

Maternity Benefits: Challenges and Judicial Responses

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ABSTRACT

The social security schemes in all the countries of the world include maternity care and benefits for women workforce as an integral part while taking into account the wellness of their women workers. Apart from providing medical care to women workers in case of confinement, miscarriage, sickness arising out of pregnancy, premature birth of the child, adoption etc., it also provides protection of wages and security of employment in aforesaid situations. It has to be noted that in India it was a long journey to reach to a point where such rights are now acknowledged and recognized by the society and are reflected in the law of the land, despite the long-held beliefs around the concept of gender, pregnancy and the like situations. However, the judicial interventions and pronouncements show that the interpretation and implementation of the law still suffers from some of the remnant of the past.

Keywords: Maternity, Social Security Schemes, Women Workers, Judicial Interventions, Medical Care.

Introduction

The concept of gender justice is based on the principle that all human beings are equal and that no one can be denied justice or discriminated only because of one's gender (sex) ¹ and is often used and understood to mean justice for women². As observed in the statement of Global Fund for Women, 'the principle of Gender Justice can be understood to mean systematic redistribution of power, opportunities and access for people of all genders, thereby dealing with equity on one hand and equality (equal outcomes for all) on the other.'³ Broadly speaking, the term gender justice refers to the protection of women's rights and ensuring justice for women. Undeniably, to advance gender equality and the ability of women to claim their human rights, a holistic approach is required while building effective and inclusive systems and institutions which follow and adhere to the rule of law.

The Constitution of India, adopted in 1950, guarantees non-discrimination, among others, on the ground of sex⁴ and under Article 15(1) permits the State to make special provision for women. The commitment for gender justice was reinforced with the ratification of the Convention of Elimination of Discrimination Against women (CEDAW) by India in 1979. The constitutional value of ensuring justice, equality and fraternity without any discrimination are expected to be reflected in the actions of the three main organs of the State, viz., Executive, Legislative and Judicial. The concerted efforts and actions of these organs are vital in ensuring the realisation of the ideal reflected in the term 'gender justice'.

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¹ Justice Yatindra Singh, Gender Justice-A Legal Panorama: A talk in the colloquium on 'Gender and Law' organised by the National Judicial Academy, British Council and Allahabad High Court at JTRI Lucknow on 14th October 2001

² Ibid

³ Global Fund For Women (2024) What is Gender Justice? | The Importance of Gender Justice (globalfundforwomen.org) Accessed on 05.08.2024

⁴ Article 15

The observations made by Beg, C.J. (as he then was) in the landmark judgement of *Maneka Gandhi v. Union of India*¹, are worth mentioning. He stated that, "The view I have taken... proceeds on the assumption that there are inherent or natural human rights of the individual recognised by and embodied in our Constitution. If either the reason sanctioned by the law is absent, or the procedure followed in arriving at the conclusion that such a reason exists is unreasonable, the order having the effect of deprivation or restriction must be quashed."

And also of Bhagwati, J. (as he then was) that, "Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."²

It is thus clear that the essence of equality includes reasonableness and absence of arbitrariness.

This paper is limited to exploring and analysing only some of the cases, out of the plethora of cases which finally find their way to the Hon'ble courts, relating to gender justice, focusing particularly on maternity benefits under the Maternity Benefit Act, 1961³ and the like, where the State organs were found to be lacking in the application of the principle of Gender Justice while the judicial intervention applying the principle upheld the natural rights of women/mothers.

Maternity Benefits

Most important aspect of continuation of human race, the maternity period, has been supported in India. However, the period of industrialisation and urbanisation saw the loss of employment, wages etc. during the period of pregnancy. With the increase of representation of women in labour force in the world the demands for the social security legislations for women gained impetus. We find that In India, the first piece of legislation relating to maternity benefits was The Bombay Maternity Benefit Act which was enacted in 1929⁴. It would be worthwhile to look into the enactment which paved the way for the other legislations to follow.

