

Maternity Benefits and Reproductive Rights of Working Women in India

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Abstract

Maternity protection lies at the intersection of labour welfare, substantive equality, reproductive autonomy, public health, and the constitutional valuation of care. India's Maternity Benefit Act, 1961, substantially strengthened by the 2017 amendment, promises twenty-six weeks of paid leave for many employees, protection against dismissal, nursing breaks, crèche access, and limited recognition of adoptive and commissioning motherhood. Yet the promise is institutionally uneven. Employer-financed benefits may discourage the hiring and retention of women; the threshold-based model excludes much informal and precarious work; crèche and work-from-home clauses are weakly specified; enforcement is complaint-driven; and maternity remains framed predominantly as a woman's private responsibility rather than a social function shared by the State, employers, and all parents. This article evaluates the statutory scheme alongside the Constitution, social-security legislation, international standards, labour-market trends, and the Supreme Court's equality and reproductive-rights jurisprudence. It gives particular attention to *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*¹, *Deepika Singh v. Central Administrative Tribunal*, and the 2026 decision in *Hamsaanandini Nanduri v. Union of India*. It argues for universal, publicly pooled maternity income security; enforceable childcare standards; inclusive parental and adoption leave; protection for non-standard workers; and data-led labour inspection. Maternity protection should be reconstructed as an equality-enabling social infrastructure, not an employment cost attached to women.

Keywords: Maternity benefit; reproductive rights; working women; substantive equality; paid maternity leave; care work; crèche; informal employment; pregnancy discrimination; social security; India.

I. Introduction

The decision to become, or not to become, a parent is central to dignity, bodily integrity, privacy, and personal liberty. For a working woman, however, reproductive choice is never exercised in a vacuum. It is conditioned by the availability of income during pregnancy and recovery, safe working conditions, healthcare, childcare, freedom from dismissal, and the possibility of returning to work without a motherhood penalty. Maternity protection therefore connects the equality guarantees of Articles 14–16 and the right to life under Article 21 with the Directive Principles requiring adequate livelihood, equal pay, humane conditions of work, and maternity relief.² The statutory project is not charity: it is a means

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¹ AIR 2000 SC 1274, (2000) 3 SCC 224

² INDIA CONST. arts. 14, 15(3), 16, 21, 39(a), 39(d), 42 & 51A(e).

of correcting a labour market organized around an “unencumbered” worker whose care responsibilities are assumed to be performed elsewhere and usually by women.

The Maternity Benefit Act, 1961 (“MB Act”) was enacted to regulate women’s employment around childbirth and provide maternity and related benefits.³ Its importance is reinforced by CEDAW’s prohibition of employment discrimination on grounds of maternity and its demand for paid maternity leave, childcare services, and protection against dismissal.⁴ The ICESCR similarly treats social security, special protection for mothers, and health as mutually supporting guarantees.⁵ ILO Convention No. 183 supplies a modern benchmark of leave, cash and medical benefits, employment protection, non-discrimination, and breastfeeding breaks, although India has not ratified it.⁶

The contemporary context is paradoxical. Female labour-force participation has risen in official estimates, but women remain concentrated in agriculture, self-employment, unpaid family work, domestic work, home-based production, and other forms of work that do not translate easily into an enforceable employer–employee claim.⁷ At the same time, platform work, fixed-term contracting, outsourcing, and hybrid work complicate the identification of the responsible employer. The 2017 amendment extended paid leave and introduced adoption leave, commissioning-mother leave, crèche facilities, and work-from-home possibilities.⁸ These are significant achievements, but their design places most direct financial responsibility on individual employers. A right meant to promote equality can consequently generate incentives to avoid hiring women of childbearing age. The central inquiry is thus not whether India has generous words on the statute book, but whether law, finance, institutions, and workplace culture make reproductive choice real.

