LABOUR LAW

Hamsaanandini Nanduri v Union of India & Ors., 2026 INSC 246, decided by the Supreme Court on **17 March 2026**. It is a **two-judge bench judgment by Justice J.B. Pardiwala, concurred in by Justice R. Mahadevan**.

Facts of the case

The petitioner was an **adoptive mother of two children**. She filed a writ petition under **Article 32 of the Constitution** challenging the validity of **Section 5(4) of the Maternity Benefit Act, 1961**, as amended in 2017. Later, because the **Code on Social Security, 2020** came into force and replaced the earlier provision, the challenge was shifted to **Section 60(4) of the 2020 Code**, which was the corresponding provision.

The problem was this: **Section 60(4)** gave **12 weeks maternity benefit** to a woman who legally adopts a child, but **only if the adopted child is below three months of age**. So if a working woman adopted a child of four months, six months, one year, or even two years, she got **no maternity benefit at all** under that provision. The petitioner argued that this age limit was unfair, arbitrary, and unconstitutional.

She also argued that the adoption process under the **Juvenile Justice Act** and **Adoption Regulations** itself takes time. By the time a child is legally declared free for adoption and handed over, in many cases the child would already be older than three months. So the benefit existed in the law, but in real life it would often be impossible to use.

Provisions involved

The main statutory provision was **Section 60(4) of the Code on Social Security, 2020**. It said that a woman who legally adopts a child **below the age of three months**, or a commissioning mother, is entitled to **12 weeks maternity benefit** from the date the child is handed over. The challenge in this case was only about the part dealing with **adoptive mothers**.

The constitutional provisions discussed were mainly **Article 14** and **Article 21**. Article 14 deals with **equality before law** and prohibits unreasonable discrimination. Article 21 was used to discuss **dignity, motherhood, reproductive autonomy, and the child's right to care and development**. The petition had also invoked **Article 19(1)(g)**, saying that denial of leave affects a woman's right to work, but the Court ultimately framed and decided the case mainly under **Articles 14 and 21**.

The Court also referred to the broader constitutional background in **Articles 39, 42, 43 and 51(c)**, especially **Article 42**, which tells the State to make provision for **just and humane conditions of work and maternity relief**.

The Court further relied on international materials like **Article 25(2) UDHR**, **Article 10(2) ICESCR**, **CEDAW**, and **Article 3 of the Convention on the Rights of the Child**, to show that maternity protection and child welfare are internationally recognized values.

Issues before the Court

The Supreme Court itself framed two main issues.

First, whether the **three-month age limit** in Section 60(4) violated **Article 14** because it discriminated against women who adopt children aged three months or more.

Second, whether that same age limit violated **Article 21** by affecting the adoptive mother's **reproductive autonomy** and the adopted child's right to **holistic care and development**.

Arguments of the petitioner

The petitioner said that the law created an **artificial classification** between two types of adoptive mothers: one who adopts a child below three months and one who adopts a child above three months. According to her, both are still mothers, both need time to bond with the child, and both children need care and integration into the new family. So there was no real basis for treating them differently.

She also argued that the provision harmed not just mothers but also children, because children above three months also need emotional support, adjustment, and a stable family environment. She said the provision ignored the long legal adoption process and therefore became practically useless. She further argued that it discouraged working women from adopting and therefore affected their right to work and live with dignity.

Arguments of the Union of India

The Union defended the law by saying that it should be read in the context of the overall maternity scheme. It argued that adoption procedures had been improved, and that for older children crèche facilities under **Section 67** could help. The government also argued that a child older than three months may not have the same level of intensive dependency as a very young infant, and that the provision balanced the interests of adoptive mothers with employer concerns.

Reasoning of the Court

The Court's reasoning is the most important part of this case.

The Supreme Court began by saying that **maternity protection is a basic human right**. It is not just about childbirth. It is about supporting motherhood, preserving dignity, promoting equality at the workplace, and protecting the child. The Court repeatedly stressed that **motherhood is not**

merely biological. Parenthood is also about love, care, responsibility, bonding, and raising a child with dignity.

Then the Court explained that maternity leave has **three components**. First, there is time for the mother's physical recovery after childbirth. Second, there is time to build the emotional bond between mother and child. Third, there is time to care for the child and help the child adjust and integrate into the family. In the case of biological motherhood, all three may overlap. In the case of adoption, the first may not apply in the same way, but the **second and third absolutely do apply**. The Court said this was the key point.

The Court therefore rejected the narrow idea that maternity leave is only for post-pregnancy biological recovery. It said that for adoptive mothers too, the law recognizes motherhood, bonding, care, and integration of the child into the family. It cited earlier decisions such as **B. Shah**, **Municipal Corporation of Delhi v Female Workers**, **Deepika Singh**, and various High Court rulings to show that maternity law must be interpreted **purposively** and in a way that promotes **social justice**.

Article 14 analysis

Under Article 14, the Court applied the test of **reasonable classification**. It said that classification is allowed only if there is an **intelligible differentia** and that differentia has a **rational nexus** with the object of the law. It also emphasized the idea of **under-inclusiveness**: if a law gives a benefit to some persons but excludes other persons who are similarly situated, then the classification can fail Article 14.

