

Maternity Rights Of Women: A Judicial Perspective

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Abstract

Maternity rights are fundamental human rights that ensure the health, dignity, and employment security of women during and after pregnancy. These rights encompass maternity leave, healthcare access, protection against workplace discrimination, and the right to return to work post-childbirth. In India, various legislative frameworks, most notably the Maternity Benefit Act, 1961, and subsequent amendments, aim to safeguard these rights. However, the effective realization of these protections often hinges on judicial interpretation and enforcement. The judiciary has played a crucial role in expanding and clarifying the scope of maternity benefits, ensuring equitable treatment, and addressing gaps in implementation. Landmark judgments have underscored the constitutional commitment to gender equality and non-discrimination, reinforcing that maternity rights are not mere statutory entitlements but integral to the right to life and dignity under Article 21 of the Constitution. This paper examines the evolution of maternity rights in India, highlights the judiciary's proactive interventions, and analyzes the ongoing challenges in translating legal provisions into lived realities for working women.

Keywords Maternity, Rights, Women, Supreme Court, Judiciary.

Introduction

Maternity rights are a crucial aspect of gender justice and social equity, designed to protect the health, employment, and dignity of women during the most vulnerable and transformative phase of their lives—pregnancy and motherhood. These rights are rooted in the broader framework of human rights and are essential for ensuring that women are not forced to choose between their reproductive roles and professional aspirations. In contemporary society, where women are increasingly becoming an integral part of the workforce, the recognition and enforcement of maternity rights are indispensable for achieving substantive gender equality.

In India, the legal foundation for maternity rights is primarily provided by the Maternity Benefit Act, 1961, which mandates paid maternity leave, job protection, and certain post-natal benefits for women in the organized sector. The Act has undergone significant amendments over time, most notably in 2017, which extended the duration of paid maternity leave from 12 weeks to 26 weeks. In addition to this, provisions under the Factories Act, 1948, Employees' State Insurance Act, 1948, and the Code on Social Security, 2020, also contribute to the broader legal framework that upholds maternity welfare.

However, despite a strong legal regime, the ground reality often reveals a gap between law and practice. Many women, especially in the informal sector, continue to face discrimination, job loss, or lack

of access to maternity benefits. Here, the role of the judiciary becomes vital. Courts have time and again interpreted the law in a progressive manner, recognizing maternity rights not merely as labor welfare measures but as fundamental rights under Article 14 (Right to Equality) and Article 21 (Right to Life and Dignity) of the Indian Constitution. The Indian judiciary has emerged as a key institution in enforcing and expanding the scope of maternity rights, thereby acting as a guardian of women's constitutional and human rights.

Through landmark judgments and suo motu interventions, the judiciary has addressed several critical issues—such as denial of maternity leave to contractual workers, discrimination against pregnant employees, and the need for crèche facilities in workplaces. These interventions have significantly contributed to the evolution of maternity jurisprudence in India and emphasized the State's obligation to create a work environment conducive to motherhood.

This study seeks to explore the legal evolution of maternity rights in India and examine the pivotal role played by the judiciary in interpreting, safeguarding, and expanding these rights. It will also highlight the challenges that persist in ensuring universal maternity protections, particularly in the unorganized sector.

Supreme court of India. In *Air India vs Nergesh Meerza and Ors.*¹, the Supreme Court held that Regulation 46, which dealt with the termination of service of air hostesses (AH) due to first pregnancy within four years of service, was found unconstitutional on the grounds of being unreasonable and arbitrary and therefore in violation of Article 14 and also wide discretion granted to Director without laying down adequate guidelines - to extend the retirement age (Regulation 47) was also found violative of Article 14. So, termination of AH, if they get married within four years of their service was not found unconstitutional. According to Amartya Sen, 'functionalities' are various things a people may value doing and being. One of such functionalities could also be marriage and reproduction, and this sort of restriction by a government agency (*Air India* was a Government Undertaking at the time of judgment) undermines the exercise of such functionalities. While in some cases, the welfare legislations were given a broader meaning, like in the

Supreme Court judgment of *Bandhua Mukti Morcha vs Union of India (UOI) and Ors.*² Justice Bhagwati and Justice Pathak, in their majority judgement, held that the jamadar or thekedar engaged by the mine lessees or the owners of stone crusher owners would be considered 'contractors' within the meaning of S. 2(1) (b) and the workmen who are recruited by or through the jamadar or thekedar from other states for employment in the stone crushers in the state would be treated as "inter-state migrant workmen". Thus, the social welfare legislation was given a broad and expansive interpretation by including the workers on contract under the Inter-State Migrant Workmen Act (ISMWA) 1979 and the MBA 1961.

