2026 INSC 246

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (C) NO. 960 of 2021**

**HAMSAANANDINI NANDURI ...PETITIONER**

**VERSUS**

**UNION OF INDIA & ORS. ...RESPONDENTS**

**J U D G M E N T**

**J.B. PARDIWALA, J.**:

For the convenience of exposition, this judgment is divided into the following parts:-

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*"Not flesh of my flesh, nor bone of my bone,*
*But still miraculously my own.*
*Never forget for a single minute,*
*You didn't grow under my heart, but in it."*

1. We are tempted to preface our judgment with the words of poet Fleur Conkling Heyliger. The stanza captioned above resonates with an undiminishing force in the present petition as well. It communicates that transition into motherhood does not occur in the brief moment when legal formalities are completed, rather it is a gradual process that takes shape in the heart of the mother. It is within these unspoken moments of reassurance and bonding that the relationship between a mother and child is gradually formed and strengthened.

2. Before we address ourselves on the issues raised in the writ petition, we find it apposite to note that the petitioner filed the I.A. No. 33856/2026 to amend the writ petition to bring on record the amendment and consolidation of the impugned provision by way of the Code on Social Security, 2020. We allow the I.A. for the amendment of the writ petition. The amended writ petition is considered for the purposes of the following exposition.

**I. THE CONTEXT**

3. The petitioner, who is an adoptive mother of two children, has filed the present petition under Article 32 of the Constitution in public interest, seeking a declaration to the effect that Section 5(4) of the Maternity Benefit Act, 1961 (for short, "**MB Act**") as amended by the Maternity Benefit (Amendment) Act, 2017 (for

short, "**Amendment Act, 2017**") is unconstitutional, being violative of Articles 14, 19(1)(g) and 21 of the Constitution, respectively. The prayer in the petition reads thus:-

> "*a) Issue a Writ, Order or direction, more particularly one in the nature of Writ of Mandamus or any other writ or direction in the nature of the writ and declare Section 5(4) of the Maternity Benefit (Amendment) Act 2017) as ultra vires Articles 14, 19 and 21 of the Constitution of India, and declare the Section 5(4) of the Maternity Benefit (Amendment) Act 2017) as unconstitutional and invalid;*
> *b) Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case, in the interest of justice and equity.*"

4. At the outset, we must mention that on 21.11.2025, the Code on Social Security, 2020, came into effect (for short, "**the 2020 Code**"), by which all laws relating to social security, including that of the MB Act were amended and consolidated. Insofar as Section 5(4) of the MB Act is concerned, Section 60(4) of the 2020 Code is the existing *pari materia* provision and holds the field on the issue at hand.

5. By order dated 12.12.2025, the Court granted the petitioner permission to take suitable steps to challenge the newly enacted provision, i.e., Section 60(4) of the 2020 Code. Pursuant to which, the petitioner filed I.A. No. 33856/2026 seeking amendment of the petition to challenge Section 60(4) of the 2020 Code on the same grounds which were applicable to Section 5(4) of the MB Act.

6. The impugned provision entitles only those mothers who legally adopt a child below the age of three months or a commissioning mother to seek maternity benefit for a period of twelve weeks from the date on which the child is handed over to the adoptive mother. However, the challenge before us is limited to the extent that it governs adoptive mothers.

## III. SUBMISSIONS ON BEHALF OF THE PARTIES

### i. Submissions on behalf of the Petitioner

7. Ms. Bani Dikshit, the learned counsel appearing for the petitioner would argue that Section 60(4) of the 2020 Code creates an unreasonable classification among adoptive mothers. She submitted that the distinction created by the legislature between a woman who adopts a child aged less than three months and a woman adopting a child aged three months or above is artificial and violative of Article 14. She fortified her submission by illustrating that if a woman adopts a child aged four months, she would not be entitled to maternity benefit as provided under the 2020 Code.

8. She added that such an exclusion bears no rational nexus with the object of the 2020 Code and unjustly deprives a mother adopting a child aged three months or above. She further submitted that the age limit of three months could not be said to fulfill the bright-line test, as there is no reasonable distinction between adoptive mothers falling on either side of three-month limit.

9. Ms. Dikshit further submitted that by prescribing the maximum age of the adopted child at three months, Section 60(4) deprives all children above the age of three months from receiving maternal care they need for their development and integration in their adoptive families. In other words, the provision overlooks the physical and emotional well-being of the adoptive child aged three months or above as well as the adoptive parent. Thus, the provision is arbitrary, unreasonable and discriminatory not only towards the mother but also towards the child.

10. In the same breath, she submitted that the provision disregards the long-drawn procedure for the adoption of orphaned, abandoned, or surrendered children under the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, "**the JJ Act**") and the Adoption Regulations, 2022 (for short, "**the CARA Regulations**"). She underscored that the process for an orphaned, abandoned, or surrendered child to be "legally free for adoption" would take, at the very least, two months. Furthermore, for the fulfillment of the residuary the statutory procedure under the CARA Regulations would require another month. Thus, in view of such prescribed timeline, the provision would be rendered completely otiose, as in no case can the legal process of adoption be completed before the child.

11. She further highlighted that Section 60(4) restricts a woman's right to carry on her trade, occupation, and business guaranteed under Article 19(1)(g) of the Constitution based on the child's age. She added that such a restriction dissuades women who

are working professionals from adopting. Thus, the provision fails to ensure that more children are adopted and also discourages women working in the organized or unorganized sector from considering adoption.

12. She further submitted that the provision also violates the adoptive mothers' and adoptive children's right to life and dignity under Article 21 by denying the mother the right to a wholesome and holistic motherhood and the adoptive children the right to receive sufficient care to be rehabilitated and integrated into the new family.

13. In such circumstances referred to above, the learned counsel appearing for the petitioner would submit that Section 60(4) of the 2020 Code be declared unconstitutional, to the extent that it limits the benefits to women adopting children up to three months old, being violative of Articles 14, 19, and 21 of the Constitution, respectively.

**ii. Submissions on behalf of the Respondents**

14. Mr. K.M. Nataraj, the learned Additional Solicitor General appearing for the respondents submitted that Section 60(4) of the 2020 Code should to be read and interpreted along with the entire scheme of the maternity benefit.

15. The learned ASG submitted that the submission canvassed on behalf of the petitioner that the procedure of the adoption is time consuming is devoid of any merit. He submitted that with a view

to expedite the adoption process, district magistrates and additional district magistrates have been conferred with the power to issue adoption orders.

16. In the aforesaid context, he submitted that in case an adoptive mother adopts a child aged more than three months, she can avail the creche facilities available at her establishment as per Section 67 of the 2020 Code.

17. It was further submitted that the prescription of "*a child below the age of three months*" is reasonable as a child older than three months does not have the same intensive dependency on the caregiver in terms of continuous feedings, sleeping regulation assistance, and immediate parental imprinting to the same degree.

18. In the last, the learned ASG submitted that Section 60(4) of the 2020 Code strikes a balance between the rights of adoptive mothers and the concerns of employers. He added that the provision satisfies the proportionality principle, ensures harmonious construction with other laws, and is consistent with international standards.

**IV. ISSUES FOR CONSIDERATION**

19. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:-

a. Whether the age limit of three months stipulated under sub-section (4) of Section 60 of the Social Security Code, 2020, could be said to be in violation of the Article 14 of the Constitution being discriminatory towards women who adopt a child aged three months or above?

b. Whether the age limit of three months stipulated under sub-section (4) of Section 60 of the Social Security Code, 2020, could be said to be in violation of the right to reproductive autonomy of an adoptive mother and the right of the adopted child to holistic care and development under Article 21 of the Constitution?

## V. ANALYSIS

### A. Maternity protection as a basic human right

20. Women, as primary caregivers of children, play a crucial role in the early development of children, more particularly, in the formative years of the child when a mother provides stability, care, and consistent nurturing. During this period, mothers undertake extensive physical, emotional, and psychological responsibilities. It often requires them to prioritize childcare over professional commitments. In such circumstances, institutional support becomes necessary to enable them to discharge responsibilities effectively without fear of financial insecurity, professional disadvantage, or the loss of livelihood.

21. The protection of maternity leave is a basic human right, as it recognizes conditions that are necessary for the full development

of human personality and realization of equality. It embodies an essential component required to promote equality at workplace and safeguards maternal and child health. In other words, it dignifies motherhood.

22. Maternity benefit or the payment *in lieu* of such leave is intended to support women during the phase of early motherhood by providing economic security when they are most engaged in the care and nurture of a young child. This act of support recognizes that motherhood entails sustained physical, emotional, and social exertion which demands time, financial stability and resources.

23. The concept of maternity benefit acknowledges the ability of a woman to exercise her reproductive choices without fear of losing her employment, more particularly, the economic security. Thus, it ensures that motherhood does not become a factor for exclusion at workplace.

24. In the aforesaid context, the right of maternity protection recognizes the biological as well as caregiving realities associated with motherhood, and seeks to correct structural inequalities that women face in employment. It represents the State's commitment to uphold human dignity, equal treatment at work, and broader ideals of social justice.

25. Thus, legislating for maternity benefit and childcare, in the form of payment during periods of recovery and care, crèche facilities

at the workplace, and parental leave for tending to young children, constitutes institutional support aimed at enabling women to seek and retain employment, participate meaningfully in public life, and progressively attain substantive equality.

26. It is important to highlight that motherhood is not merely a biological function but a deeply personal and emotional experience. It is a right rooted in the freedom to love, nurture, and raise a child with dignity and devotion. Parenthood is defined by care and responsibility rather than by physical act of giving birth alone, even more so for women who choose to embrace motherhood by adopting a child overcoming social, emotional, and institutional barriers to provide a child with security.

**i. Recognition of maternity protection in the International Law framework**

27. Article 25(2) of the United Declaration of Human Rights (UDHR) recognizes that motherhood and childhood are entitled to special care and assistance. It stipulates that all children enjoy the same social protection. Further, Article 10(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that mothers are entitled to special protection for a reasonable period before and after childbirth, including paid leave or leave supported by adequate social security benefits. In addition to this, Article 12 obligates the State Parties to take necessary steps for the healthy development of children.

28. The International Labour Organization (ILO) through Maternity Protection Conventions (Convention No. 3, Convention No. 103, and Convention No. 183) recommended for entitlements related to maternity protection at work having regard to the evolving status and recognition of women's right at workplace. Initially, Convention No. 3 provided 12 weeks maternity leave with cash benefits to ensure continuity of income, daily breaks for nursing, and protection against dismissal during leave. However, this was limited to women working in public or private industrial or commercial undertakings. Later, Convention No. 183 extended the period of leave to 14 weeks and the scope of protection to women employed in industrial undertakings and in non-industrial and agricultural work.

29. Further, Article 11(1) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) mandates the State Parties to take appropriate steps to prevent discrimination against women on the grounds of maternity and ensure their right to work. It puts an obligation on the State Parties to prohibit dismissal on the grounds of maternity leave and introduce maternity leave with comparable social benefits without loss of former employment.

30. Simultaneously, Article 3 of the Convention on the Rights of the Child (CRC) mandates that all actions concerning children must be taken having regard to the best interests of the child. It urges the State Parties to ensure that all institutional facilities

responsible for the care of children shall conform with the established standards.

31. What is discernable from the aforesaid discussion is that various international conventions recognize maternity leave as an essential human right. The objective of all the aforesaid guiding principles is to preserve the health of the mother and the child, to prevent unequal treatment at workplace due to their reproductive choices, and to promote equality of opportunity and equitable treatment between genders.

**ii. Statutory recognition of maternity benefit in India**

32. The earliest statutory recognition of maternity benefit for working women in India came through the Bombay Maternity Benefit Act, 1929, which regulated the employment of women in factories before and after childbirth and provided for the payment of maternity benefit. In 1931, the Royal Commission on Labour in India recommended that similar protective measures be taken across the country. Thus, such protection was being provided under various State and Central legislations.[1]

33. With a view to bring uniformity in, *inter alia*, the qualifying conditions for maternity benefit, period of maternity leave, payment *in lieu* of maternity leave, and to reduce disparity and

[1] Madras Maternity Benefit Act, 1934 (Act 6 of 1934), Bengal Maternity Benefit Act, 1939 (Act 4 of 1939), Punjab Maternity Benefit Act, 1943 (Act 6 of 1943), The Assam Maternity Benefit Act, 1944 (Act 1 of 1944), Bihar Maternity Benefit Act, 1945 (Act 24 of 1947).

extend maternity benefit to all women employed in establishment, the MB Act was enacted. The Introduction and the Statement of Objects and Reasons of the Act respectively read thus:-

> "*Maternity protection was being provided under the different State Acts and the three Central Acts. There was considerable diversity in their provisions relating to qualifying conditions, period and rate of benefit, etc. To reduce the disparities and to provide the maternity protection to the women employed in all establishments, including mines, factories and plantations, except those to which the Employees' State Insurance Act, 1948 applied, it was proposed to enact a separate law. Accordingly the Maternity Benefit Bill was introduced in the Parliament.*
>
> *STATEMENT OF OBJECTS AND REASONS*
>
> *Maternity protection is at present provided under the different State Acts on the subject and three Central Acts, viz., the Mines Maternity Benefit Act, 1941, the Employees' State Insurance Act, 1948 and the Plantations Labour Act, 1951. There is considerable diversity in their provisions relating to qualifying conditions, period and rate of benefit, etc. The proposed legislation seeks to reduce as far as possible the existing disparities in this respect. It will apply to all establishments, including mines, factories and plantations, except those to which the Employees' State Insurance Act, 1948 applies and its provisions approximate as nearly as possible to those of that Act.*"
>
> (Emphasis is ours)

34. The MB Act was enacted with the object of regulating the employment of women in establishments for periods before and after child birth and providing for the payment *in lieu* of maternity leave. It aimed to ensure that a working woman does not have to compromise on her role as a caregiver to her child.

35. The concept of maternity benefit also operates as an instrument of "defamilisation", whereby it reduces the woman's reliance on family for care and protects economic independence. It represents a legislative commitment towards the promotion of gender equality by creating an enabling environment that recognizes and accommodates balancing familial responsibilities with professional engagement. In doing so, the statute affirms dignity, equality, and social justice for working women.