The Court held that women who adopt children below three months and women who adopt children above three months are **similarly situated in relation to the purpose of maternity benefit**, at least so far as bonding, caregiving, and family integration are concerned. The age cut-off of three months had **no rational nexus** with the object of the law. The object of maternity benefit is linked to **motherhood**, not merely to the biological event of childbirth.

The Court also noted one more important point: the provision had an **"all or nothing" structure**. A woman adopting a child one day below three months got 12 weeks leave; a woman adopting a child even one day above three months got nothing. The Court found this unrealistic and constitutionally suspect because care needs do not end suddenly on crossing a mathematical cut-off.

So the Court concluded that the provision was **discriminatory**, lacked a real basis, and was **under-inclusive**, because it left out other adoptive mothers who were equally in need of the benefit. That violated **Article 14**.

Article 21 analysis

On Article 21, the Court made two major points.

First, it held that **reproductive autonomy** is not limited to the biological act of giving birth. Choosing to become a parent through **adoption** is also an exercise of decisional and reproductive autonomy. In simple words, the Constitution protects not only the choice to bear a child, but also the choice to build a family through adoption.

Second, the Court emphasized the **best interests of the child**. It said that this principle does not end once legal adoption papers are completed. What matters is whether the child gets a real chance to adjust, bond, feel secure, and flourish in the adoptive family. The child's welfare continues after handover, especially during the integration period. So denying maternity benefit to adoptive mothers of older children harms both the mother's dignity and the child's developmental interests.

Thus, the three-month cap also violated **Article 21**.

Workability of the law

The Court also attacked the provision from a practical angle. It examined the timeline under the **JJ Act** and **CARA Regulations** and found that the process of declaring a child legally free for adoption itself often takes **60 days or more**, and in many cases even longer. So by the time the child is legally adoptable and handed over, the child is often already outside the three-month limit. That made the benefit **illusory**, largely unworkable, and disconnected from reality.

This was a very strong part of the judgment. The Court basically said: a beneficial labour law cannot remain only on paper; if it is drafted so narrowly that real beneficiaries almost never get the benefit, it fails its social purpose.

Final judgment

The Supreme Court **allowed the petition**. It held that **Section 60(4) of the Code on Social Security, 2020 is unconstitutional only to the extent that it imposes the age limit of three months on the adopted child** for adoptive mothers to claim maternity benefit. The Court said this part violates **Articles 14 and 21**.

Instead of striking down the whole subsection, the Court **read it down / meaningfully read it** so that it now reads in substance:

A woman who legally adopts a child, or a commissioning mother, shall be entitled to maternity benefit for 12 weeks from the date the child is handed over.

So after this judgment, the **three-month condition no longer applies** to adoptive mothers.

3Part Framework: The judgment does contain a **3-part framework**, though the Court does not call it a "formal test." It uses it as a **framework to understand the purpose of maternity leave**. This appears in the discussion on the **"components of maternity leave."**

The Supreme Court says maternity leave has **three elements**:

1. Time for the mother's physical recovery after childbirth
This part is about recovery from the physical effects of giving birth. The Court says a biological mother should not be forced to return to work before she has recovered properly.

2. Time to nurture and build the emotional bond between mother and child
This is about attachment, bonding, reassurance, and emotional closeness. The Court treated this as a very important purpose of maternity leave.

3. Time to care for the child's physical and emotional needs and help the child integrate into the family
This is about day-to-day care and also about helping the child settle into the family environment. In adoption cases, this integration period becomes especially important.

The Court then applies this framework in a very important way.

For a **biological mother**, all three elements are usually present together.
For an **adoptive mother**, the **first element** — physical recovery from childbirth — may not apply in the same way. But the **second and third elements still fully apply**: bonding with the child and helping the child adjust into the family. That is why the Court said it is wrong to deny maternity benefit just because the adopted child is more than three months old.

So the real logic of the Court is:

- maternity leave is **not only about pregnancy recovery**,
- it is also about **bonding**, and
- it is also about **care and family integration**.

That is why the three-month age cap failed. The Court said the need for **bonding and integration** does not suddenly disappear once the child is older than three months.

In very simple language, the Court is saying:

- **Biological motherhood** needs recovery + bonding + care
- **Adoptive motherhood** may not need recovery from childbirth, but it still needs bonding + care
- Therefore, adoptive mothers should not be excluded from maternity benefit only because the child is older than three months.

2- M.C. Mehta v. Union of India (1987)

his case is reported as **M.C. Mehta v. Union of India, (1987) 1 SCC 395; AIR 1987 SC 1086**. It was decided by a **five-judge bench** of the Supreme Court consisting of **P.N. Bhagwati, C.J., R.S. Pathak?** — no, from the attached judgment the bench shown is **P.N. Bhagwati, C.J., Ranganath Misra, G.L. Oza, M.M. Dutt and K.N. Singh, JJ.** The judgment of the Court was delivered by **Bhagwati, C.J.** There was **no minority or dissenting judgment** in this decision. It is a unanimous judgment of the Bench.