II. Conceptual Foundations: Maternity Protection as Reproductive Justice

A narrow approach treats maternity benefit as compensated absence following childbirth. A rights-based approach sees four interdependent dimensions. First, income replacement prevents pregnancy and childbirth from producing destitution. Second, health protection permits physical recovery, antenatal care, breastfeeding, and infant care. Third, employment security prevents reproductive status from becoming a proxy for exclusion. Fourth, childcare and shared parental leave redistribute care so that women can return to work on equal terms. These dimensions convert formal freedom into effective capability.

Reproductive rights include the freedom to decide whether and when to have children, to continue or terminate a pregnancy within law, and to receive the information and healthcare necessary for those decisions. Maternity benefit concerns the social and economic conditions after a decision to continue pregnancy or assume parenthood. It is therefore a positive condition of reproductive autonomy. A woman who may legally bear a child but must lose her livelihood to do so has only a fragile choice. Conversely, rules that presume all women are or should become mothers can reproduce discrimination. The correct

³ Maternity Benefit Act, No. 53 of 1961, pmb., INDIA CODE (1961).

⁴ Convention on the Elimination of All Forms of Discrimination Against Women art. 11(2), Dec. 18, 1979, 1249 U.N.T.S. 13.

⁵ International Covenant on Economic, Social and Cultural Rights arts. 9, 10(2) & 12, Dec. 16, 1966, 993 U.N.T.S. 3.

⁶ International Labour Organization, Maternity Protection Convention, 2000 (No. 183), arts. 4–10 (June 15, 2000). India has not ratified Convention No. 183.

⁷ Ministry of Statistics & Programme Implementation, Gov’t of India, Press Note on Periodic Labour Force Survey Annual Report 2022–23, at 2 (Oct. 9, 2023) (reporting an increase in female labour-force participation in usual status for persons aged fifteen and above from 23.3% in 2017–18 to 37.0% in 2022–23).

⁸ Maternity Benefit (Amendment) Act, No. 6 of 2017, §§ 3–4, INDIA CODE (2017).

constitutional frame protects both motherhood and non-motherhood, without allowing employers or the State to penalize either.

This framework also exposes the limits of “protective” legislation. Restrictions ostensibly designed for women’s welfare may exclude women from occupations, reinforce stereotypes of fragility, or obscure workplace hazards that should be corrected for everyone. Substantive equality asks whether a measure removes structural disadvantage while preserving agency. It requires attention to intersectionality: a permanent public employee, an outsourced sanitation worker, a migrant construction worker, a domestic worker, and a platform worker face radically different routes to maternity security even though pregnancy produces common needs.

III. The Indian Legal Framework

The MB Act initially applies to factories, mines, plantations, specified performance establishments, and covered shops or establishments employing ten or more persons; governments may extend it to other establishments.⁹ Eligibility ordinarily requires at least eighty days’ work in the twelve months preceding expected delivery.¹⁰ Section 5 provides twenty-six weeks of benefit for a woman with fewer than two surviving children, of which no more than eight weeks may precede expected delivery; a woman with two or more surviving children receives twelve weeks.¹¹ A legally adopting mother of a child below three months and a commissioning mother are provided twelve weeks from the date the child is handed over.¹² Where the nature of work permits, an employer may allow work from home on mutually agreed conditions after maternity benefit.¹³

The scheme contains important ancillary guarantees. Section 4 prohibits employment during six weeks immediately following delivery, miscarriage, or medical termination and restricts arduous work at specified stages. Section 6 regulates notice and payment.¹⁴ Sections 8–10 provide a medical bonus where free prenatal and postnatal care is unavailable, six weeks’ paid leave following miscarriage or medical termination, two weeks after tubectomy, and additional leave for illness arising from pregnancy or related events.¹⁵ Section 11 grants two nursing breaks until the child reaches fifteen months.¹⁶ Section 11A requires establishments with fifty or more employees to provide prescribed crèche facilities and permits four visits daily; the employer must inform women of available benefits at appointment.¹⁷ Section 12 protects against dismissal or disadvantage during lawful absence, while penal provisions address violations.¹⁸

The MB Act coexists with the Employees’ State Insurance Act, 1948. Insured women who satisfy contribution conditions receive maternity benefit from the social-insurance system under sections 46 and

⁹ Maternity Benefit Act § 2(1).