36. Sometime between 2012 and 2015, the 44th, 45th, and 46th Indian Labour Conferences, respectively, recommended for enhancement of the period of maternity leave, the introduction of maternity benefit for adopting and commissioning mothers, facility of work from home, and provision of creche facility in establishments. Thus, with the aforesaid amendments were introduced to enhance participation of women in labour force and improve work-family balance.

37. The Amendment Act, 2017, inserted sub-section (4) of Section 5 of the MB Act which is in *pari materia* with Section 60(4) of the 2020 Code. The provision reads thus:-

> "***60. Right to payment of maternity benefit.—(****1) Subject to the other provisions of this Code, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately*

*preceding the day of her delivery, and any period immediately following that day.*

*Explanation.—For the purposes of this sub-section, "the average daily wage" means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, subject to the minimum rate of wage fixed or revised under the Code on Wages, 2019 (29 of 2019).*

*xxx*

*(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.*"

(Emphasis is ours)

38. Section 60(4) of the 2020 Code provides that a woman who legally adopts a child below the age of three months is entitled to maternity benefit for a period of 12 weeks from the date the child is handed over to the adopting mother.

**iii. Relevant precedents encapsulating judicial interpretation of maternity benefit**

39. Before we delve into the discussion of judicial interpretation of scope, ambit, application of maternity benefit in varying circumstances that have come before courts, we may look at the definition of "maternity" in dictionary.

40. The Oxford English Dictionary, defines the word "maternity" as:-

"*The state, condition, or fact of being a mother.*"

Further, the Black's Law Dictionary (8th Ed) defines "maternity" as:-

> *"The character, relation, state, or condition of a mother."*

41. The aforesaid definition reflects a broader understanding of maternity in relation to motherhood and does not restrict it to the period before and after childbirth or to the age of the child.

42. We may look into the decision of ***B. Shah* v. *Presiding Officer, Labour Court***, reported in **(1977) 4 SCC 384**, wherein this Court held that the interpretation of beneficial legislation must be guided by its underlying objective of advancing social justice. The Court emphasized that the period of maternity leave serves multiple purposes, including enabling the mother's physical recovery, facilitating the nurturing and care of the child, and ensuring the level of her previous efficiency and output.

43. In ***Municipal Corpn. of Delhi* v. *Female Workers (Muster Roll)***, reported in **(2000) 3 SCC 224**, the claim of the female workers engaged on muster roll for maternity benefit was examined on the anvil of Articles 39, 42, and 43 of the Constitution respectively. The Court, highlighting the critical phase of motherhood, observed that the MB Act seeks to ensure that women are treated with dignity at the workplace and protected from apprehension of victimization on account of forced absence during maternity. In such circumstances, the Court underscored that employers are expected to adopt a

humane and empathetic approach towards women employers. The relevant observations read thus:-

> "*13. Parliament has already made the Maternity Benefit Act, 1961. It is not disputed that the benefits available under this Act have been made available to a class of employees of the petitioner Corporation. But the benefit is not being made available to the women employees engaged on muster roll, on the ground that they are not regular employees of the Corporation. As we shall presently see, there is no justification for denying the benefit of this Act to casual workers or workers employed on daily-wage basis.*
>
> *xxx*
>
> *33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre-or post-natal period.*"
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> (Emphasis supplied)

44. This Court had the occasion to consider the interpretation of Rule 43 of the Central Civil Services (Leave) Rules, 1972 (for

short, "**CCS (Leave) Rules**"), in ***Deepika Singh* v. *Pgimer, Chandigarh***, reported in **(2023) 13 SCC 681**. The maternity leave sought by the appellant upon the birth of her first biological child was rejected on the ground that her spouse had two children from his previous marriage.

The Court underscored that judicial interpretation must bridge the gap between law and social realities through a purposive approach. It noted that the MB Act was enacted to secure a woman's rights both as a mother and as a worker, and the object of maternity leave is to facilitate the continued participation of women at workplace. What has been conveyed by this Court, in so many words, is that the birth of a child is a natural incident of life and that the provisions of the MB Act must be construed keeping this in mind. An atypical familial structure must not be weighed less than traditionally conforming families. The relevant observations read thus:-

> "*26. Unless a purposive interpretation were to be adopted in the present case, the object and intent of the grant of maternity leave would simply be defeated. The grant of maternity leave under the 1972 Rules is intended to facilitate the continuance of women in the workplace. It is a harsh reality that but for such provisions, many women would be compelled by social circumstances to give up work on the birth of a child, if they are not granted leave and other facilitative measures. No employer can perceive childbirth as detracting from the purpose of employment. Childbirth has to be construed in the context of employment as a natural incident of life and hence, the provisions for maternity leave must be construed in that perspective.*
>
> *27. The predominant understanding of the concept of a "family" both in the law and in society is that it consists of a single, unchanging unit with a mother and a father*

*(who remain constant over time) and their children. This assumption ignores both, the many circumstances which may lead to a change in one's familial structure, and the fact that many families do not conform to this expectation to begin with. Familial relationships may take the form of domestic, unmarried partnerships or queer relationships. A household may be a single parent household for any number of reasons, including the death of a spouse, separation, or divorce. Similarly, the guardians and caretakers (who traditionally occupy the roles of the "mother" and the "father") of children may change with remarriage, adoption, or fostering. These manifestations of love and of families may not be typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation. The black letter of the law must not be relied upon to disadvantage families which are different from traditional ones. The same undoubtedly holds true for women who take on the role of motherhood in ways that may not find a place in the popular imagination."*

(Emphasis supplied)

45. In yet another case, a woman's request for maternity leave was rejected on the grounds that there was no provision for the grant of maternity leave in respect of a third child from her second marriage. In ***K. Umadevi* v. *State of T.N.***, reported in **(2025) 8 SCC 263**, the Court interpreted the expression "two surviving children" in the relevant rules to mean children in lawful custody of the mother. While considering Section 5 of the MB Act, the Court observed that the grant of maternity benefit is not *per se* denied to a woman employee having more than two children. In order to effectively achieve broader social welfare

goals, the Court sought to harmonize population control measures with the objective of extending maternity benefit.

46. It would be apposite to refer to the observations of the Delhi High Court in ***Rama Pandey* v. *Union of India***, reported in **2015 SCC OnLine Del 10484**, wherein it was noted that except the physiological changes, all other challenges faced in rearing of a child are common for all mothers. The Court rejected the submission made by the respondent that maternity leave is granted only to deal with biological changes which accompany pregnancy. It was further highlighted that the concept of maternity leave shall rest upon motherhood and welfare of the child. The relevant observations read thus:-

> "*17. The argument of the respondents that the underlying rationale, for according maternity leave (which is to secure the health and safety of pregnant female employee), would be rendered nugatory - to my mind, loses sight of the following:*
> *(i) First, that entitlement to leave is an aspect different from the right to avail leave.*
> *(ii) Second, the argument centres, substantially, around, the interest of the carrier, and in a sense, gives, in relative terms, lesser weight to the best interest of the child.*"
>
> (Emphasis supplied)

47. In ***Dev Shree Bandhe* v. *C.G. State Power Holding Co. Ltd.***, reported in **2017 SCC OnLine Chh 1763**, the petitioner, employed on probation, sought maternity leave which was declined by the respondent. The Court recognized the right to motherhood and the right of every child to full development as part of Article 21. Similarly, the Rajasthan High Court in

***Chanda Keswani* v. *State of Rajasthan***, reported in **2023 SCC OnLine Raj 3274**, held that the right to life includes the right to motherhood and the right of every child to full development. Thus, it was held that denial of maternity leave cannot be on the ground that the woman seeking it has given birth biologically, or has begotten a child through surrogacy or adoption.

48. In ***Pratiba Himral* v. *State of H.P.***, reported in **2021 SCC OnLine HP 9295**, the petitioner had adopted a child and sought the benefit of maternity leave as per the CCS (Leave) Rules. While allowing the petition, the Himachal Pradesh High Court noted that one of the purposes of the leave is bonding between the child and parents. It was observed that an adopted child is not different from a biological child, thus, the way the child has come into the life of the mother is no ground to refuse maternity benefit. The relevant observations read thus:-

> "*11. Not only are the health issues of the mother and the child considered while providing for maternity leave, but the leave is provided for creating a bond of affection between the two. To distinguish between a mother who begets a child through adoption and a natural mother, who gives birth to a child, would result in insulting womanhood and the intention of a woman to bring up a child begotten through adoption. Motherhood never ends on the birth of the child and a commissioning mother cannot be refused paid maternity leave. A woman cannot be discriminated, as far as maternity benefits are concerned, only on the ground that she has obtained the baby through adoption. A newly born child cannot be left at the mercy of others as it needs rearing and that is the most crucial period during which the child requires care and attention of his mother. The tremendous amount of*

*learning that takes place in the first year of the baby's life, the baby learns a lot too. A bond of affection has also to be developed.*"

(Emphasis supplied)

49. Again, the Delhi High Court in ***State* v. *Ravina Yadav***, reported in **2024 SCC OnLine Del 4987**, dealt with the question of whether maternity leave could be granted to a woman having two surviving children. The Court adverted to the constitutional principles flowing from Articles 39, 41, 42, and 43 of the Constitution respectively, and observed that maternity leave constitutes an important facet of the constitutional guarantee available to women. It noted that the scope of maternity leave under the CCS (Leave) Rules has gradually evolved – initially confined to biological childbirth, and subsequently extended to include paternity leave, adoption leave, and childcare leave.

What is noteworthy in the observations of the Court that the concept of maternity benefit is intended to achieve social justice for women and children, and the period of leave plays a crucial role in fostering emotional bonding between the mother and the child. In this context, the Court also took note of studies indicating that stress hormone levels in children raised in orphanages are higher than those in children brought up in a familial environment. The relevant observations read thus:-

"*8. The concept of maternity leave, flowing from above quoted constitutional pronouncements is a matter of not just fair play and social justice, but also a constitutional guarantee to women of this country towards fulfillment whereof, the State is duty bound to act. It is in this direction that Parliament enacted the Maternity Benefit Act, 1961 (hereinafter referred to as "the Act"), thereby consolidating the maternity protection which was*

*earlier being provided under different State and Central enactments, embodying considerable diversity relating to the qualifying conditions, period and rate of benefits etc., to reduce which, a separate central legislation was required.*

*xxx*

*15.2. The early infancy environment and changes have lasting effect on the development of brain in the child. Researchers across the world have observed that infants begin to bond with their mother from the moment of birth, and this social bond continues to provide regulatory emotional functions throughout adulthood. It is part of well documented research that children from deprived surroundings like orphanages have vastly different hormone levels as compared to their parent-raised peers. For instance, in Romania during 1980s, in target group aged 6 to 12 years, levels of the stress hormone Cortisol were found much higher in children who lived in orphanages for more than eight months as compared to those who were adopted at or before the age of four months.*

*15.3. Other researches show that children who experienced early deprivation of maternal touch had different levels of Oxytocin and Vasopressin (hormones that have been linked to emotion and social bonding), despite having spent an average of three years in a family home and this environmental change into a home does not seem to have completely overridden the effects of earlier neglect, according to medical researches published in the year 2005 in the proceedings of the National Academy of Sciences, University of Wisconsin. The Vasopressin and Oxytocin neuropeptide systems, which are critical in the establishment of social bonds and regulation of emotional behaviors are affected by early social experience.*

*15.4. The results of various experiments suggest a potential mechanism whose atypical function may explain the pervasive social and emotional difficulties observed in many children who have experienced*

> *aberrant care giving. The social attachments formed between human infant and her caregiver begin very early in postnatal life and play a critical role in child's survival and healthy adaptation. Typically, adults provide infants with a social environment that is fairly consistent. Caregivers learn how to recognize and respond to the infants' needs, thereby creating predictable contingencies in the environment; these regularities, in turn, make the infants' environment secure and conducive to further social learning. Multiple perceptual, sensory, cognitive, and effective systems must become synchronized so that a social bond can develop between an infant and caregiver; this bond is then reflected in the child's adaptive behavioral responses to the environment. (Reference : Paper published by the team of Department of Psychology, University of Wisconsin, led by Alison B Wismer Fries (www.pnas.org/cgi/doi/10.1073/pnas.0504767102)).*
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> (Emphasis supplied)

50. Motherhood does not end with the birth of a child. This was observed, or rather emphasized by the Chhattisgarh High Court in ***Lata Goyal* v. *Union of India***, reported in **2025 SCC OnLine Chh 5572**, wherein the petitioner, an employee of IIM, sought directions that adoption leave and child care leave as per the CCS (Leave) Rules be made applicable to her. The views expressed by the Court merit commendation.

It observed that a woman's right to practice a profession is a constitutional entitlement flowing from Articles 14, 15, and 21 of the Constitution respectively. It emphasized that State cannot remain oblivious to the needs and concerns of women in workforce. The Court categorically held that discrimination on the ground of the mode of bringing a child is impermissible, for the object of such leave is to dignify motherhood and ensure the

healthy growth and development of the child. It refrained from distinguishing between a biological, adoptive or surrogate mother. The relevant observations read thus:-

> "*12. Adoptive mothers, like all mothers, are capable of experiencing deep love and affection for their children, regardless of whether they are biological or adopted. The love and affection they offer can be just as strong and profound as that of a birth mother. Adoptive mothers, like birth mothers, can form strong bonds of love and attachment with their children. These bonds can be crucial for a child's emotional and psychological well-being.*
>
> *13. The participation of women in the work force is not a matter of privilege, but a constitutional entitlement protected by Articles 14, 15 and 21 of the Constitution; besides Article 19(1)(g). The "State" as a model employer cannot be oblivious to the special concerns which arise in the case of women who are part of the work force. The provision of child care leave to women sub-serves the significant constitutional object of ensuring that women are not deprived of their due participation as members of the work force. Otherwise, in the absence of a provision for the grant of Child Care Leave, a mother may well be constrained to leave the work force. This consideration applies a fortiori in the case of a mother who has a child with special needs. Such a case is exemplified in the case of the petitioner herself.*
>
> *xxx*
>
> *15. There ought not to be any discrimination of a woman as far as the maternity benefits are concerned only on the ground that she has obtained the baby through adoption. The object of the leave is to protect the dignity of motherhood by providing for full and healthy maintenance to the child. Child care/child adoption leave is intended to achieve the object of ensuring social justice to women. Childhood both require special attention.*

*16. Not only are the health issues of the child considered while providing leave, but the leave is provided for creating a bond of affection between the two. Motherhood never ends on the birth of the child and a commissioning/adoption mother cannot be refused paid maternity leave. A woman cannot be discriminated, as far as maternity benefits are concerned, only on the ground that she has obtained the baby through surrogacy/adoption. A newly born child cannot be left at the mercy of others as it needs rearing and that is the most crucial period during which the child requires care and attention of mother. The tremendous amount of learning that takes place in the first year of the baby's life, the baby learns a lot too. A bond of affection has also to be developed.*

*17. There is no distinction between the natural, biological, surrogate or commissioning/adoption mothers and all of them have fundamental right to life and motherhood, contained under Article 21 of the Constitution of India and children born from the process of surrogacy/adoption have the right to life, care, protection, love, affection and development through their mother, then certainly such mothers have right to get maternity leave for above purpose.*"

(Emphasis supplied)

51. Recently, the Kerala High Court in ***Susan K. John* v. *National Board of Examinations in Medical Sciences***, reported in **2026 SCC OnLine Ker 1333**, held that maternity leave is a right and not a leave subject to discretion of the authorities.