While Justice A.N. Sen, in his dissenting judgment, held that the applicability of the ISMWA 1979 was doubtful considering the facts of the case. Thus, the court in the PIL alleging that certain workmen living in bondage and under inhuman conditions held that Article 21 assures the right to live with human dignity free from exploitation. The State is under a constitutional obligation to ensure that there is no violation of any person's fundamental rights, particularly weaker sections of society. The State is obligated to ensure compliance with labour laws passed to guarantee workmen basic human dignity. Later, in *Bandhua Mukti Morcha vs Union of India (UOI) and Ors.*³ in 1991, the Supreme Court reissued directions to the State to ensure improved conditions of service and facilities for workmen engaged in bonded labour. The directions included implementing maternity benefits under the MBA 1961, among other acts.

¹ *Air India vs. Nergesh Meerza and Ors.* (28.08.1981 - SC): MANU/SC/0688/1981

² *Bandhua Mukti Morcha vs. Union of India (UOI) and Ors.* (16.12.1983 - SC): MANU/SC/0051/1983

³ *Bandhua Mukti Morcha vs. Union of India (UOI) and Ors.* (13.08.1991 - SC): MANU/SC/0618/1991

In *National Thermal Power Corporation vs Bhasin Construction Co. (P.) Ltd.*⁴, the respondent, was a Private Company that had employed the labour on a contract basis. The petitioner, in this case, was NTPC which is a public-sector undertaking. Though the case debated the permissibility of awarding fair wages to the contract labour under Section 30&33 of the Arbitration Act, 1940 and discussed the scope of interference with the award, it was ruled that there were no compelling reasons for awarding the part of the amount. Hence the award was partly modified. The critical point to be noted here is that the court, while deciding on the award of fair wages to the contract labour, also held that the MBA 1961 should also be applicable to them, among other Social Welfare Legislations.

Then in the year, 2000 Supreme Court gave its landmark judgment in *Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Ors.*⁵ It held that maternity benefits should also be given to contractual workers on the muster roll like regular workers. The employer, the

Municipal Corporation of Delhi (MCD), provided maternity leave to its regular workers but not muster roll workers. The workers union, on demand of the maternity benefit by the muster roll workers, approached the Industrial Tribunal. The union claimed that the workers on muster roll were recruited perennially and were engaged in the same nature of duties and responsibility as regular workers yet denied maternity benefits under the MBA 1961, while the corporation argued that since the workers on muster roll were on a daily basis, they could not be granted maternity leave under the act. The Industrial Tribunal ordered that women workers who were on muster roll for continuous three or more years, then benefits under the MBA 1961, should be extended to them as well as the regular workers. MCD's appeal was dismissed by the High Court. The subsequent litigations and the issues involved raised the question of whether the

Corporation comes under the definition "undertaking" and "industry" as per the Industrial Dispute Tribunal Act 1947.

Before the Supreme Court, MCD contended that since the provisions of the MBA 1961 had not been applied to it, such a direction could not have been issued by the Industrial Tribunal. MCD further contended that the benefits contemplated by the MBA 1961 could be extended only to workwomen in an "industry" and not to the Muster-roll women employees of the MCD. However, the Supreme Court upheld the decision of the Industrial Tribunal that MCD was an "industry" under the Industrial Disputes Act 1947 and all the statutory provisions applicable in Industrial Law, including MBA 1961, would be applicable. The judges were of the view that as per the MBA 1961, there is no provision that said that only the regular employees were entitled to maternity benefits and not those on a casual basis or muster roll on a daily-wage basis. The court finally affirmed what the Industrial Tribunal had directed the MCD to grant the leave for muster roll workers more than or equal to three years in service. It held that the provisions of the MBA 1961 were wholly in accordance with the DPSP as set out in Article 39 and other Articles, especially Article 42 of the Constitution of India.

