative text. Second, and more tellingly, the twelve-week period itself was left untouched. A biological mother of a first child receives twenty-six weeks; an adoptive mother twelve; and the equality logic that condemned the age cap applies with equal force to the duration differential, by some margin the more consequential inequality. That the Court leaned so heavily upon *Van Wyk* while declining to follow it here is a selectivity worth naming: the South African court equalised duration and restructured the second parent's entitlement as well.²⁶ The same selectivity marks the treatment of paternity leave, addressed only in obiter: statutory silence was identified as both a gender-equality and a child-welfare

²³ *Van Wyk v. Minister of Employment and Labour*, [2025] ZACC 20 (S. Afr. Const. Ct.) (confirming the invalidity of §§ 25, 25A, 25B and 25C of the Basic Conditions of Employment Act 75 of 1997 and of the corresponding provisions of the Unemployment Insurance Act 63 of 2001).

²⁴ *Topčić-Rosenberg v. Croatia*, App. No. 1939/11, Eur. Ct. H.R. (14 November 2013) (violation of art. 14 read with art. 8 of the European Convention on Human Rights).

²⁵ *In re P & Ors.*, [2008] UKHL 38, ¶¶ 15–20.

²⁶ *Van Wyk*, *supra* note 23 (interim regime apportioning four months and ten days of shared parental leave between both parents, with the declaration of invalidity suspended for thirty-six months).

failure, gendered caregiving being entrenched by a regime giving the mother twenty-six weeks and the father nothing enforceable, and the Union was urged to legislate. Urging is not adjudication. Having found the will to void a four-month-old provision of a consolidating Code, the Court remitted the deeper asymmetry to the legislature that had just declined to address it.

VI. THE UNRESOLVED FRONTIER: THE INFORMAL-SECTOR BLIND SPOT

Consider the claimants: a nursing officer at a central institute of medical education; a permanent teacher in State government service; a petitioner able to invoke Article 32 against the Union and sustain a writ petition for five years. Each stood in a documented employment relationship with a regulable employer, holding a written entitlement refused in writing. The litigation architecture selects for that profile: the cause of action is a recorded denial, the remedy a direction enforceable against a nameable obligor. Women outside such a relationship generate no comparable cause of action, and so do not appear.

The proportions are not marginal. Successive rounds of the Periodic Labour Force Survey place the overwhelming majority of India's women workers — upward of nine in ten on most estimates — in informal employment: agricultural labour, domestic work, home-based piece-rate production, construction, vending, platform work.²⁷ For that majority the Code's thresholds are dispositive. Chapter VI attaches to establishments employing ten or more persons; the crèche obligation under Section 67 arises only at fifty.²⁸ Unorganised, gig and platform workers are quarantined within Chapter IX, which confers no entitlement but empowers governments to frame schemes — a form yielding no correlative right, no adjudicatory forum and no assured funds.²⁹ The constitutional right announced in *Umadevi* and enforced in *Nanduri* therefore attaches not to the condition of maternity but to the statutory employment relationship, its existence conditioned upon the size of one's employer's payroll.

That this is a choice, not a necessity, is established by the Court's own precedent. In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*,³⁰ women engaged on muster roll — daily-wage, unregularized, without security of tenure — were refused maternity benefit as not

²⁷ *Periodic Labour Force Survey, Annual Report, Ministry of Statistics and Programme Implementation, Government of India (successive rounds).*

²⁸ *Code on Social Security, 2020, § 1(4) read with the First Schedule (threshold of ten or more employees for the application of Chapter VI); § 67 (crèche facility in establishments with fifty or more employees).*

²⁹ *Code on Social Security, 2020, ch. IX, §§ 109–114 (framing of schemes for unorganised workers, gig workers and platform workers).*

³⁰ *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, (2000) 3 SCC 224, ¶¶ 9–17, 32–36.

being regular employees. The Court extended the benefit, reasoning that the 1961 Act nowhere predicated the entitlement upon regularisation, and drawing upon Article 42 and India's obligations under the Universal Declaration and CEDAW as mediated through Article 51(c).³¹

The doctrinal axis of that decision differs from the modern trilogy, and the difference explains the stagnation. *Muster Roll* moved along the axis of coverage — who stands inside the statute; *Deepika Singh*, *Umadevi* and *Nanduri* move along the axis of content — what those already inside may claim. The asymmetry is institutional rather than doctrinal. *Muster Roll* succeeded because the Corporation was itself the employer, present before the Court and capable of being ordered to pay; the domestic worker and the agricultural labourer have no such respondent, and a court can neither conjure an obligor nor appropriate a fund. A challenge on their behalf would lie against legislative omission and Chapter IX's scheme-dependent architecture, terrain the Court has long been reluctant to enter; and Article 42 has never served as a freestanding source of obligation. *Nanduri* itself gestured at the wider field, invoking crèche facilities and substantive equality, and observing that maternity protection concerns the organised and unorganised sectors alike³² — then made an order reaching a single sub-section of a Chapter applicable to establishments of ten or more.

VII. THE ARCHITECTURE AND THE UNANSWERED QUESTION

The trajectory is coherent: interpretive flexibility in *Deepika Singh*, constitutional harmonisation in *Umadevi*, strict scrutiny and invalidation in *Nanduri*. Each decision furnished the premise the next required, and by March 2026 a four-month-old provision of a consolidating Code could be voided for irrational classification and want of decisional autonomy. What has escalated is remedial intensity, not reach: the three judgments refined the content of an entitlement whose gateway they never disturbed, and that gateway is the regulated employment relationship. A doctrine that grows more constitutional while its addressees remain the same cohort has deepened rather than dissolved the inequality beneath it.

The unanswered question is therefore not whether maternity protection is constitutionally grounded — after *Umadevi* and *Nanduri* it plainly is — but whether a grounding that operates only where a payroll exists deserves the name. An Article 21 entitlement contingent upon the

³¹ *Convention on the Elimination of All Forms of Discrimination against Women* art. 11(2), 18 December 1979, 1249 U.N.T.S. 13; *Universal Declaration of Human Rights* art. 25(2), G.A. Res. 217A (III) (10 December 1948), read with INDIA CONST. art. 51(c).

³² *Hamsaanandini Nanduri*, *supra* note 3 (on crèche facilities, institutional support and the progressive attainment of substantive equality).

dimensions of one's employer is not a universal guarantee. It is a privilege in constitutional dress, and the ninety per cent for whom it does not operate are owed an account of why four years of escalation have passed them by.