52. The commonly drawn distinction between a mother who begets a child through surrogacy or adoption and a mother who naturally gives birth to a child perceives motherhood through the narrow lens of biology and fails to take into account the bond

that develops between a mother and her child outside the womb, which is as crucial and intimate, as the bond that is formed inside the womb. Further, the said distinction makes motherhood contingent upon biological requirements and is a direct affront to the desire and intention of a woman to experience motherhood and bring up a child. We have no hesitation in saying that an adoptive mother like the petitioner would have the same rights and obligations towards the child as the natural mother.

53. We do not say for a moment that biological mothers and adoptive mothers form the same category. We acknowledge the distinction created by the legislature. However, the constitutional validity of the impugned provision must be tested by examining the purpose and components of maternity leave and the extent to which such purpose is served in each situation.

54. The components of maternity leave broadly consist of three elements.

    i. First, the time necessary for physical recovery following the birth of a child, which concerns both the well-being of the mother and the child. As the immediate focus remains on the mother that she should not be required to resume employment until she has adequately recovered from the physical tribulations associated with childbirth.
    ii. Secondly, the time required to nurture and develop the emotional bond between the mother and the child.

iii. Thirdly, the time necessary to attend to the physical and emotional needs of the child and to facilitate the process by which the child gradually integrates into the family, with the mother often acting as the primary medium through which the child is introduced to the familial environment.

55. In case of biological birth, the aforementioned three components are largely subsumed within one another and are not clearly distinguishable. The period of physical recovery often overlaps with the period during which the mother and child establish emotional attachment and the child begins to adapt to the familial setting. Whereas, in case of adoption or surrogacy, while the first component is absent, the second and third component are present and significant. The legislative recognition of maternity leave for adoptive and commissioning mothers under sub-section (4) of Section 60 is itself an acknowledgment of the importance of these components.

56. It is limpid that in the case of a biological mother, the aforesaid components, more particularly, the development of the emotional bond between the mother and the child, are often supported by physiological mechanisms which are evolutionary in nature. In the case of adoption, however, the same bond must be consciously nurtured through time, presence, and sustained caregiving.

57. It is in this context that the argument of the petitioner assumes importance that the impugned provision by introducing an

arbitrary three-month time limit, deprives adoptive mothers of children older than three months, the opportunity required for the effective fulfilment of the above-mentioned second and the third components, more particularly, when the need for the same could not be said to be solely dependent on the age of the adopted child. We shall now proceed with testing the constitutional validity of the impugned provision on the anvil of the right to equality.

**B. The constitutional guarantee of equality under Article 14 of the Constitution**

58. Before testing the constitutional validity of a provision, more particularly, where it is alleged that it violates fundamental rights, it is necessary to ascertain the true nature, character and impact of the provision on the object and intention of the legislation. Thus, the courts have to look behind the form and appearance of the provision. In other words, the purport and intent of the legislation has to be determined.

**a. Purpose of social security benefits**

59. The discussions in the foregoing paragraphs establishes that the purport and intent of the MB Act, now forming part of the 2020 Code, is to dignify motherhood, safeguard maternal well-being, while ensuring continued participation of women in the workforce. The said Act is a legislative recognition of the physical, emotional, and social dimensions of motherhood, and accommodates the pivotal role it plays in a woman's life. By providing institutional support, the MB Act endeavours to

harmonize professional obligations with familial responsibilities in order to promote an environment in which both the mother and the child would thrive.

60. In 2020, the MB Act, along with other laws relating to social security, were consolidated in order to extend social security coverage to all persons working in both the organized and unorganized sectors uniformly. Social security benefits guarantee labour and economic protection against loss of work due to illness, disability, death of family members, old age, unemployment, and maternity.

61. In the case at hand, we are concerned with maternity benefit. With the increasing participation of women in the workforce, there emerged a growing recognition of economic contribution by women, and of the substantial loss of income when their employment was interrupted. Thus, social security is intended to provide protection against contingencies that impair a person's capacity to actively participate in work.

62. In the aforesaid context, maternity is one such contingency, as it involves temporary physical, emotional, and economic vulnerability. In other words, maternity benefit form an integral component of the social security framework, aimed at ensuring economic security, safeguarding maternal health, and promoting welfare of the child.

63. In this backdrop, we shall now address the first submission canvassed on behalf of the petitioner with regard to the violation of Article 14 of the Constitution. It was submitted that Section 60(4) of the 2020 Code creates an unreasonable classification among adoptive mothers. In other words, the petitioner argued that the classification between a woman adopting a child aged less than three months and a woman adopting a child aged three months or more is artificial and violative of Article 14.

**i. Examining validity of the impugned provision through the test of permissible classification**

64. The law on classification is well settled and does not require restatement in extenso. While Article 14 of the Constitution permits classification, such classification must rest upon a real and substantial distinction. In other words, the differential treatment accorded to one group vis-à-vis another must bear a rational relation to the object sought to be achieved by the legislature. Any classification lacking a substantial and intelligible basis is arbitrary and violative of the equality guarantee under the Constitution. Thus, Article 14 mandates that the law must operate equally on all persons under *like circumstances*.

65. Although classification by its very nature is discriminatory, yet equality, in cases involving classification, is treatment afforded after due regard to the nature, attainment or circumstances of the group concerned, so as to cater to its specific needs. It could be said that classification is an expression of substantive

equality. We say so because individuals form a group, and a group is classified on the basis of some qualities or characteristics found in all persons and not in others, and such classification must have relation to the object of the legislation. In this context, this Court in ***State of W.B.* v. *Anwar Ali Sarkar***, reported in **(1952) 1 SCC 1**, observed thus:-

> "*85. It is now well established that while Article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an "abstract symmetry" in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like. Mere classification, however, is not enough to get over the inhibition of the article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while*

> *the article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained. The doctrine, as expounded by this Court in the two cases I have mentioned, leaves a considerable latitude to the Court in the matter of the application of Article 14 and consequently has the merit of flexibility*."
>
> (Emphasis supplied)

66. We may refer to and rely upon the decision of this Court in ***State of Gujarat* v. *Shri Ambica Mills Ltd.***, reported in **(1974) 4 SCC 656**, wherein a Constitution Bench explained the characteristics of "reasonable classification". It stated that a classification would be termed reasonable when it includes all those who are similarly situated with regards to the purpose of such classification and none who are not. In other words, a classification must not either be under inclusive or over inclusive. The relevant observations read thus:-

> "*53. The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify. And the very idea of classification is that of inequality. In tackling this paradox the Court has neither abandoned the demand for equality nor denied the legislative right to classify. It has taken a middle course. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. [ See Joseph Tussman and Jacobusten Brook The Equal Protection of the Law, 37 California Rev 341]*

*54. A reasonable classification is one which includes all who are similarly situated and none who are not. The question then is: what does the phrase "similarly situated" mean? The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good.*

*55. A classification is under-inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under-inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated. A classification is over-inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. In other words, this type of classification imposes a burden upon a wider range of individuals than are included in the class of those attended with mischief at which the law aims. Herod ordering the death of all male children born on a particular day because one of them would some day bring about his downfall employed such a classification.*

*xxx*

*64. Laws regulating economic activity would be viewed differently from laws which touch and concern freedom of speech and religion, voting, procreation, rights with respect to criminal procedure, etc. The prominence given to the equal protection clause in many modern opinions and decisions in America all show that the Court feels less constrained to give judicial deference to legislative judgment in the field of human and civil rights than in that of economic regulation and that it is making a vigorous use of the equal protection clause to strike down legislative action in the area of*

*fundamental human rights. [ See "Developments Equal Protection", 32 Harv, Law Rev 1065, 1127]*

*Equal protection clause rests upon two largely subjective judgments: one as to the relative invidiousness of particular differentiation and the other as to the relative importance of the subject with respect to which equality is sought. [ See Cox, "The Supreme Court Foreword", 1965 Term, 80 Harv. Daw Rev. 91-95]*

*65. The question whether, under Article 14, a classification is reasonable or unreasonable must, in the ultimate analysis depend upon the judicial approach to the problem. The great divide in this area lies in the difference between emphasising the actualities or the abstractions of legislation. The more complicated society becomes, the greater the diversity of its problems and the more does legislation direct itself to the diversities.*

*Statutes are directed to less than universal situations. Law reflects distinctions that exist in fact or at least appear to exist in the judgment of legislators — those whose have the responsibility for making law fit fact. Legislation is essentially empiric. It addresses itself to the more or less crude outside world and not to the neat, logical models of the mind. Classification is inherent in legislation. To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic. [ See the observations of Justice Frankfurter in Morey v. Doud, 354 US 457, 472 (1957)]*"

(Emphasis supplied)

67. What flows from the aforesaid decision is that under-inclusiveness in classification refers to a situation when classification confers benefits on certain persons in furtherance of a legitimate purpose but fails to extend the same benefits to

others who are similarly situated, without a justification. Such a manner of classification renders it unreasonable and volatile when examined through the test of permissible classification under Article 14.

68. In this regard, it would be apposite to refer to the decision in ***Pravinsinh Indrasinh Mahida* v. *State of Gujarat***, reported in **2021 SCC OnLine Guj 1293**, wherein the Gujarat High Court while dealing with the challenge to the legality and constitutional validity of the Gujarat Cooperative Societies (Amendment) Act, 2019, emphasized on the principle of "similarly situated" expounded by this Court in ***Shri Ambica Mills Ltd.*** (*supra*). The State attempted to exclude sugar factories from the purview of Section 74C of the said Act. The Court found the classification of sugar factories arbitrary, looking at the intention of the Section 74C and the object sought to be achieved through the classification, i.e., administrative exigency or saving money.

In this context, the Court noted that a reasonable classification is one which includes all individuals who are similarly situated with regards to the purpose of the law. It was observed that the government cannot create a classification by excluding one category when both categories belong to the same genus. The relevant observations read thus:-

> "*75. Thus, the ratio discernible from the above referred judgment of the Supreme Court and the same can be made applicable to the case on hand is that the Government cannot create sub-classification thereby excluding one sub-category, even when both the sub-categories are of the same genus. If that is done, it*

*would be considered as violating the equality clause enshrined in Article 14 of the Constitution. The Supreme Court proceeded to observe that the judicial review of such notifications is permissible in order to undertake the scrutiny as to whether the notification results in invidious discrimination between two persons though they belong to the same class. of course, in the case on hand, the State has tried very hard to persuade this Court to take the view that the Sugar societies are not of the same genus and have tried to distinguish between the federal and primary societies. This issue we shall deal with a little later. The Supreme Court, ultimately, held that the notification should be applied to the entire class. If the Government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory.*

*xxx*

*80. Article 14 has two clear facets which are invalid. One is over classification and the other is under classification, which is otherwise, over inclusiveness or under inclusiveness. The judicial review of over classification should be done very strictly. In the cases of under classification when the complaint is either by those who are left out or those who are in i.e. that the statute has roped him in, but a similarly situated person has been left out, it would be under inclusion. It is to say that you ought to have brought him in to make the classification reasonable. It is in such cases that the Courts have said that who should be brought in, should be left to the wisdom of the legislature because it is essentially a stage where there should be an element of practicality. Therefore, the cases of under inclusion can be reviewed in a little liberal manner. The under inclusion argument should not very readily be accepted by the Court because the stage could be experimental. For instance, if the argument is in context with Section 74C that some other category of society has been left out, the Court would say that it is under inclusion. The*

*legislature does not have to bring in everybody to make it reasonable. The case on hand is one of active exclusion. Had the Sugar societies been left out or the voters been excluded in Section 74C at the first instance and they came in to say that the State ought to have included us, the test would have been very strict, not that it would be impervious to review. The Court would be justified in not entertaining such complaint saying that the State should be given some freedom whom to include or whom not to include. The Sugar societies have come at the stage where they are excluded. They are saying that having treated us as one, you cannot exclude us now in an arbitrary manner. This is not exclusion or inclusion at the threshold or the first stage. This is active positive leaving out - single legislation - single category legislation - constantly eliminating where the principles do not apply of that of under inclusion."*

(Emphasis supplied)

69. At this stage, it would be apposite to state that, in order to pass the test of permissible classification, the distinction drawn by the impugned provision or legislation must not only bear a rational nexus with the object sought to be achieved by the Act, but the classification must also be inclusive of all similarly situated individuals.

70. We may look at the decision in ***Citizenship Act, 1955, Section 6-A, In re***, reported in **(2024) 16 SCC 105**, wherein this Court held that the factors for determining a class are decisive in assessing whether a provision is under-inclusive or over-inclusive. Such factors must bear a rational nexus with the object and intent of the statute and must be in consonance with constitutional principles.