¹⁰ Id. § 5(2).

¹¹ Id. § 5(3).

¹² Id. § 5(4).

¹³ Id. § 5(5).

¹⁴ Id. §§ 4, 6.

¹⁵ Id. §§ 8–10.

¹⁶ Id. § 11.

¹⁷ Id. § 11A.

¹⁸ Id. §§ 12, 21–23.

50, while the MB Act contains coordinating provisions.¹⁹ This distinction is normatively important: pooled insurance spreads reproductive costs, whereas exclusive employer liability associates those costs with the hiring of women. The Code on Social Security, 2020 consolidates maternity provisions in Chapter VI and retains much of the existing architecture.²⁰ Its full practical effect depends on commencement, rules, administrative capacity, and a transition that does not diminish existing benefits.

Constitutional doctrine supplies the interpretive foundation. Articles 14 and 16 demand more than identical treatment when pregnancy and care generate distinctive disadvantage. Article 15(3) permits special provisions for women, but protective classification must remain compatible with dignity and agency. Article 21 includes privacy, bodily integrity, health, and decisional autonomy; Article 42 expressly directs the State to secure maternity relief. Read together, these provisions support maternity protection as an equality measure and impose a duty to make it accessible. The Supreme Court has now described maternity benefit as economic security that enables reproductive choice, prevents motherhood from becoming workplace exclusion, and corrects structural inequality.²¹

IV. Judicial Perspectives: From Welfare to Substantive Equality

In *B. Shah v. Presiding Officer, Labour Court*, the Supreme Court adopted a beneficial interpretation of the MB Act and held that maternity benefit for a mine worker should account for Sundays as part of the relevant period. The Court emphasized the statute's social-welfare purpose and the need to enable a woman to preserve her health and the child's well-being.²² The decision established an enduring interpretive principle: technical readings should not defeat the continuity of maternity income.

Air India v. Nergesh Meerza invalidated a service condition that exposed air hostesses to termination on first pregnancy as arbitrary, describing such a consequence as abhorrent to civilized society. Yet other aspects of the judgment accepted sex-differentiated service conditions, revealing the limits of early formal-classification analysis.²³ *Neera Mathur v. Life Insurance Corporation* condemned intrusive pre-employment questions about menstruation and pregnancy and directed deletion of embarrassing questionnaire fields.²⁴ Together, these cases locate pregnancy discrimination not only in lost wages, but also in surveillance, stereotypes, and compromised privacy.

The decisive expansion occurred in *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*. Daily-wage women workers were denied maternity leave because they lacked regular status. The Court rejected that distinction, relied on constitutional directives and international norms, and recognized maternity relief for casual workers.²⁵ Its reasoning remains crucial for today's contractual and outsourced labour: the physiological and caregiving needs protected by maternity law do not depend on nomenclature in a payroll system.

Reproductive-rights cases deepen this labour analysis. *Suchita Srivastava v. Chandigarh Administration* recognized reproductive choice as a dimension of personal liberty, including the choices to procreate and

¹⁹ Employees' State Insurance Act, No. 34 of 1948, §§ 46(1)(b), 50, INDIA CODE (1948).

²⁰ Code on Social Security, No. 36 of 2020, §§ 59–72, INDIA CODE (2020).

²¹ *Hamsaanandini Nanduri v. Union of India*, 2026 INSC 246, ¶¶ 21–26 (India).

²² *B. Shah v. Presiding Officer, Labour Court*, (1977) 4 S.C.C. 384, 388–90 (India).

²³ *Air India v. Nergesh Meerza*, (1981) 4 S.C.C. 335, 369–70 (India).