Bombay Maternity Benefit Act, 1929

- The Bombay Maternity Benefit Act, 1929 was passed to regulate the employment of women in factories some time before and sometime after confinement and to provide for the payment of maternity benefit to them⁵. It defined Maternity Benefit as the amount payable under the provisions of the Act to a woman employed in a factory. The Act prohibited the employment of woman by the employer or work by women in factories four weeks immediately following the day of her delivery. The fact that the maternity benefit was included as a right of a woman gives the insight into the progressive minds/outlook of the framers of legislations. The benefit was mandated to be paid for the actual days of her absence for the period immediately preceding her confinement and for the four weeks immediately following her confinement, thereby providing the entitlement for eight weeks, clarifying further that, four weeks up to and including the day of her delivery and four weeks immediately following that day.
- In case of death during the period of maternity benefit, it was to be paid up to and including the day of her death, and in such cases the maternity benefit due to be paid, in case the newly born child survives her, to the person who undertakes the care of the child or otherwise to her legal representative. The Act laid down the procedure of notifying the employer with a certificate signed by a registered medical practitioner certifying that the woman is expected to be confined within one month next following and/or the benefit was conditional on production of a certified extract from a birth register. The Act protected the employment of the woman during the period of maternity benefit by making it unlawful for the employer to give notice of dismissal during this

¹ AIR 1978 SC 597

² Ibid

³ Maternity Benefit under the Employees State Insurance Act etc. have not been covered under this paper

⁴ The Bombay Maternity Benefit Act, 1929

⁵ Ibid Preamble

period. The Act also provided for forfeiture of maternity benefits in certain circumstances and provided for penalty for contravention of the Act by an employer and also by a woman.

- The Bombay Maternity Benefit Act was germane as well as progressive in the area of maternity benefits. A substantial number of its provisions find their place in the subsequent legislations on the subject, right up to the present times. Later the Madras province enacted Madras Maternity Benefit Act in 1934, and other provinces too had similar enactments as well, preventing the employment of women in factories for some time before and sometime after confinement and to provide for the payment of maternity benefit to them, with some modifications. Some legislations passed by the then central government also contained certain provisions for maternity benefit, viz. The Mines Maternity Benefit Act, 1941; Employees State Insurance Act, 1948 and the Plantations Labour Act, 1941. These legislations were not uniform in various aspects, such as duration of leave, benefit rate, eligibility criteria etc.

Maternity Benefit Act, 1961

- In the light of the Constitution of India which ensured equality without any discrimination, which also contains special provision for women and to overcome the discrepancies of the earlier enactments, to regulate women's employment in certain establishments for certain period before and after child-birth and to provide for maternity and other benefits the Maternity Benefit Act was passed in 1961. The words "except Jammu and Kashmir" were omitted in 1970 and hence the Act is applicable to the whole of India since 1970. This Act includes conditional benefits for maternity, childbirth and complications related to it among other things. With the progress in the society and the judicial pronouncements, over a period of time certain welcoming amendments have been made to the Act which include increased period of maternity leave, post pregnancy care in case of illness, certain periods of paid leave for the adoptive (a child up to three months of age) and commissioning mothers¹, after availing the maternity benefit the provision for work from home (where the nature of work is such), the duty of the establishment to inform/intimate in writing and electronically to every woman at the time of her initial appointment about every benefit available under the Act² etc.
- Apart from the changes which are in line with the progress in the society, the provision regarding the duty of 'the establishment to inform the female employee at the time of her appointment' is reflective of the awareness of the ground reality, concerns and the efforts of the legislature, from the experiences gained over a period of time. Additionally, this change gives effect to the provisions of the legislation in earnest and might help in bringing about the much-needed positive change in the mindset of the employer/establishment towards the treatment of women employees and their needs.