It was further held that it is incumbent on the State to include all persons within the classification who satisfy the prescribed criteria for classification. Any exclusion of similarly situated individual must be justified, and the degree of justification required to be discharged by the State is substantially higher in a matter affecting individual rights than that applicable in matters of economic policy. The relevant observations read thus:-

> "*472.3. The determination of the yardstick for classification will help in the assessment of whether a provision is underinclusive or overinclusive. The yardstick must have a nexus with the object and must be in consonance with constitutional principles. If the yardstick satisfies the test, then the State must determine if all persons/situations similarly situated based on the yardstick have been included. The State must on the submission of cogent reason justify if those who are similarly situated have not been included (underinclusiveness) or those who are not similarly situated have been included (overinclusiveness). The degree of justification that the State is required to discharge depends on the subject-matter of the law, that is whether the matter deals with economic policy or fiscal matters, whether it is a beneficial provision such as a labour provision or whether it deals with the core or innate traits of individuals. The degree of justification is the least for economic policy, higher for a beneficial provision and the highest if it infringes upon the core or innate trait of individuals.*"
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> (Emphasis supplied)

71. In the aforesaid context, the observations in ***Pravinsinh Indrasinh Mahida*** (*supra*), succinctly explain the distinction between the intent of the legislation and legislative intention. It underscored that while the legislation intends to remedy a

malady, the legislative intention related to the meaning or exposition of the remedy. Insofar as the test for permissible classification is concerned, the rational nexus of the classification is juxtaposed against the intention of the legislation. The relevant observations read thus:-

> "*84. In the aforesaid context, we may refer to and rely upon a decision of the Supreme Court in the case of Hiral P. Harsora v. Kusum Narottamdas Harsora reported in (2016) 10 SCC 165. Hiral Harsora was a case which decided an important question as to the constitutional validity of Section 2(q) of the Protection of Women from Domestic Violence Act, 2005. The appeal before the Supreme Court raised an important question concerning the area of protection of the female sex generally. The Supreme Court first tried to ascertain the object which was sought to be achieved by the 2005 Act. In doing so, the Court looked into the Statement of objects and reasons, the preamble and the provisions of the 2005 Act as a whole. In doing so, the Supreme Court followed the law as discussed in paras 13 and 14. It reads thus:*
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> > "*13. In Shashikant Laxman Kale v. Union of India, (1990) 2 SCR 441, this Court was faced with the constitutional validity of an exemption section contained in the Indian Income Tax Act, 1961. After referring in detail to Re : Special Courts Bill, (1979) 1 SCC 380 : (1979) 2 SCR 476 and the propositions laid down therein on Article 14 generally and a few other judgments, this Court held:—*
> >
> > *"15. It is first necessary to discern the true purpose or object of the impugned enactment because it is only with reference to the true object of the enactment that the existence of a rational nexus of the differentia on which the classification is based, with the object sought to be achieved by the enactment, can be examined to test the validity of the classification. In Francis Bennion's Statutory Interpretation, (1984 edn.), the distinction between the legislative intention and the purpose or object of*

*the legislation has been succinctly summarised at p. 237 as under:*

> *"The distinction between the purpose or object of an enactment and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment."*

*16. There is thus a clear distinction between the two. While the purpose or object of the legislation is to provide a remedy for the malady, the legislative intention relates to the meaning or exposition of the remedy as enacted. While dealing with the validity of a classification, the rational nexus of the differentia on which the classification is based has to exist with the purpose or object of the legislation, so determined. The question next is of the manner in which the purpose or object of the enactment has to be determined and the material which can be used for this exercise.[…]*

*xxx*

*86. The constitutional principle of equality is inherent in the rule of law. The rule of law is satisfied when laws are applied or enforced equally, that is, even handedly, free of bias and without irrational distinction. The concept of equality allows differential treatment but it prevents distinctions that are not properly justified. Justification requires each case to be decided on a case-to case basis. In Subramanian Swamy's case (supra), one set of bureaucrats of the level of Joint Secretary and above working with the Central Government were offered the protection under Section 6-A while the same level of officers who were working in the States were not afforded with the same protection though both the classes of those officers were accused of an offence under the Act, 1988 and inquiry/investigation into such allegations were to be carried out. The issue before the Supreme Court was whether the classification was based on intelligible differentia. The Supreme Court took the view that the classification could not be said to be based on intelligible differentia because the provisions in Section*

*6-A of the Act, 1988 impeded tracking down the corrupt senior bureaucrats as without previous approval of the Central Government, the CBI could not have even conducted a preliminary inquiry much less an investigation into the allegations. The Supreme Court took notice of the fact that the protection in Section 6-A had the propensity of shielding the corrupt. The Supreme Court held that the object of Section 6-A itself was discriminatory and such discrimination could not have been justified on the ground that there was a reasonable classification because it had rational relation to the object sought to be achieved. Ultimately, the Supreme Court held that although every differentiation may not be a discrimination, yet the differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. In the case on hand, we have explained how the differentiation amounts to discrimination and why the differentiation could be said to be irrelevant and artificial.*"

(Emphasis supplied)

72. With a view to dispel any doubt and lend clarity, we deem it appropriate to observe that the legislature is within its right to create a classification and decide the basis thereof. However, the scope and limits of judicial scrutiny in examining such classification must be borne in mind. The degree of deference, or rather restraint exercised by courts in case of classification by the State is elucidated by this Court in ***State of T.N.* v. *National South Indian River Interlinking Agriculturist Assn.***, reported in **(2021) 15 SCC 534**. There is no doubt that courts ordinarily accord a high degree of deference to legislative decisions with regards to economic matters. However, when classification affects substantive rights and operates in an under-inclusive manner, judicial deference stands

correspondingly diminished. The relevant observations read thus:-

> "*11. However, it is settled law that the Court cannot interfere with the soundness and wisdom of a policy. A policy is subject to judicial review on the limited grounds of compliance with the fundamental rights and other provisions of the Constitution. [Asif Hameed v. State of J&K, 1989 Supp (2) SCC 364 : 1 SCEC 358; Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223; Khoday Distilleries Ltd. v. State of Karnataka, (1996) 10 SCC 304; Balco Employees' Union v. Union of India, (2002) 2 SCC 333; State of Orissa v. Gopinath Dash, (2005) 13 SCC 495 : 2006 SCC (L&S) 1225]* <u>*It is also settled that the Courts would show a higher degree of deference to matters concerning economic policy, compared to other matters of civil and political rights.*</u> *In R.K. Garg v. Union of India [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] , this Court decided on the constitutional validity of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981. The challenge to the statute was on the principal ground that it was violative of Article 14 of the Constitution. <u>Rejecting the challenge, the Constitution Bench observed that laws relating to economic activities must be viewed with greater latitude and deference when compared to laws relating to civil rights such as freedom of speech</u> : (SCC pp. 690-91, para 8)*
>
> > *"8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J. [Ed. : The reference appears to be to Bain Peanut Co. of Texas v. Pinson, 1931 SCC OnLine US SC 34 : 7 L Ed 482 : 282 US 499 (1931). See also Missouri, Kansas & Texas Railway Co. of Texas v. Clay May, 1904 SCC OnLine US SC 118 : 48 L Ed 971 : 194 US 267, 269 (1904).] , that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of*

*solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [Morey v. Doud, 1957 SCC OnLine US SC 105 : 1 L Ed 2d 1485 : 354 US 457 (1957)] where Frankfurter, J., said in his inimitable style:*

*'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.'"*

*xxx*

*32. While non-classification arbitrariness is tested based on the proportionality test, where the means are required to be proportional to the object, classification arbitrariness is tested on the rational nexus test, where it is sufficient if the means share a "nexus" with the object. The degree of proof under the test would impact the judgment of this Court on whether the law is under-inclusive or over-inclusive. A statute is "under-inclusive" if it fails to regulate all actors who are part of the problem. It is "over-inclusive" if it regulates actors who are not a part of the problem that the statute seeks to address. The determination of under-inclusiveness and over-inclusiveness, and degree of deference to it is dependent on the relationship prong ("rational nexus" or "proportional") of the test.*

> *33. The nexus test, unlike the proportionality test, is not tailored to narrow down the means or to find the best means to achieve the object. It is sufficient if the means have a "rational nexus" to the object. Therefore, the courts show a greater degree of deference to cases where the rational nexus test is applied. A greater degree of deference is shown to classification because the legislature can classify based on the degrees of harm to further the principle of substantive equality, and such classification does not require mathematical precision. The Indian courts do not apply the proportionality standard to classificatory provisions. Though the two-Judge Bench in Anuj Garg [Anuj Garg v. Hotel Assn. of India, (2008) 3 SCC 1] articulated the proportionality standard for protective discrimination on the grounds in Article 15; and Malhotra, J. in Navtej Singh Johar [Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] held that less deference must be allowed when the classification is based on the "innate and core trait" of an individual, this is not the case to delve into it. Since the classification in the impugned scheme is based neither on the grounds in Article 15 nor on the "innate and core trait" of an individual, it cannot be struck down on the alleged grounds of under-inclusiveness and over-inclusiveness.*"
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> (Emphasis supplied)

73. What is discernable from the aforesaid discussion is that the distinction created by Section 60(4) of the 2020 Code between a woman legally adopting a child below the age of three months and those who adopt a child aged three months or above must have a rational nexus with the intention and object of the 2020 Code.

74. The learned ASG on behalf of the respondents submitted that the impugned provision has been framed with an objective to strike a balance between the rights of adoptive mothers and the concerns of the employers. He further submitted that the classification under the impugned provision is reasonable as a child older than three months does not have the same intensive dependency on the caregiver.

75. Undoubtedly, the fundamental objective of the 2020 Code is to recognize human dignity by guaranteeing labour and economic protection to persons who are temporarily deprived of their capacity to fully participate in the workforce. There is no gainsaying that the protection granted earlier under the MB Act, and now subsumed within the 2020 Code, has been conceived with due regard to the multifaceted role of a woman as a mother.

76. The legislation acknowledges the indispensable contribution of a woman in familial stability, her responsibility in nurturing and caring for a child, and the physical and emotional demands attached to motherhood. By providing income security and institutional support during this critical phase, the legislation seeks to ensure that motherhood does not operate as a source of disadvantage at a work place, but is instead accommodated as a socially valuable function warranting protection and respect.

77. The purpose of maternity leave neither varies with the nature of employment nor with the manner in which the child is brought

into the life of the mother. When we look closely, the natural effect of maternity benefit is to facilitate the physical and emotional adjustment of a mother, ensure the welfare and holistic development of a child, and promote bonding between parents and children during the crucial initial phase of family integration.

78. Thus, taking into consideration the aforementioned object and intention of the 2020 Code, could it be said that women adopting a child aged three months or above do not require the same protection as is afforded to women adopting a child below the age of three months? The answer is an emphatic 'No'. We say so because the object of maternity benefit is not associated with the biological process of childbirth alone but also takes into account a holistic understanding of attainment of motherhood and consequent fulfillment of the role.

79. What flows from the aforesaid is that the need for economic security, institutional support, and protection of dignity does not diminish merely on account of the age of the child at the time of adoption. The necessity of nurturing, care, and family integration remains equally relevant and pressing irrespective of whether the adopted child is below or above the age of three months.

80. In light of the object of the 2020 Code, women who adopt a child aged three months or above are similarly situated to women who adopt a child below the age of three months, insofar as their

roles, responsibilities, and caregiving obligations are concerned. The essential attributes, capacities, and commitments of adoptive mothers do not undergo any material change merely on account of the age of the child at the time of adoption and the immediate period following the adoption.

81. We are of the considered view that the distinction drawn by Section 60(4) of the 2020 Code, does not have a rational nexus with the underlying beneficial object of the statute. The submission canvassed on behalf of the respondents proceeds on a narrow and restrictive understanding of adoption by limiting it to "caregiving responsibilities" towards an infant. Such a view disregards the bilateral process of adjustment and integration of the adopted child with the adoptive family. This disparity not only marginalizes the role that adoptive parents play in the life of the child but also reduces the recognition of their responsibilities.

82. While adoption may not involve the physical tribulations associated with the biological process of giving birth, or intensified caregiving responsibilities for an infant, the psychological and emotional factors assume significant importance, thereby requiring the mother to devote time to forge the bond of motherhood with the adopted child. A general approach which fails to consider the nuances associated with modern parenting would denigrate the understanding of motherhood, which flows from the status of being a mother and

not merely from the manner of its attainment. Such an approach would also inevitably disregard the welfare of the child.

83. The process of adoption itself entails significant emotional, psychological, and practical adjustments for both the child and the adoptive mother. Children adopted at any age require sustained care, reassurance, and stable parental presence to overcome past vulnerabilities and integrate into a new familial environment. This is even more imperative to allow such mothers to avail themselves of the leave. In such circumstances, denying maternity benefit solely on the basis of an arbitrary age threshold disregards these essential aspects of adoption and undermines the very purpose of social welfare legislation.

84. The absence of an age limit assumes greater importance when we consider the position of children with disabilities. It is a matter of common knowledge that children with disabilities often wait considerably longer to be adopted as compared to other children. The process of identifying adoptive parents, ensuring that they are capable of providing the required care, and completing the necessary formalities would ordinarily take longer.

85. In such circumstances referred to above, confining the benefit of maternity leave where a child is adopted at a prescribed age would operate to the detriment of children with disabilities. It would also discourage the prospective parents from adopting children who require their presence during the initial period of

adjustment. The need for parental presence, patience, and emotional support is often more pronounced in the case of children with disabilities. Thus, in such circumstances, in absence of any parental leave, maternity benefit leave enables the adoptive mothers to devote adequate time towards nurturing, rehabilitation, and emotional bonding with the child.

86. This issue also assumes a distinct dimension in the case of single adoptive mothers. Unlike in a traditional family setup where caregiving responsibilities may be shared between two parents, a single adoptive mother bears the entire responsibility of integrating the child into the family environment while simultaneously discharging her professional obligations.

87. In the absence of adequate maternity benefit, a single adoptive mother may be compelled to choose between her employment and the immediate needs of the adopted child. Such a predicament undermines the very purpose of social welfare legislation designed to support working women. The law cannot overlook the practical realities. In such circumstances, extending the benefit of maternity leave is not merely a matter of convenience but a necessary support that enables the woman to discharge her parental responsibilities while securing her economic independence.