²⁴ *Neera Mathur v. Life Ins. Corp. of India*, (1992) 1 S.C.C. 286, 289–90 (India).

²⁵ *Mun. Corp. of Delhi v. Female Workers (Muster Roll)*, (2000) 3 S.C.C. 224, 232–35 (India).

to abstain from procreation.²⁶ *K.S. Puttaswamy v. Union of India* placed intimate and reproductive decisions within constitutional privacy.²⁷ In *X v. Principal Secretary, Health and Family Welfare Department*, the Court refused a marriage-based hierarchy in abortion access, emphasized bodily and decisional autonomy, and interpreted the law to include unmarried women.²⁸ These holdings matter at work: policies that demand disclosure, penalize pregnancy, or distinguish “respectable” families burden constitutional agency.

In *Deepika Singh v. Central Administrative Tribunal*, a nursing officer was denied maternity leave for her biological child because she had earlier taken childcare leave for her spouse’s children from a previous marriage. The Court construed service rules purposively, recognized atypical and blended families, and linked maternity entitlements to women’s continued participation in the workplace.²⁹ The judgment destabilizes the assumption that family is always a fixed heterosexual unit with exclusively biological caregiving.

The most recent doctrinal development is *Hamsaanandini Nanduri v. Union of India* (2026). The Supreme Court struck down the three-month age ceiling attached to adoption maternity benefit under section 60(4) of the Social Security Code as arbitrary, under-inclusive, and contrary to Article 14.³⁰ Adoption processes frequently ensure that a child is older than three months when placed; the ceiling therefore made the benefit illusory for many legal adoptions. More broadly, the Court treated maternity protection as institutional support for substantive equality and examined the invisibility of household and care work. It also urged serious attention to paternity leave as a means of dismantling gendered parenting roles.³¹ The judgment marks a shift from protecting biological recovery alone toward valuing caregiving, bonding, and diverse routes to parenthood.

V. Implementation Challenges

The first challenge is coverage. A threshold tied to establishment size and enumerated sectors leaves many women to prove that an establishment is covered, that an employment relationship exists, and that the eighty-day condition is met. Informal workers may have multiple employers, irregular attendance records, cash wages, or no appointment letter. Home-based and domestic work occurs in dispersed private spaces; agricultural work is seasonal; gig platforms characterize workers as independent contractors. Formal neutrality therefore produces indirect exclusion. Substantive equality doctrine requires attention to these effects, not merely to a statute’s facial generosity.³²

Second, the financing model can create a hiring penalty. Twenty-six weeks of employer-paid leave is valuable to an eligible employee but expensive for a small enterprise, particularly where replacement labour must also be funded. The employer may respond through covert discrimination: preferring men, asking unlawful family-planning questions, delaying confirmation, outsourcing roles, or not renewing

²⁶ *Suchita Srivastava v. Chandigarh Admin.*, (2009) 9 S.C.C. 1, 13–15 (India).

²⁷ *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1, 487–89 (India) (Chandrachud, J.).

²⁸ *X v. Principal Sec’y, Health & Fam. Welfare Dep’t*, 2022 SCC OnLine SC 1321, ¶¶ 98–113 (India).

²⁹ *Deepika Singh v. Cent. Admin. Tribunal*, 2022 INSC 832, ¶¶ 12–27 (India).

³⁰ *Hamsaanandini Nanduri*, 2026 INSC 246, ¶¶ 91–93, 167 (holding the three-month age ceiling for an adopted child under § 60(4) of the Code on Social Security unconstitutional).

³¹ *Id.* ¶¶ 146–64 (discussing the invisibility of care work and the need for meaningful paternity leave).

³² *Lt. Col. Nitisha v. Union of India*, (2021) 15 S.C.C. 125, 166–70 (India) (explaining indirect discrimination and substantive equality).

fixed-term contracts. International evidence favors social insurance or public funds that distribute maternity costs across society.³³ Maternity is a social reproductive function from which the economy benefits; its cost should not be attached to an individual woman at the hiring gate.