Blatant Inequality

As is apparent from the various cases, the female employees generally have to assert their natural rights against the actions emanating from the arbitrary, unfair and blatant despotism of the employers. In the case of *Air India v Nargesh Meerza & Ors.*³ the service rules/regulations of Air India contained the provision, amongst others, of ending the services of an Air Hostess on her first pregnancy. The Supreme Court of India held, "It seems to us that the termination of the services of an Air Hostess under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilised society." Calling it grossly unethical, it noted that it is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism, the Court declared such rules/regulation to be unconstitutional, void and violative of Article 14 of the Constitution of India and pronounced it to stand deleted. It is worth noticing that the Court referred with approval to an earlier observation made by its five-judge bench in *State of Andhra Pradesh and Anr. V. Nalla Raja Reddy and Ors.*⁴. This was a case relating to the arbitrary and

¹ The Maternity Benefit (Amendment) Act, 2017, Section 3 (ba) "Commissioning mother" means a biological mother who uses her egg to create an embryo implanted in any other woman

² The Maternity Benefit (Amendment) Act, 2017, Section 11 (2)

³ *Air India v. Nargesh Meerza* (1981) 4 SCC 335; Also read *C. B. Muthamma v. Union of India*, 1979 AIR 1868 and *Neera Mathur v. Life Insurance Corporation of India*, 1992 AIR 392

⁴ 1967 AIR 1458

unreasonable method adopted for collection of land assessment revenue¹ where the Court had observed that, "Official arbitrariness is more subversive of the doctrine of equality than statutory discrimination. In respect of a statutory discrimination, one knows where he stands, but the wand of official arbitrariness can be waved in all directions indiscriminately". The Hon'ble court stating that the impugned provisions appear to us to be a clear case of official arbitrariness, it struck down the impugned part² of the regulation.

Interpretation

The instances of unfair treatment extend to the application of the enactments by the executive branch of the government as well as non-government bodies which are in effect, beneficial and are in the form of ensuring/imparting social justice to the female employees. There were cases where simple, popular and plain meaning term "week" was not understood to mean a period of seven days and had to be interpreted. While interpreting the term 'week' for computation of wages towards maternity benefit in Section 5 of the Maternity Benefit Act, 1961³ the Apex Court in *B. Shah v Presiding Officer, Labour Court, Coimbatore & ors.*⁴, gave effect to the dictionary and popular meaning of the term, "week", which is a cycle of seven days including Sunday. It further observed that, '*in interpreting provisions of beneficial pieces of legislation like the one in hand which is intended to achieve the object of doing social justice to women workers...the beneficent rule of construction which would enable the worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output has to be adopted by the court*'. This case overruled the law laid down by the Full Bench of the Kerala High Court in *Malayalam Plantations Ltd. Cochin v Inspector of Plantations Mundakayam & ors.*⁵ wherein the High Court, while exploring the legislative intent, resonated with the view that, 'The section, if understood to mean a right to get maternity benefit for wageless holidays also, will be really in the nature of an incentive for pregnancy and delivery' (!).⁶ Here, it is apparent that the courts too are not devoid of the patriarchal and biased mindsets.

Unmasking the Attitude

The attitude of the organisations is generally exhibited in the actions that emanate from the rules framed for the functioning of an organisation. Invariably laced with the patriarchal outlook, the expectations reach the point of humiliation, overlooking the natural progress of life. In the case of *Mrs. Neera Mathur v. Life Insurance Corporation of India*,⁷ the Apex Court while pronouncing its judgement observed, "When we are moving forward to achieve the constitutional guarantee of equal rights for women, the Life Insurance Corporation of India seems to be not moving beyond the status quo. The case on hand illustrates this typical attitude of the Corporation". In this case a lady candidate was discharged during her probation period and no ground was assigned. On appeal the Apex court was informed that the decision to discharge the lady was on two grounds, viz. a false declaration by her at the very initial stage of her service; and her work during the period of probation was not satisfactory. The Court, after perusing the facts, held that, "the real mischief though unintended, is about the nature of the declaration required from a lady candidate. Clauses of declaration seeking disclosure of personal problems by lady candidate are embarrassing if not humiliating (like whether her menstrual period is regular or painless, the number of conceptions taken place; the last date of menstrual period, pregnancy, how many have gone full term etc.). The Corporation would do well to delete such columns in the declaration. If the purpose of the declaration is to deny the maternity leave and benefits to a lady candidate who is pregnant at the time of entering the service (the legality of which we express no opinion since not challenged), the Corporation could subject her to medical examination including the pregnancy test." *The interim order of reinstatement of the lady was made absolute, however it was directed that she will not be entitled to the salary from the date of discharge till her reinstatement.*

Plight of Female employees on Muster Roll

¹The Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act, 1962

² *Air India v. Nargesh Meerza* (1981) 4 SCC 335, Impugned provision - 46 (i) (c) 'or on first pregnancy whichever occurs earlier'

³ The Maternity Benefit Act, 1961, Section 5. Right to payment of maternity benefit-(1)Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the averagedaily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeksimmediately following that day.