88. In such a view of the matter, an age limit fails to account for the diverse realities of adoption. The needs of children and adoptive families are neither uniform nor reducible to an understanding

of adoption in a typical familial structure. A provision that fails to accommodate these realities undermines the objective of the legislation and is prone to constitutional attacks.

89. Another aspect which deserves to be mentioned is the absence of any graded entitlement to maternity benefit in the impugned provision. In other words, while women adopting children younger than three months are entitled to maternity benefit for a period of 12 weeks, women adopting children even a day older than three months are not entitled to maternity benefit to any extent. This approach adopted by the legislature while enacting the impugned provision does not reflect the real-world requirement of care and nurturing, which does not come to a sudden halt upon the attainment of a certain mathematical number, but gradually tapers with the proper integration of the child with the new environment, especially the parents. While it could be argued that the legislature could have provided for a graded entitlement to maternity benefits dependent upon the age of the child, however, such a situation does not arise for consideration *in lieu* of the either-or approach adopted by the legislature in the impugned provision.

90. The impugned provision also fails in including all those who are similarly placed, i.e., adoptive mothers. Thus, although the classification expressed in the words, "*a woman who legally adopts a child…shall be entitled to maternity benefit for a period of twelve weeks*", seeks to give a benefit in recognition of gender equity, and in that sense, it bears a rational relation to the

intention and object of the statute, yet it nonetheless fails to conform to constitutional principles of equality because it qualifies such benefit to "*a woman who legally adopts a child below the age of three months*". Thus, it leaves all the similarly situated women who legally adopt a child aged three months or above.

91. We are of the view that the impugned provision, i.e., Section 60(4) of the 2020 Code, to the extent that it prescribes an age limit of three months, is discriminatory because *first*, it does not disclose a reasonable distinction between women who adopt a child below the age of three months and those who adopt a child aged three months or above. *Secondly*, the particular differentiation, which is sought to be made, has no nexus with the object sought to be achieved. *Thirdly*, the classification suffers from under-inclusiveness.

92. Section 60(4) of the 2020 Code, in effect, operates unequally upon adoptive mothers who are similarly situated, resulting in discrimination without reasonable justification. As a necessary consequence, Section 60(4) of the 2020 Code violates the mandate of equality enshrined under Article 14 of the Constitution. The classification under the Act is palpably unreasonable and arbitrary.

93. When the Amendment Act, 2017, was introduced by the then Minister for Labour and Employment, this very issue was raised during the debates. Although a query was posed regarding the

yardstick adopted for capping the age of a child at three months for an adoptive mother to avail maternity benefit, yet it was left unanswered. The question reads thus:-

> "*[…]Apart from that, there is a criterion for the commissioning mother and for a mother adopting legally, if I understand it correctly that the child must be less than three months. Now, what I do not understand is that what is the reason for that criteria. Today, if I have four month old child which I have got through surrogacy or which I have got through adoption, why should this law discriminate against a child which is four or five months? If there is any justification for it, then I hope that the Hon. Minister will clarify what that justification is.[…]*"

94. Another submission was canvassed by the respondents that in case an adoptive mother adopts a child aged more than three months, she can avail benefit of the crèche facilities available at her establishment. The submission although seemingly appears to be lucrative yet the same in our considered opinion is flawed for the following reasons.

95. The limitation of Section 67 of the 2020 Code, in the particular circumstances, lies in the fact that the statutory obligation of an establishment to provide crèche facility arises only when there are fifty employees. A large number of establishments, more particularly, smaller establishments, therefore fall outside the ambit of this requirement, leaving a significant section of working women without access to such facilities.

96. Further, there is no gainsaying that the provision of a crèche facilities within an establishment is not a substitute for

maternity leave. The realization of the right of maternity benefit must not be contingent on the number of employees. Maternity leave serves a distinct purpose, as elucidated in the foregoing paragraphs of this judgment. A crèche facility, on the other hand, merely provides a place for the child to remain during working hours and cannot replace the indispensable presence and care of the mother during this period.

97. When the benefit of maternity leave is not granted to all mothers, in some situations, she may be compelled either to leave the child at home, rely on the assistance of an older sibling, or take the child with them to the workplace, thereby compromising the child's health and safety. Where the older sibling is a girl child, such arrangements often result in her being withdrawn from school, which reinforces the vicious cycle of gender inequality.

98. In light of the aforesaid discussion, we may look into the decision of ***Werner Van Wyk & Ors.* v. *Minister of Employment and Labour***, reported in **[2025] ZACC 20**. The challenge before the Constitutional Court of South Africa was with regards to the constitutional validity of Sections 25, 25A, 25B and 25C of the Basic Conditions of Employment Act ("BCEA") respectively. The provisions largely dealt with maternity and parental leave. The challenge to the provision was on account of the differentiation between categories of the parents and children, i.e., a child born by their birth mother, a child born by surrogacy, and an adopted child. The challenge to Section 25B is of some relevance to us. Section 25B of the BCEA was challenged as it capped the age of

a child being adopted at 2 years in order for the adoptive parent to avail parental leave. The provision read thus:-

> "*Section 25B deals with adoptive parents. It provides:*
> *"(1) An employee, who is an adoptive parent of a child who is below the age of two, is subject to subsection (6), entitled to—*
> *(a) adoption leave of at least ten weeks consecutively; or*
> *(b) the parental leave referred to in section 25A.*"
>
> (Emphasis is ours)

99. In ***Werner Van Wyk*** (*supra*), the respondent conceded that the provision is violative of the right to human dignity of persons, more particularly, of women who are not biological mothers. The Court was of the view that the human dignity of such persons is violated because they are not afforded the same protection as biological mothers. It indicated how the absence of provision of parental leave assumes that women are primary caregivers of children. We shall discuss the importance of paternity leave in some detail in the latter part of this judgment.

100. The Court applied the principle of permissible classification to assess whether the differentiation between parents on the basis of the child's age was constitutionally and statutorily valid. It observed that, on account of such differentiation, a child above the age of two years is denied any opportunity to adjust or integrate into the adopted family. It was further highlighted, and rightly so, that imposing an age limit on the child discourages the prospective parents and reduces the likelihood of such children being adopted. The relevant observations read thus:-

"*55. It is trite that if section 9 is invoked to attack a legislative provision or executive conduct on the ground that it differentiates between people or categories of people in a manner that amounts to unequal treatment or unfair discrimination, the first enquiry must be directed to the question of whether the impugned provision does, in fact, differentiate between people or categories of people. Here, the answer must be in the affirmative. That the provisions differentiate between categories of adoptive parents and their children on the basis of age cannot be disputed. Indeed, adoptive parents of children who are older than two years, and their children, are treated differently from parents and children younger than two years.*

*56. The next enquiry is if the provision does so differentiate, then in order not to fall foul of section 9(1) of the Constitution, there must be a rational connection between the differentiation in question and the legitimate governmental purpose it is designed to further or achieve. If it is justified in that way, then it does not amount to a breach of section 9(1).*

*xxx*

*58. The Minister's arguments in this regard do not hold water. The age cap set is in respect of children under the age of two years and the maternity leave has such an effect that birth parents leave their children who are much younger than two years. Birth mothers return to work whilst their children are three to four months old, unless they make special arrangements with their employer. If the Minister is concerned about equalising the two scenarios, it has not been argued why a four, six or 12-month age cap would be inappropriate. There is no explanation as to how two years was set as an appropriate age cap and why it should be regarded as a reasonable cap. I fail to see the creation of the "equivalence" alleged by the Minister.*

*59. I also reject the argument that the differentiation does not occur in respect of children. Of course, there is a financial benefit resulting from the UIF claim, but the adopted children older than two years are treated*

*differently because they are not afforded time to be with their employed parents when they join their new families and there is no opportunity afforded for them to adjust to the new family at all. It also cannot be gainsaid, as the Commission has argued, that the lack of parental leave benefits for parents of adopted children who are two years and older further decreases the likelihood of such children being adopted because there is absolutely no leave after such children join their new family*."

(Emphasis supplied)

101. The Court further observed that the need for adjustment to a new environment cannot be negated. It rejected the submission on behalf of the respondent that the provision attempts to place adoptive parents on the same pedestal as biological parents. This meant that the age limit affords similar benefits to different categories of parents. However, the Court held that the maternity benefit policy could not be framed in ignorance of the welfare of the child. In this context, the Court observed thus:-

"*65. This argument by the Minister is flawed, as already stated. It does not address the differentiation between adopted children below the age of two years and those above it. It focuses on the parents. However, the focus cannot be on the parents alone to the exclusion of the children, because the whole regime around maternity, paternity and adoption leave centres around both the parents and the children, with the parents being the givers of nurturing, and the children being the recipients or beneficiaries*."

(Emphasis supplied)

102. Most importantly, while equating the leave available to adoptive parents with that granted to biological parents, the Court

emphasized the difference in the underlying purpose of leave in the case of adoptive parents as opposed to biological parents and surrogate parents. The Court declared the age limit of two years as unconstitutional, and left it to the legislature to determine a reasonable age limit, if any, in accordance with constitutional principles. The relevant observations read thus:-

> "*71. Furthermore, when analysing whether adoptive leave should mirror the leave provided to other categories of parents, it is evident that the two are fundamentally different. Whilst leave for new-borns is focused on supporting the immediate and intensive needs of infancy, adoptive leave also addresses a broader spectrum of challenges. Adoptive parents, particularly those caring for children over the age of two, face the added complexities of facilitating the child's integration into a new family and navigating cultural and environmental shifts. This multifaceted responsibility, which extends beyond mere physical care, calls for a tailored leave framework that recognises the unique demands of adoption, rather than a one-size-fits-all approach.*
>
> *72. Therefore, parental leave, irrespective of the child's age, is not solely about meeting the needs of the child, such as nurturing, but also to allow children of different ages a period to integrate and adapt in the new family unit. It cannot be disputed that in certain instances adopted children may require additional care and support depending on the circumstances they come from.*"
>
> (Emphasis supplied)

103. It would also be apposite to refer to the decision by the European Court of Human Rights in ***Topčić-Rosenberg* v. *Croatia***, **Application no. 1939/11**. The applicant therein, an adoptive mother of a three year-old child, was aggrieved by the non-grant

of maternity leave, which was contrary to Article 14 read with Article 8 of the European Convention on Adoption of Children ("Convention"). Although, the benefit of maternity and parental leave is governed by the Maternity and Parental Benefits Act, 2009, yet the Court viewed the issue largely through the prism of Convention. The provisions read thus:-

> "*Article 8*
> *"1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
> *2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*
> *Article 14*
> *"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*

104. The Court held that Article 14 read with Article 8 of the Convention squarely applied to the case. It did not see a reasonable justification behind difference in treatment between an adoptive mother and a biological mother insofar as maternity leave and related allowances of an adoptive mother were concerned. Such distinction without a justification was held to be discriminatory. The purpose of such leave in case of an adoptive child was identified to be care-giving responsibilities,

nurturing, and bonding for integration of the child in the adoptive family. The relevant observations read thus:-

> "*42. The Court considers that when assessing the domestic practice in the present case, in which the authorities refused to grant maternity leave to an adoptive mother, it must take into account two considerations. First, for an adoptive mother the purpose of parental or maternity leave is to enable her to stay at home to look after her child. In this respect she is in a similar situation to a biological parent (see, mutatis mutandis, Petrovic, cited above, § 36, and Konstantin Markin, cited above, § 132). Secondly, the State should refrain from taking any actions which could prevent the development of ties between the adoptive parents and their child and the integration of the child into the adoptive family (see, mutatis mutandis, Wagner and J.M.W.L. v. Luxembourg, no. 76240/01, §§ 119 and 121, 28 June 2007).*
>
> *xxx*
>
> *47. Accordingly, being unable to discern any objective and reasonable justification for the difference in treatment of the applicant as an adoptive mother, in granting her the right to maternity leave after the adoption of her child, and a biological mother, who had such a right from the time of the birth, the Court considers that such a difference in treatment amounted to discrimination.*"
>
> (Emphasis supplied)

105. The net effect of the aforesaid discussion is that the absence of a biological connection does not diminish the depth of their bond. We cannot emphasize more on the fact that motherhood is ultimately shaped through affection, selfless care, and not through blood alone. This is one of those instances where law is confronted by a question which cannot be answered by statute alone.

### C. The right to a dignified life for adoptive parents and adopted child under Article 21 of the Constitution

#### i. Adoption as an expression of reproductive autonomy

106. The second submission canvassed on behalf of the petitioner is that the impugned provision violates the adoptive mothers' and adoptive children's right to live life with dignity as enshrined under Article 21 by denying the mother the right to motherhood and the adoptive children the right to receive sufficient care to be rehabilitated and integrated into his/her new family.

107. Although biology has traditionally been the predominant lens through which kinship and family relationships are understood, yet non-biological modes of building a family are no less legitimate or meaningful. The decision to adopt may be motivated by a variety of personal, social, or humanitarian reasons. Thus, adoption is an equally valid pathway for the creation of a family. It is not biology that constitutes a family of a mother, father, and children, rather, it is the shared meaning, responsibility, and emotional bonds that sustain such a relationship. We say so because biological factors, by themselves, do not determine family behaviour or familial identity.

108. In such circumstances referred to above, an adopted child is no different from a so-called "natural" child, the only distinction is that the process of adoption is more visible and legally acknowledged. Thus, the act of adoption may carry an equally,

if not more, profound affirmation of parenthood. There is no doubt that sharing of meaning, affection, and responsibility lies at the heart of both family creation and the adoption process.

109. A three Judge Bench of this Court in ***Suchita Srivastava* v. *Chandigarh Admn.***, reported in **(2009) 9 SCC 1**, affirmed the reproductive rights of the appellant-victim, who was allegedly raped while staying in a Government-run welfare institution, when she expressed her willingness to carry the pregnancy till its full term despite being diagnosed with mild mental retardation.