Facts of the case

M.C. Mehta had filed a writ petition under **Article 32 of the Constitution** seeking directions regarding the dangerous activities of **Shriram Foods and Fertiliser Industries**, which was operating hazardous chemical units in Delhi. The main concern was that these units were located in a densely populated area and posed a threat to the community. While that writ petition was pending, **oleum gas leaked from one of Shriram's units on 4 and 6 December 1985**. Because of this leak, persons were injured and affected. After the gas leak, the **Delhi Legal Aid and Advice Board** and the **Delhi Bar Association** filed applications seeking compensation for the victims. A three-judge bench had earlier allowed restart of some of the plants subject to conditions, but because the compensation applications raised major constitutional questions, those questions were referred to a larger five-judge bench.

Why this case became so important

This case became historic not merely because a gas leak occurred, but because the Supreme Court had to answer very important legal questions: first, whether compensation could be sought in a petition under **Article 32**; second, whether **Article 21** could be used against a private company like Shriram; and third, what rule of liability should apply to an enterprise carrying on a hazardous or inherently dangerous activity. The Court treated the matter not as an ordinary private dispute but as a constitutional issue involving the right to life and the need to protect people from modern industrial risks.

Relevant provisions involved

The main constitutional provisions were **Article 21** and **Article 32**. Article 21 protects the right to life and personal liberty, and the compensation applications were presented as part of enforcing that right. Article 32 gives the Supreme Court power to enforce fundamental rights. The case also discussed **Article 12**, because one issue was whether a heavily regulated private corporation engaged in an industry vital to public interest could be treated as an "authority" or as falling within the discipline of fundamental rights. The Court also referred to the wider PIL framework under **Article 226**, and in discussing comparative constitutional ideas it mentioned **Article 15(2)** as one reason why the American "state action" doctrine could not simply be copied into India. On the regulatory side, the judgment refers to the **Industries (Development and Regulation) Act, 1951**, especially **sections 18A, 18AA and 18G**, and to the **Factories Act**, **Delhi Municipal Act, 1957**, **Water (Prevention and Control of Pollution) Act, 1974**, **Air**

(Prevention and Control of Pollution) Act, 1981, and the then recent **Environment Act, 1986** as showing the extent of state control over such hazardous activity.

Issues before the Court

The Court effectively dealt with three central issues. First, **whether applications for compensation could be entertained in a pending Article 32 writ petition**, even though the original writ petition had not specifically claimed compensation. Second, **whether a private corporation like Shriram could be treated as subject to Article 21 via Article 12**, because it was engaged in an industry of public importance, heavily controlled by the State, and capable of affecting life and health. Third, **what should be the legal rule of liability for a hazardous enterprise when an accident causes death or injury**: should Indian law follow the old English rule in *Rylands v Fletcher*, or should it develop a new rule? These were the core questions referred to the Constitution Bench.

First issue: maintainability under Article 32

Shriram argued through a preliminary objection that compensation could not be considered because the original writ petition did not contain a compensation claim, and no amendment had been made. The Supreme Court rejected this objection. It said that the Court must not adopt a **hyper-technical approach** when dealing with enforcement of fundamental rights, especially where poor or disadvantaged persons are affected. The Court emphasized that it must look at the **substance and not the form**. Since the compensation applications were really for enforcement of the right to life under Article 21, they were maintainable. This part of the judgment strongly reinforces **public interest litigation** and the idea that procedure cannot become an obstacle to justice.

PIL and epistolary jurisdiction

The Court went further and repeated its broader PIL approach: where a person or class of persons cannot approach the court because of poverty, disability, or social disadvantage, a public-spirited person or group may move the Court on their behalf. It also reaffirmed that even a **letter** can in proper cases be treated as a petition. The Court said letters addressed even to an individual judge should not automatically be rejected, and affidavits should not be insisted upon rigidly where doing so would defeat access to justice. This is one of the reasons the case is also cited for **epistolary jurisdiction** and a liberal approach to standing and procedure in public law matters.

Second issue: scope of Article 32 and compensation

The Court held that **Article 32 is not merely injunctive; it is also remedial**. In other words, the Supreme Court is not limited to stopping future violations of fundamental rights; it can also provide relief for a violation that has already taken place. The Court said that its powers under Article 32 include incidental and ancillary powers, and in an appropriate case this may include awarding **compensation**. But the Court also put a caution: not every fundamental-rights case should become a compensation case directly under Article 32. Compensation under Article 32 should be awarded only in **exceptional cases**, where the violation is gross, patent,

incontrovertible, large-scale, or where it would be very harsh to force victims to file ordinary civil suits. This is an important step in the development of **constitutional compensation** in India.

Third issue: whether Article 21 applies against Shriram

This part of the case is subtle. The applicants argued that Shriram, although a private company, was carrying on an industry of vital public importance, under extensive government control and assistance, and therefore it should be subject to constitutional discipline. They relied on earlier Article 12 cases such as **Rajasthan Electricity Board**, **Sukhdev**, **Ramanna Shetty**, **Ajay Hasia**, and **Som Prakash**. The Court examined these authorities and discussed the evolving test for determining when a body can be treated as an instrumentality or agency of the State. It also discussed the American doctrine of state action, though it warned that Indian courts are not bound by American constitutional doctrine. The Court even observed that, prima facie, there was a plausible argument that such a hazardous private enterprise under functional control of the State could be subjected to constitutional limitations. But ultimately the Court **did not finally decide this issue**. It expressly left the question whether Shriram fell within Article 12 for a later and fuller consideration if necessary. So on this issue, the Court opened the door but did not walk fully through it.