⁴1978 AIR 12

⁵ AIR 1975 Kerala 86

⁶ Para 7 Ibid

⁷ AIR 1992 SC 392

In the case of *Municipal Corporation of Delhi v Female workers (Muster roll) &Anr.*¹, the Municipal Corporation of Delhi was providing maternity leave to regular female workers but denied it to the female workers on Muster roll (not regularised). In the year 2000 while pronouncing the judgement in favour of Women employees (Muster roll) of Municipal Corporation of Delhi the Hon'ble Supreme Court stated that, "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 phenomena 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 work place 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." The Court also held that, "We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily wages basis."

The Imbroglio

It is seen that generally the confusion in grant of maternity benefits is found sometimes when the situation of the case is not specifically covered under the enactment and at others when arbitrary executive orders violate the statutory provisions. As can be seen from the cases discussed below-

- In the case of *Dr. Rachna Chaurasiya v State of U.P.*² wherein Dr. Rachna, who was selected through the Selection Board on the post of Lecturer on a contractual basis in 2009, services were extended and was promoted to Associate Professor in 2015, gave birth to child in the year 2016 and applied for child care leave for a period of three months, which was denied on the ground that being a contractual employee she is not entitled to Child Care Leave. The Hon'ble High Court noted that the State Government had followed the Central Government orders and had enhanced the quantum of Maternity Leave and also adopted the provision of Child Care Leave in 2011 and 2014 respectively. The Court referred to the Preamble, Fundamental Rights and the Directive Principles of State Policy considered Article 42 which speaks of "just and humane conditions of work" and "maternity relief" and proceeded to examine the validity of an executive and administrative action on the anvil of Article 42. Discussing the various provisions of the Maternity Benefit Act, 1961 and considering the government orders, the Court categorically stated that "Maternity Benefit is a social insurance and the Maternity Leave is given for maternal and child health and family support", it did not find anything which entitles only regular women employees to the benefit of Maternity Benefit and Child Care Leave and not those who are engaged on casual basis or on muster roll on daily wage basis. Taking further support from the judgement of the Hon'ble S. C. of India in *Municipal Corporation of Delhi*³ (discussed earlier), the Court held that the benefit under the Act as well as the Rules of the Government Orders providing for grant of Maternity benefits and Child Care leave are applicable to all female employees, irrespective of their nature of employment whether permanent, temporary or contractual.
- But in the face of a clear provision of the Act, the laying down and continued existence of a contravening executive order is beyond comprehension. In *Anshu Rani v State of U.P.*⁴ the petitioner had applied for Maternity Leave from 01.10.2018 to 31.03.2019, for the grant of Maternity Leave for a period of 180 days. However, without assigning any reason the Maternity Leave for a period of 90 days was granted instead. It is to be noted here that in 2017⁵ the Act was amended and the Maternity Leave has been increased to 26 weeks. After the perusal of the different provisions of the Maternity Benefit Act, 1961 as amended in the year 2017 as well as

¹ AIR 2000 Supreme Court 1274

² Decided on 29.05.2017

³ *Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) &Anr.*, (2000) 3 SCC 224,

⁴ AIR ONLINE 2019 ALL 572

⁵ Maternity Benefit (Amendment) Act, 2017

the policy of the Central Government to grant child care leave and Government orders issued by the State Governments in the State of U.P. adopting the same for its female employees, the High Court was of the firm opinion that the female employees of the State of U.P. are entitled for the benefits of the maternity leave as contained in the Maternity Benefit Act 1961 as amended by the Maternity Benefit (Amendment) Act, 2017 and the Writ of Mandamus was issued for the grant of Maternity Leave for a period of 180 days in favour of the petitioner.