The Court declined to discount her decision on the ground that it was "questionable" and instead looked beyond prevailing social prejudices to accord primacy to her right to make reproductive choices under Article 21. The Court held that the Medical Termination of Pregnancy Act, 1971, recognizes and respects the personal autonomy of a woman in matters relating to reproduction. The Court further directed the respondents to ensure that adequate medical facilities were provided so as to safeguard her health and well-being during the course of the pregnancy. The relevant observations read thus:-

> "*22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's*

*right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a "compelling State interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.*

*xxx*

*59. Lastly, we have urged the need to look beyond social prejudices in order to objectively decide whether a person who is in a condition of mild mental retardation can perform parental responsibilities.*

*60. The findings recorded by the expert body which had examined the victim indicate that the continuation of the pregnancy does not pose any grave risk to the physical or mental health of the victim and that there is no indication that the prospective child is likely to suffer from a congenital disorder. However, concerns have been expressed about the victim's mental capacity to cope with the demands of carrying the pregnancy to its full term, the act of delivering a child and subsequent childcare. In this regard, we direct that the best medical facilities be made available so as to ensure proper care and supervision during the period of pregnancy as well as for post-natal care.*"

(Emphasis supplied)

110. We may look into the decision of ***K.S. Puttaswamy (Privacy-9J.)* v. *Union of India***, reported in **(2017) 10 SCC 1**, wherein this Court recognized the multifaceted nature of the right to

privacy, which encompasses, *inter alia*, decisional autonomy in matters relating to intimate personal choices. Such autonomy includes decisions governing reproduction and family life, thereby affirming the individual's freedom to make choices concerning procreation and parenthood without unwarranted State interference. The relevant observations read thus:-

> "*248. Privacy has distinct connotations including (i) spatial control; (ii) decisional autonomy; and (iii) informational control. [ Bhairav Acharya, "The Four Parts of Privacy in India", Economic & Political Weekly (2015), Vol. 50 Issue 22, at p. 32.] Spatial control denotes the creation of private spaces. Decisional autonomy comprehends intimate personal choices such as those governing reproduction as well as choices expressed in public such as faith or modes of dress. Informational control empowers the individual to use privacy as a shield to retain personal control over information pertaining to the person.[…]*"
>
> (Emphasis supplied)

111. In ***X2* v. *State (NCT of Delhi)***, reported in **(2023) 9 SCC 433**, wherein one of us, J. B. Pardiwala, J., was a part of the Bench, observed that the bouquet of reproductive rights encompasses at the very least the right of women to have or not have children. The Court emphasized that reproductive autonomy forms an integral part of personal liberty and decisional autonomy under Article 21 of the Constitution. The relevant observations read thus:-

> "*101. The ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive*

*health. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose whether and when to have children, the right to choose the number of children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning these rights, free from coercion or violence.*

*102. Zakiya Luna has, in a 2020 publication, argued that reproduction is both biological and political. [ Zakiya Luna, Reproductive Rights as Human Rights : Women of Color and Fight for Reproductive Justice (NYU Press, 2020).] According to Luna, it is biological since physical bodies reproduce, and it is political since the decision on whether to reproduce or not is not solely a private matter. This decision is intimately linked to wider political, social, and economic structures. A woman's role and status in family, and society generally, is often tied to childbearing and ensuring the continuation of successive generations.*"

(Emphasis supplied)

112. What can be discerned from the above discussion is that when family structures and modes of parenthood have evolved and diversified, parenthood is not confined to the biological act of giving birth. It includes a broader spectrum of choices through which individuals realize their aspiration to build a family. Thus, an atypical or unconventional familial setup does not strip away the rights guaranteed by the Constitution.

113. In the aforesaid context, reproductive autonomy, therefore, cannot be narrowly understood as being limited to biological

reproduction alone. Adoption, too, represents a conscious and meaningful exercise of the choice to create and nurture a family, and must be viewed as falling within the broader spectrum of reproductive decision-making.

114. The protection of maternity benefit cannot be confined keeping in mind the age of the child. More so, when this benefit seeks to support motherhood and the welfare of the child, it must extend to adoptive mothers who undertake the equally significant responsibilities of nurturing and raising a child.

115. We are at one with the learned counsel appearing on behalf of the petitioner that the impugned provision, by stipulating an age limit, fails to recognize the right of reproductive autonomy of those adoptive mothers who adopt a child aged three months or more. It denudes such adoptive mothers of the ability to meaningfully exercise and enjoy their right to decisional autonomy, dignity, and bodily integrity under Article 21.

116. What flows from the aforesaid discussion and need not be elaborated more is that the decision to have children is not confined to the biological birth. The choice to bring a child into one's life may also manifest through non-biological means such as adoption, which equally reflects an individual's autonomy in matters of parenthood and family formation. A mother takes birth the day a child comes into her life. While the day of the entry of the child in the mother's life slightly varies in case of biological route of attainment of motherhood, what follows after

the coming of the child in the mother's life is a universal feeling, shared by all mothers - whether adoptive, surrogate or biological.

117. Recently, in ***K. Umadevi*** (*supra*), Ujjal Bhuyan, J., succinctly highlighted the constitutional support to social security benefits through the Directive Principles of State Policy. The relevant observations read thus:-

> "*30. Article 42 of the Constitution of India which is one of the directive principles of State policy mandates that the State shall make provisions for securing just and humane conditions of work and for maternity relief. Article 42 is as follows:*
>
> > *"42. Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief."*
>
> *31. Another directive principle is contained in Article 51 of the Constitution of India. Amongst others, it says through Article 51(c) that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised people with one another."*
>
> (Emphasis supplied)

**ii. Scope and application of the principle of "*best interest of the child*"**

118. For this particular discussion, it would be worthwhile to refer to the observations made by this Court in ***Lakshmi Kant Pandey* v. *Union of India***, reported in (**1984) 2 SCC 244**, wherein this Court prior to enactment of the JJ Act took note of the guiding principles contained in the Declaration of the Rights of the Child adopted by the United Nations General. The Declaration states

that every child must be provided with opportunities and facilities to enable their development by all possible means, and best interest of the child shall be the paramount consideration in all laws and policies concerning children.

This Court categorically observed that in situations where it is not possible for the biological parents to care for the child, an adoptive family would be the most appropriate alternative to provide a loving and nurturing environment. It emphasized that every child has the right to grow up in a loving and caring family. The relevant extract reads thus:-

> "*7. There has been equally great concern for the welfare of children at the international level culminating in the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on November 20, 1959. The Declaration in its Preamble points out that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth", and that "mankind owes to the child the best it has to give" and proceeds to formulate several Principles of which the following are material for our present purpose:*
>
> > *"Principle 2.—The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child shall be the paramount consideration.*
> >
> > *Principle 3.—The child shall be entitled from his birth to a name and a nationality.*
> >
> > *Principle 6.—The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and in any case in an atmosphere of*

*affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.*

*Principle 9.—The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.*

*Principle 10.—The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood and in full consciousness that his energy and talents should be devoted to the service of his fellow men."*

*Every child has a right to love and be loved and to grow up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family. The most congenial environment would, of course, be that of the family of his biological parents. But if for any reason it is not possible for the biological parents or other near relative to look after the child or the child is abandoned and it is either not possible to trace the parents or the parents are not willing to take care of the child, the next best alternative would be to find adoptive parents for the child so that the child can grow up under the loving care and attention of the adoptive parents. The adoptive parents would be the next best substitute for the biological parents.[…] Such adoption would be quite consistent with our National Policy on Children because it would provide an opportunity to children, otherwise destitute, neglected or abandoned, to lead a healthy decent life, without privation and suffering arising from poverty, ignorance, malnutrition and lack of sanitation and free from neglect and exploitation, where they would be able to realise "full potential of growth".[…]*

(Emphasis supplied)

119. We must now advert to the definition of "*best interest of child*" as given under the JJ Act. Section 2(9) of the Act reads thus:-

> "*(9) "best interest of child" means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development*"
>
> (Emphasis is ours)

120. Further, Section 3 of the JJ Act states that all the authorities while implementing the provisions of JJ Act shall be guided by the principle of best interest of child. The relevant part of the provision reads thus:-

> "(*iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.*"

121. We may also look into the relevant regulations of the CARA Regulations guided by the principle of the best interest of the child. Regulation 3 of the said regulation stipulates one of the fundamental principles governing adoption, within which the child's best interest is considered of paramount importance. The said regulation reads thus:-

> "*3. Fundamental principles governing adoption.— The following fundamental principles shall govern adoptions of children from India, namely:— (a) the child's best interests shall be of paramount consideration, while processing any adoption placement;*"

122. Thus, the common thread flowing across the aforesaid provision is that the principle of the best interests of the child constitutes the core of all laws and policies concerning children. It reflects the recognition that children, by reason of their age and vulnerability, they require special care, protection, and opportunities for development. The concept of best interest is not confined to a narrow or immediate understanding of welfare but rather, it comprises the overall well-being of the child. The principle of best interest seeks to ensure that every child is provided with conditions that promote their healthy development.

123. On a plain reading of the aforesaid provisions, it is limpid that the guiding premise underlying this principle is that every child must be given the opportunity to grow in an environment that nurtures their potential, emotional, and intellectual development. The family, as a primary unit of care and protection, plays an indispensable role in fulfilling these objectives. A stable and harmonious home environment provides the foundation which enables a child to realize their fullest potential.

124. In ***Dasari Anil Kumar* v. *Child Welfare Project Director***, reported in **2025 SCC OnLine SC 1689**, the appellants who were adoptive parents, were aggrieved by the action of police in taking away the custody of minor children from them without the authority of law. This Court, having regard to the best interest of the children, the bonding between the parents and

the child, the principle of family responsibility, and the principle of safety, directed that the custody of the children be restored to the adoptive parents. The relevant observations read thus:-

> "*11. This is in the interest of the children owing to the bonding between the "adoptive parents" and the respective children. This is by following the principle of the best interest of the child; principle of family responsibility; principle of safety, positive measures, principle of Institutionalization as a measure of last resort, principle of repatriation and restoration, which are also enunciated as general principles in Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015.*
>
> *xxx*
>
> *14. However, as a safeguard and in the best interest of the children, we direct that the Member Secretary of the State Legal Services Authority and/or the Member Secretary of the District Legal Services Committee, within whose jurisdiction the "adoptive parents" reside to seek reports on the welfare and progress of the child from the respective "adoptive parents" on a quarterly basis starting from November, 2025 onwards. The Member Secretary of the State Legal Services Authority and/or the Member Secretary of the District Legal Services Committee will also be at liberty to depute a Child Welfare Expert to inspect the home where the child and the "adoptive parents" reside. This is to ensure the welfare and progress of the children who have been returned to the "adoptive parents".*
>
> *15. We again clarify that we have passed the aforesaid order in the best interest of the children concerned in the instant case as they have been with their adoptive parents for a few months upto three years in these cases.*"
>
> (Emphasis supplied)

125. In the aforesaid context, we may also refer to a decision by Labour Court of South Africa, Durban in ***MIA* v. *State***

***Information Technology Agency (Pty) Ltd.***, **[2015] ZALCD 20**, which dealt with the denial of "maternity" leave to a male employee. The respondent therein refused to grant leave on the basis that its policies and the Basic Conditions of Employment Act covered only "female" employees. In the case before the Court, the surrogacy agreement provided that the applicant would play the role of usually performed by the birthmother.

In such circumstances, the Court held that maternity leave is associated to the welfare and health of the child's mother as well as best interests of the child. While keeping in mind the best interest of the child, the Court further held that the policy of the respondent unfairly discriminates against the applicant and he should be entitled to "maternity leave". The relevant observations read thus:-

> "*[13] <u>This approach ignores the fact that the right to maternity leave as created in the Basic Conditions of Employment Act in the current circumstances is an entitlement not linked solely to the welfare and health of the child's mother but must of necessity be interpreted to and take into account the best interests of the child.</u> Not to do so would be to ignore the Bill of Rights in the Constitution of the Republic of South Africa6 and the Children's Act. Section 28 of the Constitution provides:*
>
> *28 Children*
> *(1) every child has a right-*
> *a. …*
> *b. To family care or parental care …*
>
> *[14] The Children's Act specifically records not only that the act is an extension of the rights contained in Section 28 but specifically provides:*
>
> *Best interests of child paramount.*

> *In all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance must be applied.*
>
> *xxx*
>
> *[16] The surrogacy agreement specifically provides that the newly born child is immediately handed to the commissioning parents. During his evidence the applicant explained that for various reasons that he and his spouse had decided that he, the applicant, would perform the role usually performed by the birthmother by taking immediate responsibility for the child and accordingly he would apply for maternity leave. The applicant explained that the child was taken straight from the surrogate and given to him and that the surrogate did not even have sight of the child. Only one commissioning parent was permitted to be present at the birth and he had accepted this role.*
>
> *[17] Given these circumstances there is no reason why an employee in the position of the applicant should not be entitled to "maternity leave" and equally no reason why such maternity leave should not be for the same duration as the maternity leave to which a natural mother is entitled.*"
>
> (Emphasis supplied)

126. We may also look into the decision by the House of Lords in ***In re P & Ors.***, **[2008] UKHL 38**, wherein the Court dealt with the issue of whether an unmarried couple could be excluded from being considered as adoptive parents of a child. In that case, the male applicant, who was not the child's biological father, sought to be recognized as the father, while the female applicant was the biological mother of the child. However, article 14 of the Adoption (Northern Ireland) Order, 1987, states that an adoption order could be made on the application of more than one person only if the applicants were a married couple.