Why the Court did not finally decide the Article 12 point

The Court explained that it had not had enough time for the kind of full and detailed examination required for such an important constitutional question. So while it gave a strong indication that expanding Article 12 to protect human rights in relation to powerful corporations might be justified, it stopped short of giving a final ruling. This is important because many students mistakenly think the case conclusively held that Shriram was "State" under Article 12. It did not. The Court only said that the argument was serious and arguable, but the issue was left open.

The most important part: rejection of Rylands v. Fletcher

The most famous contribution of this case is that the Supreme Court refused to confine Indian law to the old English rule in **Rylands v. Fletcher**. Under *Rylands v. Fletcher*, a person who keeps a dangerous thing on land is strictly liable if it escapes and causes harm, but that rule has several exceptions, such as act of God, act of stranger, plaintiff's fault, consent, and statutory authority. The Supreme Court said that this 19th-century English rule was not adequate for a modern industrial society with highly developed science and hazardous industries. Indian law, the Court said, must develop its own principles consistent with constitutional norms and present social conditions.

Absolute liability: the new rule laid down by the Court

The Court then created the rule of **absolute liability**. It held that an enterprise engaged in a **hazardous or inherently dangerous activity** owes an **absolute and non-delegable duty** to the community to ensure that no harm results. If harm does occur, the enterprise is **absolutely liable** to compensate the victims, and it cannot defend itself by saying that it had taken all reasonable

care or that there was no negligence on its part. This is stricter than strict liability under *Rylands v. Fletcher*, because the old exceptions do not apply. In simple words: if you run a dangerous industry for profit and an accident from that activity harms people, you must pay. The law places the burden on the enterprise because it is the enterprise that benefits from the activity and is best placed to prevent the harm.

Reasoning behind absolute liability

The Court gave several reasons. First, hazardous industries are permitted to operate for profit, so the cost of accidents should be treated as part of the enterprise's overheads. Second, the enterprise has the best knowledge, resources, and capacity to discover, prevent, and guard against dangers. Third, victims are usually in no position to identify the exact internal process or technical failure that caused the accident. Therefore, fairness requires shifting the burden to the enterprise rather than making injured persons prove negligence or overcome technical defences. This reasoning makes the judgment deeply connected with social justice and the right to life.

Quantum of compensation

The Court also laid down an important principle on damages: compensation in such cases must be related to the **magnitude and financial capacity of the enterprise**. The larger and more prosperous the enterprise, the greater should be the compensation, because compensation should also have a **deterrent effect**. So the Court was not thinking only in terms of individual loss, but also in terms of public policy and future prevention of industrial accidents.

Final order of the Court

Even though the Court recognized the power to grant compensation in an Article 32 petition in appropriate cases, it did **not itself set up a special machinery** and did **not itself determine compensation** in this judgment. This was because it had not finally decided the Article 12 issue against Shriram. Instead, it directed the **Delhi Legal Aid and Advice Board** to take up the claims of all persons who suffered from the oleum gas leak and file actions for compensation in the appropriate courts, and it directed the **Delhi Administration** to provide funds for this purpose. So the judgment gave the victims a route to compensation, but it did not itself conclude the compensation claims.

Section 57 in Occupational Safety, Health and Working Conditions Code, 2020

57. Prohibition of employment of contract labour.

(1) Notwithstanding anything contained in this Part, employment of contract labour in core activities of any establishment is prohibited: Provided that the principal employer may engage contract labour through a contractor to any core activity, if-

(a) the normal functioning of the establishment is such that the activity is ordinarily done through contractor; or

(b) the activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be;

(c) any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time.

(2) (a) The appropriate Government may, by notification, appoint a designated authority to advise that Government on the question whether any activity of an establishment is a core activity or otherwise;

(b) if a question arises as to whether any activity of an establishment is a core activity or otherwise, the aggrieved party may make an application in such form and manner as may be prescribed, to the appropriate Government for decision;

(c) the appropriate Government may refer any such question suo motu or refer the application to the designated authority, which on the basis of relevant material in its possession, or after making such an enquiry as it deems fit, shall report to the appropriate Government, within such period and thereafter the appropriate Government shall decide the question within such period as may be prescribed.

Section 2 (p) "core activity of an establishment" means any activity for which the establishment is set up and includes any activity which is essential or necessary to such activity:

Provided that the following shall not be considered as essential or necessary activity, if the establishment is not set up for such activity, namely:---

(i) sanitation works, including sweeping, cleaning, dusting and collection and disposal of all kinds of waste;

(ii) watch and ward services including security services;

(iii) canteen and catering services;

(iv) loading and unloading operations;

(v) running of hospitals, educational and training Institutions, guest houses, clubs and the like where they are in the nature of support services of an establishment;

(vi) courier services which are in nature of support services of an establishment;

(vii) civil and other constructional works, including maintenance;

(viii) gardening and maintenance of lawns and other like activities;

(ix) housekeeping and laundry services, and other like activities, where these are in nature of support services of an establishment;

(x) transport services including, ambulance services;

(xi) any activity of intermittent nature even if that constitutes a core activity of an establishment;

4. Who decides whether something is core or non-core?
If there is a dispute, the **appropriate Government** may appoint a **designated authority** to advise on whether a particular activity is core or otherwise. An aggrieved party may apply, and the Government can also refer the issue on its own.