Though it had been settled in the Supreme Court of India that workers on muster roll having the same responsibilities as regular workers of MCD were entitled to maternity benefits, yet we see several cases being filed that involved contractual workers and employees. Like in *Bharti Gupta vs Rail India Technical and Economical Services Ltd. (Rites) and Ors.*⁶ the petitioner was appointed on a contractual basis for six months, which was extended on a routine basis. The respondent, RITES, a Subsidiary of Indian Railways, terminated the petitioner's contract denying the benefit under the MBA 1961. However, the writ

⁴ *National Thermal Power Corporation vs. Bhasin Construction Co. (P.) Ltd.* (02.12.1994 - DELHC): MANU/DE/0151/1994

⁵ *Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Ors.* (08.03.2000 - SC): MANU/SC/0164/2000

⁶ *Bharti Gupta vs. Rail India Technical and Economical Services Ltd. (Rites) and Ors.* (09.08.2005 - DELHC): MANU/DE/1055/2005

petition was partly allowed with no cost. RITES was directed to release the full salary and bonus payable under the MBA 1961. It is worth noting that the claim of maternity was being framed by the petitioner's counsel stating the grant of maternity benefit as "a positive mandate of law" and "not a matter of charity".⁷

Often in contractual, non-regular, casual, or daily wages employment, the woman is terminated when she applies for maternity leave, as is also established in *K. Chandrika vs Indian Red Cross Society and Ors.*⁸. In which the Delhi High Court has clearly mentioned such an intension, it is worth noting in the following quote:

In the instant case, the petitioner had applied for maternity leave with effect from 3rd May 1980. Her services appeared to have been terminated with effect from the same date. The order of termination does not disclose any reasons whatsoever. However, the manner in which her termination has been affected would go a long way to indicate that the same may have been on account of her pregnancy. (Para 11)

The Delhi High Court held the termination illegal and unjust and directed the respondent to reinstate the petitioner (who was appointed by the Indian Red Cross as a lower division clerk on a temporary basis) in service with continuity of service for the purpose of computation of service benefits within a period of four weeks from the date of judgment. It also directed to pay the workman back wages with effect from 3rd May 1980 (The date on which her termination was said to be intimated) at a rate equivalent to 50% of the basic pay which was being paid to her when she proceeded on maternity leave. Similarly, in *Vishakha Kapoor vs National Board of Examination and Ors.*⁹, the Delhi High Court held that termination of service of the petitioner working on probation while on maternity leave violated the Maternity Benefits Act, 1961.

In the *National Board of Examinations vs Rajni Bajaj and Ors.*¹⁰, the petitioner contended that the writ petition, which was filed by the respondent (in this case) in the Delhi High Court, was transferred to the Central Administrative Tribunal and was listed before the Tribunal on 11.11.2009 without its knowledge. The Tribunal vide order dated 11.11.2009 set aside the order dated 5.12.2005 (termination order by the Petitioner) and directed the petitioner before this

Court to reinstate respondent No. 1 as Data Entry Operator w.e.f. 5.12.2005 with all benefits, within a period of 3 months. It is worth noting that the tribunal found the performance of respondent no. 1 to be satisfactory and deemed the termination as illegal. When again the petition was filed by the petitioner as per Rule 16 of Central Administrative Tribunal Procedure, Rules, 1987 via MA No. 2023/2010, it was dismissed vide impugned order dated 29.9.2010. However, in the Delhi High Court, the judgment asserted that in the absence of any Rule to the contrary, employees continue to be on probation unless they are confirmed on the post to which they were appointed on probation. There is no deemed confirmation merely on account of the failure of the employer to extend the period of probation. Rather, there is a presumption of deemed extension of the employee's probation. It found the termination to be neither punitive nor stigmatic. It further held that the termination of the services of the probationer was not illegal and that the order extending the period of probation of the petitioner by itself was a sort of caution to respondent No. 1 that her performance was not up to the mark and that is why her period of probation was being extended. And accordingly set aside the impugned orders passed by the Tribunal, which reinstated respondent no.1 and allowed for the maternity benefit for three months. The court contended that respondent No. 1 before this Court continued to remain on probation until her services were terminated. However, the court is cautious of the real motive being different than what is cited for the termination in case of such probationary appointment and especially when an event has followed related to the person concerned, which might

⁷ Ibid

⁸ *K. Chandrika vs. Indian Red Cross Society and Ors.* (24.04.2006 - DELHC): MANU/DE/1807/2006