Third, statutory reach diverges sharply from labour-market reality. A large share of women work outside stable wage employment and may receive only targeted welfare cash transfers rather than wage replacement.³⁴ Such transfers serve maternal nutrition and health but are not equivalent to job-protected paid leave. The result is a two-tier structure: relatively generous protection for a segment of formal employees and modest, conditional assistance for many others. The constitutional concern is not that every benefit must be identical, but that minimum income security and healthcare should not depend on formal employment status.

Fourth, enforcement remains fragmented and complaint-driven. Inspectors can investigate, direct payment, and hear claims, but an individual worker may fear retaliation, lack documents, or be unaware of the remedy.³⁵ Litigation after childbirth is an especially unrealistic enforcement mechanism. Low reported disputes may signify invisibility rather than compliance. Labour departments often lack gender-disaggregated data on eligibility, claims, rejection grounds, dismissals, crèche availability, and return-to-work outcomes. Without transparent reporting, neither deterrence nor policy evaluation is credible.

Fifth, the crèche provision is under-specified in practice. The fifty-employee threshold can encourage workforce fragmentation; questions persist about distance, common facilities, quality standards, hours, fees, safety, and inclusion of contractual workers' children. A nominal room does not constitute childcare. Because section 11A is central to return and retention, its implementation should be measured through utilization and quality, not the existence of a signboard.³⁶ Smaller establishments and clusters of informal workers require publicly supported neighborhood crèches rather than exemption by scale.

Sixth, "work from home" is discretionary and dependent on mutual agreement.³⁷ It may assist some workers, but it is not a substitute for leave or childcare. Remote work can merge paid work with uninterrupted infant care, extend working hours, impair breastfeeding and recovery, and disadvantage workers whose tasks cannot be performed digitally. A rights-consistent policy must protect voluntariness, workload, privacy, appraisal, and the right to disconnect.

Seventh, the architecture remains maternal rather than parental. Long maternity leave combined with minimal paternity or parental leave signals to employers that women are the expected caregivers. It also burdens single parents, adoptive parents, queer families, and families in which the mother is not the primary caregiver. Comparative standards increasingly recognize adequately paid, individual, non-transferable leave for each parent because leave reserved for fathers or second parents changes actual behavior more effectively than transferable family leave.³⁸ Hamsaanandini Nanduri correctly links paternity leave to dismantling gender roles, but legislative action is necessary.

³³ ILO, Care at Work: Investing in Care Leave and Services for a More Gender Equal World of Work 109–13 (2022).

³⁴ ILO, World Social Protection Report 2024–26: Universal Social Protection for Climate Action and a Just Transition 74–78 (2024).

³⁵ Maternity Benefit Act § 2(1)(b) (applying to covered shops and establishments employing ten or more persons).

³⁶ See Ministry of Labour & Employment, Gov't of India, Compliance Handbook for Employers Under the Four Labour Codes 22–23 (2026).

³⁷ Nat'l Comm'n for Enters. in the Unorganised Sector, Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector 1–4, 75–79 (2007).

³⁸ Pradhan Mantri Matru Vandana Yojana, Mission Shakti Guidelines, Ministry of Women & Child Development, Gov't of India 67–75 (2022).

Finally, access is shaped by caste, class, disability, migration, marital status, and geography. A woman with disability may require reasonable accommodation during pregnancy; a migrant worker may lose continuity when moving between states; a transgender or non-binary gestational parent may confront gendered statutory language; and an unmarried woman may face stigma. Equality requires universal minimum protection plus accommodations responsive to specific disadvantage. A single category of “woman employee” cannot exhaust the diversity of reproductive labour.

VI. A Reform Agenda

First, India should establish universal maternity income security through a pooled social-insurance and tax-supported model. Employers may contribute, but payment should not turn on the solvency or willingness of the immediate employer. A national floor should cover informal, self-employed, domestic, agricultural, migrant, gig, and platform workers, with simple registration and portability. Existing superior contractual or statutory benefits must remain protected.³⁹ The amount should approximate meaningful wage replacement and never fall below an adequate social-protection floor.