Core activity = main business + directly necessary activity
Non-core activity = support service, if the establishment is not set up for that service

Example

Take a **car manufacturing plant**.

Core activities:

- assembling cars,
- production line work,
- quality control of cars,
- machine operations directly linked to manufacturing.

Usually non-core under the proviso:

- cleaning,
- security,
- canteen,
- gardening,
- staff transport,
- guest house,
- housekeeping.

But take a **security agency**:

- security becomes core.

Take a **hospital**:

- running the hospital is core.

Take a **courier company**:

- courier service is core.

So the same activity may be core in one establishment and non-core in another.

NOTE:

Section 57 sits inside Part I of Chapter XI, and **Section 45 tells you when that entire Part applies at all**. So the logic is:

Step 1: First check **Section 45**. Part I on contract labour applies only to an establishment with **50 or more contract labour** in the preceding 12 months, and it does **not apply** if the establishment performs work only of an **intermittent or casual nature**. The Code also says work is **not** deemed intermittent if it was performed for **more than 120 days** in the preceding 12 months, or, if seasonal, for **more than 60 days** in a year.

Step 2: Only if Part I applies do you move to **Section 57**, which prohibits contract labour in **core activities**, subject to the 3 exceptions.

So the "50 workers / intermittent or casual" point is relevant because it is a **gateway question**. If Part I itself does not apply, then you do not even reach the Section 57 prohibition.

There is also a second reason it is relevant: **"intermittent" appears in two different places, but with two different functions**.

Under **Section 45(2)**, "intermittent or casual nature" is used at the **establishment-level applicability stage**. It asks: is the work of this establishment only intermittent/casual, so that Part I should not apply at all?

Under **Section 2(p)(xi)**, "any activity of intermittent nature" appears inside the definition of **core activity**. There it works at the **activity-level classification stage**. It says that even if something might otherwise look like a core activity, if that particular activity is intermittent, it will not be treated as essential or necessary in that sense.

So they are not the same point:

- **Section 45** = "Does Part I apply to this establishment at all?"
- **Section 2(p)** = "If Part I applies, is this particular work core or non-core?"
- **Section 57** = "If it is core, contract labour is prohibited, unless one of the 3 exceptions applies."

A simple example:

Suppose a factory hires 80 contract workers throughout the year. Then Part I clearly applies under Section 45. After that, you ask under Section 2(p) and Section 57 whether a specific activity like housekeeping, loading, or a production-line function is core or non-core.

But suppose a small establishment engages contract labour only for occasional short-term work and the work remains truly intermittent/casual within Section 45(2). Then Part I may not apply at all, and Section 57 never gets triggered.

So the short answer is: **it is relevant because Section 45 is the entry gate, and Section 57 operates only after crossing that gate.** Also, the word **"intermittent"** in Section 45 and Section 2(p)(xi) serves **two different legal purposes**.

J.K. Industries Ltd. v. Chief Inspector of Factories 1996

This was a **two-judge Bench** decision of the Supreme Court, decided on **25 September 1996**. The Bench consisted of **A.S. Anand, J. and K.T. Thomas, J.** The judgment was delivered by **Dr. Anand, J.** The case arose out of a batch of writ petitions and appeals challenging directions issued by the Chief Inspector of Factories and challenging the validity of **proviso (ii) to section 2(n) of the Factories Act, 1948**, as amended in 1987. There was **no minority judgment or dissent**; the Court spoke with one voice and dismissed all the matters.

Facts

The Chief Inspector of Factories required the companies involved to submit applications for grant or renewal of factory licence **signed by a director of the company as the occupier**. The authorities took the view that a company could not nominate some other officer or employee as occupier. The companies challenged this direction. They argued that even after the 1987 amendment, the company could nominate some other employee or officer by board resolution, provided that person was said to have "ultimate control over the affairs of the factory." They also challenged the constitutional validity of **proviso (ii) to section 2(n)** on the ground that it violated **Articles 14, 19(1)(g), and 21 of the Constitution**.

The Court also noted that before the 1987 amendment there was divergence among High Courts. Some High Courts had held that a company could nominate a non-director as occupier, while others had held that only a director could be nominated. One purpose of the Supreme Court judgment was to settle this conflict.

Relevant provisions

The main provision in issue was **section 2(n) of the Factories Act, 1948**, which defines "occupier." After the 1987 amendment, the section said that the occupier means the person who has ultimate control over the affairs of the factory, and then added three provisos. The most important one here was **proviso (ii)**, which says that **in the case of a company, any one of the directors shall be deemed to be the occupier**.

Section 2 (n) of the Factories Act 1948: **"occupier"** of a factory means the person who has ultimate control over the affairs of the factory,

Provided that
(ii)in the case of a company, any one of the directors shall be deemed to be the occupier;

The Court also discussed the old **section 100**, which had existed before the 1987 amendment and had given companies more room to nominate a director for prosecution purposes. Section 100

was omitted in 1987. The Court treated that omission as important in understanding the legislative change.

Other relevant provisions discussed were:

Section 7: it requires notice to the Chief Inspector before using premises as a factory and requires disclosure of the name and address of the occupier. The Court treated this as creating a statutory obligation to notify the occupier for licensing or licence renewal.