The Court held that such a rule which excluded unmarried couples from maintaining an application as a potential adoptive parent was discriminatory and violative of the fundamental principle of adoption law, i.e., the best interest of child. It was held that status of an individual with regards to his marital life cannot be said to be determinative of the fact of child's best interest. Thus, the applicants were held to be entitled to apply to adopt the child. The following observations of Lord Hoffman and Lord Mance respectively are worthy of reproduction:-

**Lord Hoffman**

> "*16. The question therefore is whether in this case there is a rational basis for having any bright line rule. In my opinion, such a rule is quite irrational. In fact, it contradicts one of the fundamental principles stated in article 9, that the court is obliged to consider whether adoption "by particular…persons" will be in the best interest of the child. A bright line rule cannot be justified on the basis of the needs of administrative convenience or legal certainty, because the law requires the interests of each child to be examined on a case-by-case basis. Gillen J said that "the interests of these two individual applicants must be balanced against the interests of the community as a whole." In this formulation the interests of the particular child, which article 9 declares to be the most important consideration, have disappeared from sight, sacrificed to a vague and distant utilitarian calculation. That seems to me to be wrong. If, as may turn out to be the case, it would be in the interests of the welfare of this child to be adopted by this couple, I can see no basis for denying the child this advantage in "the interests of the community as a whole".*
>
> *xxx*
>
> *18. It is one thing to say that, in general terms, married couples are more likely to be suitable adoptive parents than unmarried ones. It is altogether another to say that one may rationally assume that no unmarried*

*couple can be suitable adoptive parents. Such an irrebuttable presumption defies everyday experience. The Crown suggested that, as they could easily marry if they chose, the very fact that they declined to do so showed that they could not be suitable adoptive parents. I would agree that the fact that a couple do not wish to undertake the obligations of marriage is a factor to be considered by the court in assessing the likely stability of their relationship and its impact upon the long term welfare of the child. Once again, however, I do not see how this can be rationally elevated to an irrebuttable presumption of unsuitability.*"

**Lord Mance**

"*134. The present case concerns the strengthening and deepening of private and family relationships that can arise on all sides from adoption. Adoption cements a family unit. It gives the child maintenance rights against the adoptor(s). It makes the child a member of the adoptor(s)' wider family, and confers inheritance rights in that connection. It is a process in relation to which the child's well-being ought to be paramount. The fact that proposed adoptors are a married couple is on any view a material factor. Society is entitled to place weight on the existence of such a bond. But that does not mean that every married couple are suitable or every unmarried couple unsuitable as adoptors. A close scrutiny of all the circumstances is required in the particular child's interests before any adoption can be sanctioned. A couple's decision to remain unmarried cannot determine what is in the child's best interests. In today's world, failure to tie the knot is not to be equated with lack of actual commitment; and one would have thought that a joint wish to adopt was itself, at least to some extent, a counterbalancing factor. The threshold criterion of marriage which exists under the Northern Irish legislation looks at the matter in terms of the couple's decision whether or not to marry, rather than from the viewpoint of the child or the potential benefits of joint adoption for the child. It excludes all possibility of adoption by all unmarried*

> *couples, however longstanding and stable their relationship It precludes any second stage: any scrutiny at all of the circumstances, the needs or the interests of the particular child. The legislation distinguishes between a married and an unmarried couple, both equally suitable as adoptors, purely on the basis of marital status. The line drawn does not avoid the need for a second stage scrutiny where adoption is possible. It simply makes adoption and the security and benefits which it would bring for the child impossible in the case of this child unless the couple marry."*
>
> (Emphasis supplied)

127. Similarly, the South African Constitutional Court in ***Suzanne Du Toit and Vos* v. *Minister for Welfare and Population Development***, **(2002) 13 BHRC 187**, dealt with the issue of whether the applicants (same-sex unmarried couple) were eligible to adopt children as the existing legislation restricted the right to adopt only to married couples. The Court referred to Section 28(2) of the Constitution, which states that a child's best interest is of paramount importance in every matter concerning the child.

In such circumstances, the Court held that the exclusion of the applicants defeats the essence and purpose of adoption which is to provide stability, commitment, affection and support for child's development. The impugned provision was held to be violative of the principle of best interest of the child as it deprived them of a stable and loving family. The relevant observations read thus:-

> "*[19] The institutions of marriage and family are important social pillars that provide for security, support and companionship between members of our society and play a pivotal role in the rearing of children.*

*However, we must approach the issues in the present matter on the basis that family life as contemplated by the Constitution can be provided in different ways and that legal conceptions of the family and what constitutes family life should change as social practices and traditions change.16 I turn now to consider the constitutionality of the impugned provisions.*

*xxx*

*[21] In their current form the impugned provisions exclude from their ambit potential joint adoptive parents who are unmarried, but who are partners in permanent same-sex life partnerships and who would otherwise meet the criteria set out in section 18 of the Child Care Act.20 Their exclusion surely defeats the very essence and social purpose of adoption which is to provide the stability, commitment, affection and support important to a childs development, which can be offered by suitably qualified persons.*

*[22] […] The impugned provisions of the Child Care Act thus deprive children of the possibility of a loving and stable family life as required by section 28(1)(b) of the Constitution. This is a matter of particular concern given the social reality of the vast number of parentless children in our country. The provisions of the Child Care Act thus fail to accord paramountcy to the best interests of the children and I conclude that, in this regard, sections 17(a) and (c) of the Act are in conflict with section 28(2) of the Constitution."*

(Emphasis supplied)

128. The overarching theme emerging from these judgments is that the law across the globe recognizes that the best interest of the child must remain the paramount consideration in all decisions affecting a child. It needs no elaboration that children must be raised in an atmosphere of affection, understanding, and moral security.

129. In the aforesaid context, the principle of the best interests of the child does not conclude with the completion of the formalities of adoption or the handing over of custody of the child to the adoptive parents. It is a continuing obligation that persists throughout the period a child remains a child, more particularly, in this context, during which the child integrates into the adoptive family. The true fulfilment of the child's welfare lies in enabling the child to meaningfully adjust, bond, and flourish within the family environment. The period immediately following adoption is often the most critical phase in this process, as the child must acclimatize to unfamiliar surroundings and develop a sense of belonging within the new family.

130. The net effect of the aforesaid discussion is that the welfare of the child in adoption extends far beyond the moment of placement. It entails the child's health, emotional security, and other needs, all of which require constant care, and support from the parent. When Section 60(4) of the 2020 Code imposes an age limit of three months for the availment of maternity benefit by an adoptive mother, it fails to adequately account for these continuing dimensions of the child's welfare.

**D. Examining validity of the impugned provision through its workability**

131. We may look at the matter from one another angle. The learned counsel appearing for the petitioner vehemently submitted that Section 60(4) of the 2020 Code fails to take into consideration the time required for completing the procedure for adoption of

orphaned, abandoned, or surrendered children under the JJ Act and the CARA Regulations, respectively. She would submit that the adoption process ordinarily takes 2 months or more to be completed. Consequently, by the time the child is legally placed with the adoptive mother, the statutory age limit would, in most cases, stand exhausted, thereby, rendering the provision largely otiose in its practical application.

132. The following table indicates the timeline of the time required for a child to be declared legally free for adoption and referred to prospective adoptive parents (PAPs). It reads thus:-

| SURRENDERED CHILD | | ORPHAN OR ABANDONED CHILD | |
|---|---|---|---|
| IDENTIFICATION | | | |
| T | Execution of Surrender Deed by the parent or guardian. [*S. 35 of the JJ Act*] | T | A child who appears or claims to be an orphan, abandoned or lost shall be brought before the CWC. [*S. 32(1) of the JJ Act*] |
| T+60 days (60 days) | The parents or guardian who surrendered the child, have two months' time to reconsider their decision. [*S. 35(3) of the JJ Act*] | T+60 days If the child is less than 2 years old. (2 months) | The CWC shall take efforts to trace the biological parents or legal guardian of the child.<br><br>[*S. 37(1)(c) of the JJ Act; Rule 19(24)-(27) of the JJ Rules*]<br><br>If the local police report on the non- |

| | | | |
|---|---|---|---|
| | In the meanwhile, the SAA[2], DCPU[3], CWC shall take steps to explore the possibility of parents retaining the child.<br><br>[*Reg 7(11) of CARA Regulations*]<br><br>The SAA shall intimate the CWC in case surrendering parents have not claimed back the child during the reconsideration period.<br><br>[*Reg 7(15) of CARA Regulations*] | T+120<br>If the child is more than 2 years old.<br>(4 months) | traceability of biological parents or guardians is not received within the stipulated time, they shall be deemed to be non-traceable.<br><br>[*Reg 6(9)-(11) of the CARA Regulations*] |
| DECLARATION OF LEGALLY FREE FOR ADOPTION | | | |
| T+61 days<br>(No time period stipulated) | The institution where the child has been placed by the CWC shall bring the case before the CWC on completion of two months.<br><br>CWC may declare the child legally free for adoption. [*S. 38(2) of the JJ Act; Rule 19(23) of the JJ Rules*] | T+63 days<br>(3 days)<br><br>T+123 days<br>(3 days) | The CWC shall declare the child as being legally free for adoption.<br><br>[*First Proviso to S. 38 of the JJ Act; Reg 6(13) of the CARA Regulations*] |

[2] Specialized Adoption Agency.
[3] District Child Protection Unit.

| | | | |
|---|---|---|---|
| | [*Reg 7(17) of Adoption Regulation*] | | |
| UPLOAD OF CHILD STUDY REPORT & MEDICAL EXAMINATION REPORT | | | |
| T+71 days (10 days) | The CSR[4] and MER[5] shall be prepared and posted on the Designated Portal.<br><br>[*Reg 7(18) of CARA Regulations*] | T+73 days (10 days)<br><br>T+133 days (10 days) | The CSR and MER shall be prepared and posted on the Designated Portal.<br><br>[*Reg 6(15) of the CARA Regulations*] |
| REFERRAL | | | |
| T+71 days (No time period stipulated) | The child, subject to availability, may be referred to PAPs on the basis of seniority on the Designated Portal.<br><br>[*Reg 11(2) of CARA Regulations*] | T+73 days (No time period stipulated)<br><br>T+133 days (No time period stipulated) | The child, subject to availability, may be referred to PAPs on the basis of seniority on the Designated Portal.<br><br>[*Reg 11(2) of CARA Regulations*] |

133. The substantial amount of time in the aforesaid timeline, in the case of a surrendered child, is devoted to allowing the parents or guardian to reconsider their decision to surrender the child. Whereas, in the case of an orphaned or abandoned child, owing

[4] Child Study Report.
[5] Medical Examination Report.

to the age of the child, time has been devoted to making sincere efforts to trace the biological parents or legal guardian of the child.

134. We lay much emphasis on the fact that this timeline cannot be compromised, having regard to the sensitive nature and the serious legal consequences that follow once a child is declared legally free for adoption. The time afforded to biological parents to reconsider the decision of surrender, as well as the efforts undertaken to trace the biological parents or legal guardians of an orphaned or abandoned child, are indispensable safeguards. These processes are bound to require time and must necessarily be allowed to unfold with due care.

135. In this regard, the respondents have submitted that in order to expedite the adoption process, district magistrates and additional district magistrates have been conferred with the power to issue adoption orders. We discourage this understanding of the adoption process. The expedition cannot be pursued at the cost of the essential safeguards that ensure no child is separated from their parent or legal guardian without consent or due process.

136. The conferment of such powers is intended to streamline procedural bottlenecks and ensure timely administrative action. This does not warrant the curtailment of the safeguards embedded in the statutory scheme. The adoption framework is designed not merely to facilitate placement of children but to

ensure that every stage of the process accords primacy to the best interests of the child. Any attempt to compress or abbreviate these procedures in the name of expedition would undermine the safeguards that protect the rights of the child as well as those of the biological and adoptive parents. Therefore, the time taken in the process of declaring a child legally free for adoption is not a procedural "formality" but a necessary component of a careful and responsible adoption structure.

137. We shall now turn to the legal discussion concerning this issue. In adjudging the validity of a provision, the existing conditions in which the law is to be applied cannot be ignored. We say so because such conditions bear a direct nexus with the object sought to be achieved by the legislation. A statutory provision cannot be examined in isolation or in the abstract, divorced from the practical realities within which it is expected to operate.

138. In the aforesaid context, it is apposite to understand that law is not unidimensional or myopic in its application. If a provision is framed without due regard to the administrative conditions in which it is to operate, the intention of the legislation would stand frustrated. The law must be understood not merely through its terminology, but also in terms of its ability to meaningfully address the conditions for which it has been enacted.

139. It is well settled that the law cannot be merely symbolic or rather illusory. A legislative provision, more particularly, one which is beneficial in nature, must be capable of meaningful

implementation so that the class for whose benefit it has been enacted is able to effectively avail the protection intended by the legislature. If the structure of the provision or the circumstances surrounding its operation make the benefit practically unattainable, the law risks becoming a mere formality on paper rather than an instrument of social welfare.

140. It would be worthwhile to refer to the observations made by this Court in ***State of Kerala* v. *Unni***, reported in **(2007) 2 SCC 365**. The challenge to Rule (2) of the Kerala Abkari Shops (Disposal in Auction) Rules, 2002, was on the ground of its unworkability. In the factual scenario, the sample obtained from the business of the respondent was found to contain ethyl alcohol in excess of 9.5%. The respondents therein contended that no mechanical equipment was available to accurately measure the ethyl alcohol content in toddy. This Court, accepting the respondent's argument, held the provision to be unworkable when put to application, and struck down the impugned rule. The relevant observations read thus:-

> "*39. Workability of a statute vis-à-vis the question as to whether it is vague or otherwise must also be considered having regard to the question as to whether it is at all practical.*
>
> *40. We must state that where two interpretations are possible, having regard to the workability or unworkability of a statute, the one which leads to the workability of the statute must be preferred to the other, keeping in view the principle ut res magis valeat quam pereat. (See State of T.N. v. M.K. Kandaswami [(1975) 4 SCC 745 : 1975 SCC (Tax) 402] .)*

*xxx*

*45. Here, no two interpretations are possible for upholding the validity of statute. Applying the principle of law as enunciated by this Court in the decisions noticed hereinbefore, no interpretation would make the statute workable or definite and thereafter, valid in law.*

*xxx*

*50. A person may be held to be guilty even if the contents of ethyl alcohol exceed 8.1% marginally. He must, therefore, be in a position to know as to what extent he can go and to what extent he cannot. The matter cannot, thus, be left to an act of nature. A penal provision must be definite. Unless the statutory intention otherwise provides, existence of mens rea must be read into a penal statute. It must be a deliberate act and not an unintentional one, unless the statute says so explicitly or by necessary implication. The Act or the Rules do not say either. It is in that sense vague or unreasonable.*

*51. Once, thus, it is found to be ex facie unreasonable and unworkable, the Court would not hesitate to strike down the said rule. We do so.*"

(Emphasis supplied)

141. In this context, by the time a child is declared legally free for adoption, the child is unlikely to remain within the narrow age threshold (three months) contemplated by the provision. The inevitable consequence is that although the statute ostensibly confers maternity benefit upon adoptive mothers, yet the benefit remains largely inaccessible in practice.