⁹ *Vishakha Kapoor vs. National Board of Examination and Ors.* (03.03.2009 - DELHC): MANU/DE/0971/2009

¹⁰ *National Board of Examinations vs. Rajni Bajaj and Ors.* (10.02.2012 - DELHC): MANU/DE/6348/2012

warrant any other motive. This is clear when the judgment puts that the case is “open to the court to lift the veil in order to ascertain as to what was the real motive and foundation for terminating the services of the employee (Para 7).”¹¹ The court has itself held that mere the form of order cannot be conclusive of its true nature in the following words:

The Court can, in appropriate cases, examine the circumstances preceding or attending the order of termination, and the form of the order would not be conclusive of its true nature, the determinative factor being the foundation and not the form of the order (Para 10).

In Chief Secretary, Govt. of NCT of Delhi and Ors. vs. Satish Kumar and Ors.¹², it is worth noting how the MBA 1961 has been interpreted by the Delhi High Court to be applicable to all establishments irrespective of the nature of employment that whether tenure, contractual or of a kind which has acquired a status but only in relation to such establishments as which falls within the definition of ‘Establishment’ in Section 3(e) of the Act. The Delhi High Court held that, if applicable, the benefits would be granted to the contract-appointed Craft Instructors. The court relied on the Supreme Court Judgment in the Municipal Corporation of Delhi vs. Female Workers (Muster Roll)¹³ for deciding whether the establishment under this case came under the definition of such establishment or not.

In Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors.¹⁴ the Delhi High Court itself has pointed out how the employees working on a contractual basis have grievances in terms of denial of entitlements of wages and other benefits, including maternity benefits. However, it has taken the view that the employees appointed on contract could not be equated with regular employees. The Delhi High Court, while deciding on the writ petition of petitioners who were para-medics in different hospitals established by the Government of NCT of Delhi and were working as contractual employees for over a decade and a half over the grievances that they are not being extended the benefit of the law as declared in the Victoria Massey case¹⁵ directed that all contract appointed employees shall be paid wages by the Government of NCT of Delhi shall be entitled to leave of all kind including maternity and sick leave. The court had cited the judgment in the Government of NCT of Delhi & Anr. Vs. Suman Singh that “a female contractual employee working for 11 years would be entitled to maternity leave and while a male contractual employee to paternity leave (Para 12 Cited in Para 16 of Sonia Gandhi vs

Govt of NCT of Delhi)”¹⁶. However, the point to be noted here is that it neither went into the reasoning for taking the 11 years instead of 10 or 9 years. It further directed that the Government of NCT Delhi carry out a workforce requirement assessment in all its departments and sanction the number of posts as necessary. Thus, it framed a one-time policy of regularization, amending the existing rules in different departments and considering the existing contractual employees for appointment to these new posts.

In Government of N.C.T. Delhi vs Shweta Tripathi,¹⁷ the petitioner, the Govt. of NCT of Delhi (GNCTD), challenged an order of the Central Administrative Tribunal (CAT) by which the respondent had pleaded the GNCTD's decision not to grant them maternity leave for 180 days and confining it to 12 weeks was arbitrary and discriminatory against them. Consequently, by its impugned order, the CAT had accepted the applicants' contentions and held that the mere circumstance that they were contractual employees could

¹¹ See Supra Note 4

¹² Chief Secretary, Govt. of NCT of Delhi and Ors. vs. Satish Kumar and Ors. (01.11.2013 - DELHC): MANU/DE/4963/2013

¹³ See Supra Note 8

¹⁴ Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors. (06.11.2013 - DELHC): MANU/DE/4116/2013

¹⁵ W.P.(C) No. 8476/2009 Government of NCT of Delhi vs. Victoria Massey. The Division Bench of the Delhi High Court in Victoria Massey's case held that contractual employees would be entitled to all benefits which were given to the regularly appointed employees including annual increment.