Section 7A: it lays down the general duties of the occupier regarding health, safety, and welfare of workers. The Court used this to show why the law wanted responsibility fixed at a high level.

Section 92: it provides general penalties for contraventions of the Act, rules, and written orders. The Court relied on this to explain that occupiers and managers are made liable irrespective of who committed the actual wrongful act.

Section 101: it provides a limited defence to the occupier or manager by allowing them to bring the actual offender before the court and escape liability if they prove due diligence and lack of knowledge, consent, or connivance. The Court used this section to soften the strictness of section 92 and show that the law is not wholly unfair.

The Court also referred to **section 3(42) of the General Clauses Act** for the meaning of "person," and to **section 291 of the Companies Act** to explain the role of directors as those who manage and direct the business of the company.

Issues before the Court

The main issues were these.

First, **in the case of a company owning a factory, can only a director be notified as occupier, or can the company nominate some other employee or officer?**

Second, **is proviso (ii) to section 2(n) beyond the scope of the main definition of "occupier"?** In other words, does the proviso contradict the main clause or merely clarify it?

Third, **is proviso (ii) unconstitutional as violating Articles 14, 19(1)(g), and 21?** The companies said it was arbitrary, imposed unfair vicarious criminal liability, and allowed the Inspector to pick and choose any director.

Court's reasoning

1. Nature and purpose of the Factories Act

The Court began by emphasizing that the Factories Act is a **social welfare legislation** meant to protect workers against industrial and occupational hazards. It is designed to ensure health, safety, hygiene, welfare, and safe working conditions. Because the Act is beneficial and protective in nature, its provisions should be interpreted in a way that advances worker protection and prevents evasion.

The Court then explained the background of the 1987 amendment. According to it, before 1987 many companies avoided real responsibility by nominating some employee or officer as occupier, so that if violations occurred, that lower-level person faced prosecution while those truly controlling the company escaped. The Court said Parliament amended the Act in 1987 precisely to plug this "escape route," and it expressly linked this development with the concern earlier voiced by the Supreme Court in **M.C. Mehta** after the oleum gas leak.

2. Meaning of "occupier" and "ultimate control"

The Court said that where a factory is owned or run by a company, **the company itself** has ultimate control over the affairs of the factory. But since a company is only a legal abstraction, it acts through natural persons. Those natural persons are its **directors**, described by the Court as the **"directing mind and will"** or **alter ego** of the company.

The Court stressed the meaning of the word **"ultimate."** It said there is a real difference between a person who has **ultimate control** and one who has only **day-to-day, immediate, or supervisory control**. A manager or employee may run day-to-day operations, but that does not mean he has ultimate control. The ultimate control remains with the company acting through its board of directors, unless there has been a complete transfer of control.

The Court was very firm here. It said that a board resolution merely reciting that some officer or employee will have "ultimate control" cannot change the legal reality. Such a resolution may be only a camouflage or artful circumvention. The Court said the law does not countenance a duality of ultimate control. Unless control is completely transferred, the employee cannot be treated as occupier merely because of a resolution.

3. Interpretation of proviso (ii) to section 2(n)

The companies argued that the main part of section 2(n) was enough, and that the proviso could not be used to override or expand the main clause. The Supreme Court rejected this. It held that a proviso must be read together with the main provision and interpreted in context. The proper approach is harmonious construction, not isolation.

The Court held that in the case of a company, the main part of section 2(n) becomes workable only when read with **proviso (ii)**. The proviso does not destroy the main definition; it **clarifies** it.

Thus, when the factory belongs to a company, the occupier for the purposes of the Act must be **one of the directors** notified by the company. If the company fails to notify a director, then the Inspector may proceed against any one of the directors as the deemed occupier.

4. Why only a director and not an employee?

The Court's logic was simple. An employee works under orders. Even if he is given discretion or supervision, he remains subordinate. He may have day-to-day control, but not ultimate control. Directors, on the other hand, control and direct the business of the company and are therefore the appropriate persons to bear statutory responsibility under the Act. The Court repeatedly said that Parliament intended to ensure that responsibility for safety and compliance could not be pushed downward to a convenient scapegoat.

5. Treatment of earlier case law

The Court considered the argument based on **John Donald Mackenzie v. Chief Inspector of Factories** and explained that it had been misunderstood by some High Courts. According to the Supreme Court, Mackenzie was decided under the **pre-1987 law**, when section 100 still existed and companies had greater flexibility. Even in Mackenzie, the Chief Inspector had been held right in insisting on a proper application signed by a director. So Mackenzie could not be used to justify nomination of a non-director under the amended law.

Similarly, the Court said that an earlier three-judge order suggesting that a non-director could be nominated was also based on the **old section 2(n)** and therefore could not govern the amended law after 1987.

6. Challenge under Article 14

The companies argued that proviso (ii) gave unguided and arbitrary power to the Inspector to pick any director for prosecution. The Court rejected this. It said that **section 7** itself requires the company to notify the name of the occupier. So the first choice lies with the **Board of Directors**, not with the Inspector. Once the company names a director as occupier, the Inspector has no discretion to pick some other director. Only if the company fails to discharge its duty can the Inspector proceed against any one of the directors as deemed occupier. Therefore, the Court held that proviso (ii) does **not violate Article 14**.