142. This issue was highlighted in ***Temple of Healing* v. *Union of India***, **W.P.(C) No. 1003/2021**, wherein the petitioner called attention to the deficiencies in the process for adoption in the

country. The report submitted by the Central Adoption and Research Agency indicated that PAPs wait between three to four years in order to get a healthy and young child. The reason was attributable to the mismatch in the number of registered PAPs and children available for adoption. The Court observed that the process of defining the legal status of the child is delayed on part of the CWCs. We may again bring the observations of this Court to the notice of the respondents. It reads thus:-

> "*(b) Compilation of data on registration of all OAS children of the district on CARINGS and monitoring of CWCs for timely determination of legal status of children. It is imperative for the States to ensure registration of all OAS children in the district on the CARINGS portal. States are required to nominate an officer of a sufficiently senior level to monitor this exercise. It has been observed while examining the data on CARINGS as well as visits conducted from time to time by CARA that the process of defining the legal status of children is delayed on the part of CWCs. The pending cases with CWCs beyond stipulated time limit for declaring a child legally free for adoption (LFA) is also one of the major concerns. There are a total number of 761 cases in all States/UTs which are pending with CWCs for more than four months for declaring LFA children. CWCs are required to expedite the legal status of all orphans, abandoned and surrendered children irrespective of their age. Older children can be benefited by the foster care adoption module being operationalized by CARA. The necessary data on pending applications for LFA children also needs to be compiled.*"

143. This Court should not remain oblivious to such ground realities. When a law, more particularly a beneficial legislation, is framed in a manner that prevents the intended beneficiaries from actually receiving its benefits, it ceases to serve its social

purpose. A beneficial legislation must be interpreted and structured in a manner that enables its benefits to reach the masses for whom it is intended.

144. Thus, a provision which, owing to its design or surrounding conditions, cannot be effectively applied may result in the law becoming illusory in operation. The constitutional promise of equality and social justice demands that beneficial measures are not merely enacted, but are also capable of meaningful realization in the lives of those whom they seek to protect.

145. At this stage, we deem it appropriate to observe that the legislature, while enacting a statute, bears the responsibility of ensuring that the law it enacts is capable of being implemented. The duty of the law maker does not end with the mere articulation of a right or benefit. The enforceability of that right is equally important. Accessibility of law does not mean formal existence, but the ability of individuals to avail the benefits.

**E. Institutional invisibility of household and care work**

146. This provides us with the segue to address yet another aspect of rationale behind conferring maternity benefit upon adoptive mothers irrespective of the age of the adopted child.

147. It is not an unknown phenomenon that women often sacrifice earnings and career progression for childbirth and child care. Care work for children includes attending to their daily needs, bathing and feeding them, accompanying them for medical

visits, etc., and undertaking the preparation that these responsibilities entail. There is no doubt that every member of a household benefits from the care work within households, and ordinarily, it is undertaken by women.

148. Such work of indispensable nature for the functioning of the family is performed without any explicit remuneration. The care provided within the home enables other members of the household to participate productively at their workplace. The economic significance of this care work, though frequently overlooked, is considerable. Only when time is spent on domestic and care responsibilities, the receivers are able to sustain productive employment. Thus, the contribution of women's unpaid labour at home, is not merely a private or domestic matter but forms an integral part of the broader economy.

149. In this regard, we may refer to what is called the *Wollstonecraft Dilemma.* It refers to the tension between recognizing women's role as caregivers and ensuring their equal participation in the workforce. This dilemma reflects the challenge of reconciling two competing expectations placed upon women. *First*, that they perform the role of a caregiver. *Secondly*, that they participate on equal terms with men.

150. This communicates that it would be unreasonable to treat women identically to men without acknowledging the social realities of the responsibilities to be undertaken at home. As a

result, it will perpetuate structural disadvantage. At the same time, it would be unjust, if the law recognizes differences without ensuring equality in opportunity. Thus, conferring maternity benefit is a manner of acknowledging the realities of caregiving while enabling women to remain integrated within the workforce.

151. A study by the ILO indicate that employed women tend, on average, to work for longer hours than employed men when both paid employment and unpaid domestic work are taken into account.[6] This disparity in working hours highlights the gendered nature of household responsibilities and clearly reflects societal norms regarding domestic labour and care work. Further, in the study, *Valuation of Unpaid Household Activities in India*[7], the authors highlight the economic significance of unpaid domestic and care work performed within households. There is no doubt that such unpaid house and care work contributes to the overall growth of the economy.

152. The aforesaid study reflects that this care work, though often unaccounted for, is far from insignificant, rather, it represents a foundational contribution to economic productivity. These caregiving responsibilities do not change when a woman adopts a child aged three months or above. On the contrary, they are

[6] International Labour Organization, "Women at Work: Trends 2016" (2016).
[7] Satyananda Sahoo, Kaustav K. Sarkar & Amit Kumar, "Valuation of Unpaid Household Activities in India" 59(39) EPW 190 (2024).

heightened, in order to make the child comfortable and integrate within the family.

153. As discussed in the foregoing paragraphs of this judgment that the initial months following the arrival of a child, whether by birth or adoption, require time, attention, and rearing responsibilities to ensure the well-being of the child and the establishment of a stable environment.

154. In such circumstances, the absence of adequate economic protection or institutional support places an unreasonable burden upon women. There is no gainsaying that it would be unreasonable to expect a woman who has just welcomed a child into her life and simultaneously discharges the demanding responsibilities of caregiving at home to maintain the same level of presence and efficiency at the workplace. The maternity benefits are nothing but an expression of treatment grounded in equity and substantive approach to equality.

**F. Highlighting the importance and need for paternity leave**

155. There exists a kind of injustice, although not deliberate, yet based on assumptions so deeply rooted that they have ceased to appear as injustice at all, and have come to be accepted as the natural order of things in society. Society has historically attributed caregiving and nurturing responsibilities almost exclusively to mothers. While the role of a mother is undeniably central to a child's emotional, physical, and psychological

development, it would be incomplete and unjust to overlook the equally significant role of a father.

156. Parenthood is not a solitary function performed by one parent but rather a shared responsibility in which each parent contributes to the child's holistic development. Although the father is present at the periphery of infancy, yet he is not present in the intimate and irreplaceable way that society has always presumed the mother must be. This acceptance of absence has seldom been examined with the seriousness it deserves. As a result, the cost is borne silently by children who grow up never realizing what they lacked, by fathers who were constrained by circumstances to remain distant. At the same time, by mothers who were denied the companionship and support of their partners in the early phase of caregiving.

157. The early months and years of a child's life constitute a formative period during which emotional bonds, attachment, and a sense of security begin to take shape. During this stage, the presence of a father contributes significantly to the child's emotional and psychological well-being. The essence of the matter is simple, the presence of both parents during the early development of a child is indispensable. What a father offers to a child in those nascent days cannot be scheduled for a convenient time or compensated for later.

158. In the aforesaid context, the absence of a father is rationalized by the hope of making up for lost time through devoted weekends. For the child, who needed to hear the voice and feel

the warmth of a father in those early moments, the absence is not merely a matter of memory. It affects the foundation upon which the child begins to build emotional security and attachment. The absence of a father during the formative years of a child's life, particularly due to employment constraints, deprives both the child and the parent of the opportunity to form these early bonds.

159. We must note that proximity is not identical to presence. A father who remains physically near yet is compelled by professional obligations to remain disengaged from early caregiving roles cannot truly participate in the formative experiences of a child's infancy. It is not unknown that fathers have traditionally been perceived as providers, with their responsibilities revolving around financial stability. Consequently, as financial care does not resemble the visible, everyday nurturing, it has often been undervalued as a basis for recognizing the need for leave.

160. The other side of the same coin is the historical absence of a father's participation in everyday caregiving and shared responsibility. In this context, the absence of paternity leave produces two consequences. *First*, it reinforces gendered roles in parenting. *Secondly*, even where a father is willing and desirous of contributing, he is left without a meaningful opportunity to do so. When fathers are afforded the opportunity to take leave following the arrival of the child, they are able to support mother and share family responsibilities. This support

extends to participating in the upbringing and caregiving of the child, assisting with household responsibilities, and remaining emotionally present during this demanding phase.

161. In such circumstances referred to above, a provision for paternity leave serves an important purpose by enabling fathers to participate meaningfully in the early stages of a child's life and development. It helps in dismantling gendered roles, encourages fathers to take an active role in child care, fosters a balanced understanding of parenting, and promotes gender equality within family and workplace.

162. It also advances the best interests and welfare of the child, which are most effectively served when both parents are enabled to play meaningful and complementary roles in the child's growth and development. The reasons highlighted in the foregoing paragraphs of this judgment for maternity leave remain similar for paternity leave.

163. At present, Sections 43A and 43AA of the CCS (Leave) Rules, respectively, grant a male government servant 15 days of paternity leave for the birth of the child or for adoption. The provisions read thus:-

> "*43-A. Paternity leave*
> *(DOPT Notification No. 13026/1/99-Estt. (L), dated 18.04.2002)*
> *(1) A male Government servant (including an apprentice) with less than two surviving children, may be granted Paternity Leave by an authority competent to grant leave for a period of 15 days, during the*

*confinement of his wife for childbirth, i.e., up to 15 days before, or up to six months from the date of delivery of the child.*
*(2) During such period of 15 days, he shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.*
*(3) The paternity Leave may be combined with leave of any other kind.*
*(4) The paternity leave shall not be debited against the leave account.*
*(5) If Paternity Leave is not availed of within the period specified insubrule (1), such leave shall be treated as lapsed.*
*NOTE:- the Paternity Leave shall not normally be refused under any circumstances.*

*43-AA. Paternity Leave for Child Adoption*
*(DOPT Notification No. 110 I2/l/2009-Estt. (L), dated 01.12.2009)*
*(1) A male Government servant (including an apprentice) with less than two surviving children, on valid adoption of a child below the age of one year, may be granted Paternity Leave for a period of 15 days within a period of six months from the date of valid adoption.*
*(2) During such period of 15 days, he shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.*
*(3) The Paternity Leave may be combined with leave of any other kind.*
*(4) The Paternity Leave shall not be debited against the leave account.*
*(5) If Paternity Leave is not availed of within the period specified in sub-rule (1), such leave shall be treated as lapsed.*
*NOTE 1.— The Paternity Leave shall not normally be refused under any circumstances.*
*NOTE 2.— "Child" for the purpose of this rule will include a child taken as ward by the Government servant, under the Guardians and Wards Act, 1890 or the personal law applicable to that Government servant, provided such a ward lives with the*

*Government servant and is treated as a member of the family and provided such Government servant has, through a special will, conferred upon that ward the same status as that of a natural born child.*
*(DOPT Notification No. 13026/5/2011-Estt. (L), dated 04.04.2012)*"

164. The aforesaid provision reflects that the concept of paternity leave is not alien, but less recognized. We are observant that certain efforts are being made towards recognizing the need for such a provision. Recently, a private member Bill titled The Paternity and Parental Benefit Bill, 2025 (Bill No. 82 of 2025), was introduced, which seeks to grant eight weeks of paternity leave. The Bill, *inter alia*, seeks to extend paternity leave to adopting fathers.

165. Before we part, we would like to pen that a child who is born or adopted does not know what the law has decided about presence of the father, nor does the child understand how the law values paternity leave. The child, in all likelihood, experiences the presence or absence of closeness, and the depth or shallowness of the bond, simply as the natural state of things between them. It does not know that the slightest distance it feels is not reflective of the care or affection that exists. The realization that one of its parents arrived a little late to the story because the law required him to be present at work is something the child may never consciously know, yet the quiet cost of that absence is later reflected in their relationship.

## V. CONCLUSION

166. A conspectus of our discussion in the aforesaid section is as follows:-

a. The distinction drawn by sub-section (4) of Section 60 does not have a rational nexus with the object of the 2020 Code. The object of maternity benefit is not associated with the process of childbirth but with the process of motherhood. The purpose of maternity protection does not vary with the manner in which the child is brought into the life of the beneficiary mother. Insofar as the roles, responsibilities, and caregiving obligations are concerned, women who adopt a child aged three months or above are similarly situated to women who adopt a child below the age of three months.

b. The process of adjustment and integration within the adoptive family, both for the parents as well as the child, remains substantially the same irrespective of the age of the child. The impugned classification overlooks the significant emotional, psychological, and practical adjustments required, of the adoptive parents and the adopted child, more particularly, in cases involving children with disabilities or single adoptive mothers.

c. The right of reproductive autonomy is not confined to the biological act of giving birth. Adoption is an equal exercise of the right to reproductive and decisional autonomy under Article 21 of the Constitution.

d. In matters affecting a child, paramount consideration must be given to best interests of the child. This consideration does not conclude with the completion of the formalities of adoption or the handing over of the custody, rather it continues throughout the period the child remains a child, more particularly, the period during which the child integrates into the adoptive family. The true fulfilment of the child's welfare lies in enabling the child to meaningfully adjust, bond, and flourish within the family environment.

e. When sub-section (4) of Section 60 of the 2020 Code is examined through one another angle, the provision turns out to be incapable of practical implementation, as it cannot fully achieve the purpose for which it has been enacted. With regard to the time required to declare a child legally free for adoption, by the time such declaration is made, the child is unlikely to be of less than three months old. Thus, the age limit renders the provision illusory and devoid of practical application.

167. For all the foregoing reasons, we have reached the conclusion that Section 60(4) of the 2020 Code insofar it puts an age limit of three months on the age of the adoptive child, for the adoptive mothers to avail maternity benefit under the 2020 Code is violative of Articles 14, and 21 of the Constitution respectively.

168. Therefore, the sub-section (4) of Section 60 of the 2020 Code should now be meaningfully read as:-

> "(*4) A woman who legally adopts a child or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.*"

169. In light of the aforesaid discussion on the need of paternity leave, we urge the Union to come up with a provision recognizing paternity leave as a social security benefit. We emphasize that the duration of such leave must be determined in a manner that is responsive to the needs of both the parent and the child.

170. In the result, the petition stands allowed in the aforesaid terms. Pending application(s), if any, also stand disposed of.

**.....J.**
**(J.B. PARDIWALA)**

**.....J.**
**(R. MAHADEVAN)**

**17th March, 2026;**
**New Delhi.**