

Supreme Court Strikes Down Provision Restricting Maternity Leave for Adoptive Mothers

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Introduction

The Supreme Court of India in *Hamsaanandini Nanduri v Union of India and Others*, 2026 INSC 246, has held Section 60(4) of the Code on Social Security, 2020 (SS Code) as unconstitutional and violative of Article 14 and Article 21 of the Constitution of India (Constitution) insofar as it restricts maternity benefit to an adoptive mother who adopts a child below the age of three months.

Understanding the Law

The SS Code (which repeals the erstwhile Maternity Benefit Act, 1961 (MB Act)) regulates employment of women in establishments before and after childbirth and is applicable to every establishment employing 10 or more employees (irrespective of whether there are any women employees) on any day of the preceding 12 months. It provides for maternity benefits to be granted by an employer to a woman employee, including paid leave entitlements for adopting and commissioning mothers.

Section 60(4) of the SS Code provides that a woman who legally adopts a child below the age of three months, or a commissioning mother, is entitled to paid maternity leave for a period of 12 weeks from the date the child is handed over to the woman.

Factual Background

The petitioner, an adoptive mother of two children, filed a writ petition under Article 32 of the Constitution challenging the validity of Section 60(4) of the SS Code which restricted an adoptive mother from availing maternity leave basis the age of the adopted child.

The petition was originally filed challenging the constitutionality of Section 5(4) of the erstwhile MB Act. During the pendency of the writ petition, the SS Code came into force on 21 November 2025, repealing the erstwhile MB Act. Section 60(4), being the corresponding provision under the SS Code, continued to retain the age-based restriction of an adoptive child (less than three months old) and limit the benefit of paid maternity leave only to a woman who adopts a child below the age of three months. Accordingly, the Supreme Court allowed an amendment to the writ petition to examine the constitutional validity of Section 60(4) of the SS Code as being violative of Article 14 and Article 21 of the Constitution.

Issue

The issues raised before the Supreme Court for consideration were whether the age-based restriction under Section 60(4) of the SS Code is violative of:

- Article 14 of the Constitution due to being discriminatory towards a woman who adopts a child aged three months or above; and
- Article 21 of the Constitution, with respect to the right to reproductive autonomy of an adoptive mother and the right of the adopted child to care and development.

Contentions

- Stance of the petitioner: The petitioner argued that Section 60(4) of the SS Code creates an unreasonable classification among adoptive mothers based on the age of the adopted child because it deprives an adoptive mother who adopts a child older than three months, an opportunity to nurture the adopted child during the critical initial phase of family integration. This age-based classification does not have a rational nexus with the object of the SS Code and is violative of Article 14 of the Constitution. Additionally, the provision violates the right to reproductive autonomy and dignified motherhood under Article 21 of the Constitution.
- Stance of the respondent: The respondent i.e., Union of India argued that Section 60(4) should be interpreted in conjunction with the broader scheme of the maternity benefits provided under the SS Code. The prescription of three months as the age threshold is reasonable since a child older than three months does not have the same degree of dependency on the caregiver. If a woman adopts a child with age more than three months, she may avail the creche facilities available at her establishment under Section 67 of the SS Code. Section 60(4) strikes a fair and proportionate balance between the rights of an adoptive mother and that of an employer.

Key Takeaways from the Ruling

The following are a few important observations made by the Supreme Court that laid the foundation for its decision:

- Classification under Section 60(4) is unconstitutional: The Supreme Court held that the distinction under Section 60(4) of the SS Code between a woman who adopts a child below the age of three months and a woman who adopts a child aged three months or above does not constitute a reasonable classification and bears no rational nexus with the object of the maternity benefits provided under the SS Code. The arbitrary nature of this classification is most evident when a woman adopting a child even a day older than three months will be ineligible for maternity leave under the SS Code. The court further noted that as far as caregiving responsibilities are concerned, all adoptive mothers are similarly situated regardless of the age of the adopted child. The classification under Section 60(4) therefore operates unequally upon similarly placed women without any substantial or intelligible basis. Accordingly, Section 60(4) was held to be violative of the right to equality guaranteed under Article 14 of the Constitution.
- Maternity benefit is rooted in motherhood: The Supreme Court held that maternity benefits are not limited to the biological process of childbirth but extends to the process of attaining motherhood and fulfilling the responsibilities flowing from it. The age of the child and the manner in which a child comes into the life of the mother do not change the need for a child's care, economic security and support. Additionally, the court identified three components that constitute the purpose for providing maternity leave, namely: (i) physical recovery of the mother following childbirth, (ii) development of bonding between the mother and the child, and (iii) child's gradual integration into the family. While the first component is absent in cases of adoption, the value of second and third component increases significantly due to the need of the child to form an emotional attachment with the adopted family.
- Adoption as an expression of reproductive autonomy: The court held that the right of reproductive autonomy under Article 21 of the Constitution is not confined to the biological act of giving birth. Adoption irrespective of the age of the adopted child, represents a conscious choice by the adoptive mother to nurture a family and falls within the broader spectrum of reproductive autonomy.
- Provision rendered illusory due to unworkability: The Supreme Court noted that due to the time required for the process of adoption in India, a child is unlikely to remain within the three-month age threshold prescribed under Section 60(4) by the time the adoption process is formally completed. Accordingly, a beneficial legislation such as the SS Code, must be capable of meaningful implementation in substance even when the practical conditions makes its implementation illusory.

The Court held that Section 60(4) of the SS Code should 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*".

Comment

The judgment holds substantial implications for employers across industries. With the striking down of Section 60(4) of the SS Code as unconstitutional, an employer is required to provide paid maternity leave of twelve weeks to a woman employee who adopts a child, irrespective of the age of the child at the time of adoption. An employer may consider revisiting their existing maternity benefit policy as applicable to an adoptive mother, to ensure that the policy reflects the Supreme Court's meaningful reading of Section 60(4). Further, the Supreme Court's observations on paternity leave reflects an inclination towards shared caregiving between both parents of the child. In such circumstances, provision of paternity leave and gender-neutral parental leave facilitates in reducing the disproportionate burden on women employees in the workforce.

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