7. Challenge under Article 19(1)(g)

The Court also rejected the challenge under **Article 19(1)(g)**. It held that if the provision imposes any restriction at all, that restriction has a **direct nexus** with the object of the Act, namely proper enforcement of safety and welfare obligations in factories. Making one director responsible for compliance was regarded as a reasonable way to plug loopholes and ensure accountability at the top. So the restriction, if any, was held to be reasonable under **Article 19(6)**.

8. Challenge under Article 21 and argument on criminal liability

A more serious argument was that section 92, read with proviso (ii), imposed criminal liability on a director even without mens rea and even if he personally knew nothing about the violation. The Court rejected this too. It held that offences under the Factories Act are **strict statutory offences** and belong to the class of **public welfare offences**. In such legislation, mens rea is not always essential. The offence consists in breach of the statutory duty itself.

The Court said that the occupier and manager are made liable because the Act is intended to reach those with ultimate responsibility. The notified director may therefore be held **vicariously liable** for breaches by the company. The Court also referred to English company-law ideas such as the directors being the "directing mind and will" of the corporation.

At the same time, the Court noted that the law is not blindly harsh because **section 101** gives the occupier or manager a way to avoid conviction by bringing the actual offender before the court and proving both due diligence and absence of knowledge, consent, or connivance. Because of this built-in defence, the Court found no violation of Article 21.

The final holding

The Court summed up its conclusions in five points.

First, **where a company owns the factory, only one of its directors can be notified as occupier**; no other employee can be nominated. Second, **if the company does not nominate a director, the Inspector may proceed against any one of the directors as deemed occupier**. Third, **proviso (ii) is intra vires section 2(n)**. Fourth, **proviso (ii) is constitutionally valid and does not violate Articles 14, 19(1)(g), or 21**. Fifth, the Court held that the view taken by the High Courts of **Bombay, Orissa, Karnataka, Calcutta, Guwahati, and Madras** was incorrect, while the contrary view of the High Courts of **Allahabad, Madhya Pradesh, Rajasthan, and Patna** was correct. Finally, **all the writ petitions and appeals were dismissed**, with parties left to bear their own costs.

SOCIAL SECURUTY CODE,2020 in reference to GRATUITY

The starting point is this: the **Payment of Gratuity Act, 1972 stands repealed by section 164** of the Code on Social Security, 2020, and gratuity is now contained in **Chapter V, sections 53 to 58** of the Code. The Ministry of Labour's official material says the Code has been enforced from **21 November 2025**, and its gratuity calculation regime applies from that date.

Who is an employee for gratuity

The Code uses a broad definition in **section 2(26)**. "Employee" means any person, other than an apprentice under the Apprentices Act, employed on wages by an establishment, **either directly or through a contractor**, to do skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work.

For gratuity specifically, **Explanation 1 to section 53** says that "employee" does **not** include a person holding a post under the Central or State Government who is governed by another Act or rules providing gratuity. So government servants covered by separate service rules are outside this Chapter.

A practical point: because **section 2(27)** includes a **contractor** within "employer," and the Ministry's FAQ says so expressly, in contract labour situations the present official position is that the **contractor** bears gratuity liability under section 53.

What gratuity is under the Code

Gratuity remains a **terminal social-security benefit** payable when employment ends in the situations listed in **section 53(1)**. Under the Code, gratuity is payable on termination of employment:

- on **superannuation**
- on **retirement or resignation**
- on **death or disablement due to accident or disease**
- on **termination of the contract period under fixed-term employment**
- on any other event that may be notified by the Central Government.

So the biggest express additions in the Code are the **fixed-term employment** route and the possibility of further notified events.

Main eligibility rule

The normal rule is:

5 years' continuous service + termination in one of the above events.

Exceptions: 5 years not needed

The 5-year rule is **not required** in case of:

- death,
- disablement,
- expiry of fixed-term employment,
- any other notified event.

For **working journalists**, the 5-year requirement is reduced to **3 years**.

Continuous service

Under **section 54**, continuous service means **uninterrupted service**. It still counts even if there are breaks due to sickness, accident, leave, lay-off, strike, lock-out, or stoppage of work not caused by the employee.

For one year of continuous service

In a **non-seasonal establishment**:

- if the employee worked in the last 12 months for **240 days**, he will be treated as having completed **1 year of continuous service**;
- but if he works **below ground in a mine**, or in an establishment working **less than 6 days a week**, then **190 days** is enough.

Simple example

Suppose a factory worker did not work on all 365 days.
Still, if he actually worked **240 days** in the previous 12 months, the law treats him as in **continuous service for 1 year**.

For six months of continuous service

If you want to check **6 months' continuous service**, then the lower numbers apply:

- **120 days** in normal cases;
- **95 days** for mine workers / establishments working less than 6 days a week.

Example

If a person worked **125 days** in the last 6 months in a normal establishment, he is treated as having **6 months' continuous service**.

What counts as "actually worked"

This is very important.

The law says some days will still count even if the employee was not physically working. These include:

- lay-off days,
- leave with full wages,
- temporary disablement due to employment injury,
- maternity leave up to **26 weeks**.

So, "actually worked" does **not** mean only days of physical attendance.

Example

A woman employee worked for 180 days and was on maternity leave for 26 weeks. Those maternity leave days are also counted as part of continuous service.

Seasonal establishments

For a **seasonal establishment**, the rule is different.