¹⁶ Ibid

¹⁷ Government of N.C.T. Delhi vs. Shweta Tripathi (09.12.2014 - DELHC): MANU/DE/3399/2014

not arm the GNCTD with the discretion to treat them differently from other employees was extended the benefit of 180 days' maternity leave. The GNCTD, before the Delhi High Court division bench, contended that the respondent was on contractual employment. Thus, they could only claim entitlements such as maternity leave to the extent of terms of engagement given in various Office Memorandum and Central Services (Leave) Rules, 1972 and when read together with the provisions of the MBA 1961. The MBA 1961 mandated that every establishment or shop necessarily give 12 weeks' maternity benefit to its employees. But the Central Civil Services (Leave) Rules, 1972, in its substantive provision Rule 43, which enables permanent employees to avail maternity leave for 180 days, could not have been applied under the circumstances. However, the Delhi High Court held the reasoning adopted by the CAT for proceeding in the way it did, is that the higher benefit which is given to employees who are not contractual but are borne in the establishment of the GNCTD itself is a standard which should not have been deviated. Further, it stated that "keeping in mind the larger public interest sub- served in the grant of maternity benefit, the GNCTD, as a model employer, which is bound by Articles 14 and 16(1), had discriminated between two female employees, for the purpose of maternity benefit, on the basis contractual and permanent employment and that it could not be treated as a reasonable classification, considering the object of the rule for grant of maternity benefit." (Para 6)

In *Artiben R. Thakkar vs Delhi Pharmaceutical Sciences and Research University and Ors.*¹⁸, the petitioner was on a contractual appointment with the respondent, and her contractual employment came to an end on 15th May 2017. On humanitarian grounds, the respondent facilitated the petitioner to avail twelve weeks of maternity leave and extended the contractual employment until 30th June 2017. After that, the petitioner's contractual employment was neither renewed nor any new contract was entered into with the petitioner. A clarification issued by the Ministry of Labour & Employment of the Government of India on 12th April 2017 extended the benefit of twenty-six weeks of maternity leave to contractual employees and consultant women. However, the respondent's counsel argued that her contract was not renewed since she was no longer an existing employee, so it could not be extended to her. The Delhi High Court held that even though the amendment to the Maternity Benefits Act, 1961 came into force during the period of petitioner's employment, the benefit of full maternity leave of twenty-six weeks as per the Maternity Benefit (Amendment) Act, 2017 could not be extended to petitioner because her contractual period had come to an end. As a special case, her contractual period was extended until the end of the academic session. It was not justified to extend her benefit as her contractual period had already ended.

In *Vandana Shukla vs Indian Institute of Public Administration and Ors.*¹⁹, the petitioner was appointed as ad hoc Research Officer which was extended initially for a period of three months and after that by six months, attached to the Dr Ambedkar Chair in Social Justice, in the Respondent No. 1 - Institute, i.e. the Indian Institute of Public Administration. Her repeated extensions of service, and the enhancement of her salary, were on account of the exemplary nature of her performance. However, the petitioner asserted that her services were not extended further after being informed about her pregnancy. The respondent apprehended that she would not be able to discharge her duties properly as she would require maternity leave. The Delhi High Court observed that the respondent had issued a notice before the petitioner informed about her pregnancy that she was appointed "purely on contract and ad-hoc basis. She was given periodic extensions in the past to give her an opportunity to learn and improve. However, her performance has not been consistent all through (Para 11)."²⁰ The petitioner contended that such a notice could easily be created for a before date and that she was appreciated for her work before the last extension she had got. If the employee was on ad-hoc or fixed-term tenure, even if it was extended regularly in the past, after the end of the tenure, the decision to not extend further cannot be challenged in the court (Para 14). Thus, the Delhi

¹⁸ *Artiben R. Thakkar vs. Delhi Pharmaceutical Sciences and Research University and Ors.* (08.02.2018 - DELHC): MANU/DE/0614/2018

¹⁹ *Vandana Shukla vs. Indian Institute of Public Administration and Ors.* (14.09.2018 - DELHC): MANU/DE/3330/2018

²⁰ *Vandana Shukla vs. Indian Institute of Public Administration and Ors.* (Supra)

High Court made clear that an extension cannot be claimed based on what had been followed in the past. It held that such a decision not to extend the tenure could not be proved to be “malafide, vitiated by perversity, or is ex facie arbitrary on the face of the record” (Para 15). Instead, it was proved that it was based on her performance. The Delhi High Court dismissed the writ petition, and the petitioner, whose tenure was already ended, could not get the relief of getting her contract renewed and maternity leave granted even in the advanced stage of her pregnancy.