Second, pregnancy discrimination should be expressly regulated across recruitment, probation, promotion, fixed-term renewal, performance evaluation, and dismissal. The law should prohibit intrusive reproductive inquiries except where narrowly necessary for health and safety; shift the evidentiary burden once a prima facie case is shown; authorize reinstatement, compensation, and civil penalties; and protect complainants from retaliation. Algorithmic recruitment and platform deactivation should be included.

Third, childcare must become enforceable social infrastructure. National rules should prescribe accessibility, distance, hours, caregiver ratios, safety, inclusion of all workers, inspection, and grievance standards. Government, municipalities, employer clusters, and worker organizations can support common crèches. Early-childhood policy already demonstrates that nutrition, care, and development are public concerns rather than private conveniences.⁴⁰

Fourth, maternity leave should be integrated with paid paternity, second-parent, and parental leave. A protected period reserved for each parent would reduce statistical discrimination against women and affirm caregiving by men. Adoption and commissioning-parent benefits should focus on placement and care needs rather than arbitrary child-age thresholds. The Court’s 2026 reasoning provides a constitutional foundation for this transition.⁴¹

Fifth, enforcement should become proactive and data-led. Digital wage and social-security records can trigger benefit information without demanding repeated applications, while offline routes must remain available. Inspectors should conduct risk-based audits of sectors with high female and contractual employment. Governments should publish annual, establishment-size and sector-disaggregated data on claims, payment delays, dismissal complaints, crèche compliance, appeals, and sanctions. Worker collectives and legal-services authorities should be permitted to assist claims; limitation rules should reflect the vulnerability surrounding childbirth.⁴²

Sixth, implementation must be coordinated with public health. Antenatal care, safe delivery, postnatal care, mental-health support, lactation accommodation, miscarriage leave, and return-to-work adjustments

³⁹ Maternity Benefit Act §§ 14–17.

⁴⁰ Id. § 11A(1).

⁴¹ Id. § 5(5).

⁴² ILO, *Maternity and Paternity at Work: Law and Practice Across the World* 73–79 (2014).

should form a continuum. International human-rights doctrine recognizes that reproductive health demands availability, accessibility, acceptability, and quality, free from discrimination.⁴³ Maternity law should therefore be evaluated not only by weeks of leave but by health, income, retention, and autonomy outcomes.

VII. Conclusion

India's maternity-benefit framework contains a strong normative core. Twenty-six weeks of paid leave, dismissal protection, nursing breaks, miscarriage leave, and crèche obligations reflect an understanding that equality requires material support. Judicial interpretation has repeatedly rescued that purpose from narrow status-based readings—from B. Shah and Female Workers (Muster Roll) to Deepika Singh. Reproductive-autonomy jurisprudence has simultaneously established that decisions about pregnancy and family lie within dignity, privacy, and liberty. Hamsaanandini Nanduri brings these lines together: maternity protection is economic security, caregiving support, and an instrument against workplace exclusion; arbitrary limits that disregard lived family formation cannot survive equality review.⁴⁴ Yet legal generosity for a formal minority cannot substitute for universal protection. Threshold exclusions, informal work, weak enforcement, discretionary flexibility, deficient childcare, and employer-only finance sustain a wide implementation gap. They also risk converting maternity protection into a reason not to employ women. The next generation of reform should socialize cost, universalize a minimum income floor, make childcare real, prohibit pregnancy discrimination throughout the employment cycle, and create paid leave for all parents. Such reform would not dilute maternity rights. It would secure their purpose: enabling every person to exercise reproductive choice without surrendering health, livelihood, dignity, or equal citizenship.

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⁴³ Law Comm'n of India, Report No. 259, Early Childhood Development and Legal Entitlements 35–43 (2015).

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