The employee is treated as being in continuous service if he worked for at least **75% of the days** on which the establishment was actually operating.

Example

If a seasonal factory was open for **100 days** in a season, and the employee worked **75 days**, that is enough.

Why this rule exists

This rule is there so that employers cannot deny gratuity or other benefits just because:

- the employee had some leave,
- there was a lay-off,
- the establishment was closed for some period,
- or the employee did not work literally every day.

Very short understanding

So the simplest way to remember it is:

- **1 year continuous service** = usually **240 days**
- **6 months continuous service** = usually **120 days**
- **mine / less-than-6-day week** = **190 days / 95 days**
- **seasonal establishment** = **75% of operating days**

This is not about perfect uninterrupted service.
It is about the law saying: **"enough work has been done, so we will treat it as continuous service."**

How gratuity is calculated

Basic rule

Gratuity is calculated as:

15 days' wages for every completed year of service

And if the extra period is **more than 6 months**, it is counted as **1 full year**.

If it is **6 months or less**, it is ignored.

Example

- Service = **10 years 7 months** → count as **11 years**
- Service = **10 years 5 months** → count as **10 years**

Formula for monthly employee

For a monthly-rated employee:

Gratuity = Last drawn monthly wages ÷ 26 × 15 × number of years

Why divide by 26?

Because the law takes **26 as the working days in a month**.

So first find **one day's wage**, then take **15 days' wage**, then multiply by total years.

Example

Suppose:

- Last drawn wages = **₹26,000**
- Service = **10 years 7 months** = **11 years**

Then:

- ₹26,000 ÷ 26 = **₹1,000 per day**
- ₹1,000 × 15 = **₹15,000**
- ₹15,000 × 11 = **₹1,65,000**

So gratuity = **₹1,65,000**

Special rules

(a) Piece-rated employee

If the employee is paid by output/work done, not monthly salary, then wages are calculated on the basis of the **average wages of the last 3 months**, excluding overtime.

(b) Seasonal employee

If the employee works in a seasonal establishment and not throughout the year, gratuity is **7 days' wages for each season**, not 15 days per year.

(c) Employee re-employed after disablement on lower wages

If an employee becomes disabled and is later given work on lower pay:

- the earlier period is calculated on **old wages**
- the later period is calculated on **reduced wages**

So the service is split into **two parts**.

(d) Fixed-term employee / deceased employee

For these cases, gratuity is paid on a **pro rata basis**.

That means payment is made in proportion to the period actually served.
So full 5 years need not be completed in those situations.

Maximum limit

The Code says gratuity cannot exceed the amount **notified by the Central Government**.

So there is a **maximum ceiling**.

In the passage you quoted, the present ceiling mentioned is **₹20 lakh**.

What counts as wages

For gratuity, “wages” under the Code mainly include:

- **basic pay**
- **dearness allowance**
- **retaining allowance**.

Bonus, HRA, overtime, commission and similar items are excluded, **but** if excluded allowances go beyond **50% of total remuneration**, the excess is added back into wages. This is an important change under the labour codes.

The Ministry says this revised gratuity calculation applies from **21 November 2025**, the date the Codes were implemented.

Fixed-term employees

The Code expressly says gratuity is payable on **expiry of fixed-term employment**, on a **pro rata basis**, and the 5-year condition does not apply. The Ministry FAQ also says fixed-term employees become eligible if they render service under the contract for **one year**.

Nomination

After **1 year of service**, the employee must make a nomination under **section 55**. If the employee has a family, nomination must be in favour of family members. If the nominee/heir is a minor, the minor’s share is deposited with the competent authority.

Payment procedure

Under **section 56**:

- the employer must determine gratuity **even if no application is made**,
- gratuity must be paid within **30 days**,
- delay attracts **simple interest**,
- disputes go to the **competent authority**,
- employer’s appeal requires prior deposit of the gratuity amount.

Forfeiture

Gratuity can be forfeited only in limited cases under **section 53(6)**:

- **to the extent of loss/damage** caused to employer property; or
- wholly/partly for **riotous/disorderly conduct or violence**; or

- for an act constituting an **offence involving moral turpitude committed in the course of employment**.

So, **dismissal alone does not automatically forfeit gratuity**.

Better terms and insurance

If an employee has **better gratuity terms** under an award, agreement or contract, those better terms are protected. Non-government employers are also required under **section 57** to obtain gratuity insurance, subject to exemptions.

Under the Social Security Code, 2020, gratuity is subject to the maximum amount notified by the Central Government.

Key cases to remember

Lalappa Lingappa v Laxmi Vishnu Textile Mills (1981)
Important for the concept that gratuity is a reward for **long, continuous and meritorious service**, and for understanding continuous service in seasonal establishments.

Union Bank of India v C.G. Ajay Babu (2018): forfeiture must fit the statute strictly.

Western Coal Fields Ltd. v Manohar Govinda Fulzele (2025): for moral-turpitude forfeiture, a separate criminal conviction is not necessary if the proved misconduct itself answers that description.

BCH Electric Ltd. v Pradeep Mehra (2020): an employee cannot usually combine the best parts of the statutory gratuity scheme and a separate contractual gratuity scheme.

Birla Institute of Technology v State of Jharkhand (2019): teachers became entitled to gratuity after the statutory amendment.