- In *Dr Nidhi Rai v State of U.P. Thru. Addl. Chief Secy. Basic Education Civil SecttLko. And ors.*,¹ the petitioner had applied for maternity leave from 1.9.2020 to 27.2.2021 which was granted however, the second time when the petitioner became pregnant and sought maternity leave from 2.7.2022 till 28.12.2022 it was rejected relying upon a proviso of Rule 153 (1) of Financial Handbook Part 2 to 4 which contained a restrictive clause wherein the said leave could not be granted before expiry of two years from the last date of grant of leave on the previous occasion. After perusal of the various provisions of the Maternity Benefit Act, 1961, the High Court observed, "The 1961 Act does not contain any such stipulation of the time difference between grant of maternity benefit for the first and second child as stipulated in Rule 153 (1) of the Financial Handbook. Section 27 of 1961 Act categorically provides that the provisions of 1961 Act shall have effect notwithstanding anything inconsistent therewith contained in any other law whether made before or after coming into force of 1961 Act." A writ of Mandamus was issued in favour of the petitioner.
- In *Deepika Singh v. Central Administrative Tribunal & Ors.*² the entitlement to maternity benefit of a woman whose spouse had two children from his previous marriage was also upheld by the Apex Court to give effect to the purpose of the law rather than to prevent its application.

Extension of contract

As recently as in 2023, the Hon'ble Supreme Court of India in the case of *Dr. Kavita Yadav v The Secretary, Ministry of Health and Family Welfare Department & Ors.*³ held that, '...once the appellant fulfilled the entitlement criteria specified in Section 5(2) of the Act, she would be eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute "discharge" and attract the embargo specified in Section 12(2)(a) of the 1961 Act. *The law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the 1961 Act,*' and allowed the claim of a contractual doctor whose contract was ending in the middle of her pregnancy. Interpreting the provisions of the Act, the Court clarified that maternity benefits are not co-terminus with a woman's tenure of employment.

Conclusion

'A woman completes her womanhood once she becomes a mother', is the long-held belief in the society and a mother is generally referred to as the expression of the highest form of unconditional love. The logical and necessary implication is that the society as a whole will support and assist such a woman in her progress towards it. However, the dichotomy is writ large, as can be seen from the cases discussed above. As for the plight of the female workers in unorganised sector, nothing is left to imagination in the face of the reality/facts that the cases discussed above occurred in the reputable establishments, including those of the State, which in fact exist in the organised sector. In view of the fact that only limited numbers of cases reach the courts, are decided after due consideration and are not fully publicised in the places where needed most, namely, in the institutions/establishments where female employees work, leave the desirability of the following affirmative actions to be taken on the part of the legislature, executive and the judiciary to assist a woman in her life journey, viz.:

- It is suggested that adequate explanation/illustrations must be to the relevant provisions of the maternity benefits contained in the enactments, by the experience gained so far from the application and implementation of the Maternity Benefits Act, 1961, which has now been subsumed in the Code of Social security, 2020, for better guidance, clarity and understanding of the authorities entrusted with the duty to apply them.

¹ Decided on 15.07.2022

² *Deepika Singh v. Central Administrative Tribunal & Ors.*, (2022) SCC Online SC 1088

³ 2023 SCC Online SC 1067

- The executive should ensure the publication¹, in the local language for the information of the similarly placed women.
- In the era of technological advancements, it is desirable that the judgments, whichever authority pronounces them, be translated in the vernacular languages and wider publicity is given to them, especially in the areas where any of the female worker is working.
- The employer should maintain a bulletin board/ notice board in each establishment exclusively for female workers of the establishment which displays the entitlement/rights of the woman worker in vernacular language also.
- To make the above suggestions a reality, a duty must be cast upon respective Inspector-cum-Facilitator to disseminate the relevant provisions of the enactments and the judgments.

The mutual trust between the employer and the employee stands frustrated by unfair and biased outlook of the employers and is a hinderance in maintaining healthy and cordial environment at workplace. The above suggestions, if implemented, will help in bridging the gaps and in building the trust between the employees and the employers. Hence, it is in the interest of all the stakeholders viz., employee, employer, establishment and the State, that the gaps must be filled and the march towards a better and trusted future continues.



¹ Section 71, The Code on Social Security, 2020