



# Maternity and Paternity Benefits for Temporary Employees: Role of Judiciary

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## Abstract

Right to life under Article 21 of the Constitution of India includes the right to mother and to become a mother is the most natural phenomena in the life of a woman. Therefore, whatever is needed to facilitate the birth of her child to a woman, who is in service, the employer has to be considerate and sympathetic towards her, must realise the physical difficulties, which a working woman faced in performing duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The object of maternity leave is to protect the dignity of motherhood by providing full and healthy maintenance to the woman and her child, maternity leave is intended to achieve the social justice to women, motherhood and childhood, both require special attention. Maternity benefits cannot be denied to a female employee merely because the nature of such employment is contractual. Denial of the said benefits is inhumane and in violation of fundamental Rights. Maternity rights are not something that is based on a statute but stands to be an integral part of the identity of a woman. Denial of such rights is in fact standing in the way of a woman choosing to bring life into the world, thereby violating her fundamental right to life. Such denial is indeed against the principle of social justice.

**Keywords:** Maternity Leave Social Justice, Temporary Employees, Motherhood, Draconian Rule, Livelihood Etc..

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## 1. Introduction

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.

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Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre-or post-natal period.

## **2. Judgment Relied**

*Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr.* (2000) In this case the apex court held that the provisions of the Maternity Benefit Act, 1961 entitled maternity leave even to women engaged on a casual basis or on muster roll basis daily wage and not only those in regular employment. It is further held that the provisions of the Act in this regard are wholly in consonance with the Directive Principles of the State Policy as contained in Articles 39, 42 and 43 of the Constitution of India.

In *State of H.P. & Ors. v. Sudesh Kumari* (2015) 1 HLR DB 36, wherein it was held In law, there is no difference between a female regular employee and a contractual employee/ ad hoc employee because a female employee whether regular, temporary or ad hoc, is a female for all intents and purposes and she has a matrimonial home, matrimonial life, and after conception, she has to undergo the entire maternity period, same treatment, pains and other difficulties which a regular employee has to undergo. Thus, there is no occasion for making discrimination

and if, less period of maternity leave is granted to a contractual employee, it will amount to discrimination, in terms of Article 14 of the Constitution of India.

The claim of maternity leave is founded on the grounds of fair play and social justice. There cannot be discrimination and if any discrimination is made, it is in breach of Articles 14 and 15 of the Constitution. Articles 41, 42, and 43 deals with the subject and we deem it appropriate to reproduce the said Articles herein:

Article 41. Right to work, to education and to public assistance in certain cases:- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42. Provision for just and humane conditions of work and maternity relief:- The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43. Living wage, etc., for workers.- The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.”

### **3. Employees for the Purpose of Maternity Leave Is Impermissible Differentiating Between Contractual & Permanent**

The Calcutta High Court has recently held in case of Neeta Kumari v. Union of India & Ors. WPA 29978 of 2013 that it is impermissible and violative of the Right to Equality under Article

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14 of the Constitution, to differentiate between contractual employees and permanent employees for the purpose of extending maternity leave. Denial of grant of maternity leave to the petitioner constitutes a discriminatory would tantamount to compel an employee to work during her advanced pregnancy, notwithstanding the same may ultimately endanger both her and her foetus. If the same is permitted, the object of social justice would stand deviated. Further the court express their view it would be detrimental to the future of our country, a healthy mother and a healthy new born child not only ensures to the growth and development of the child but to the nation as well, as the child of today would be the force behind tomorrow's development. Depriving such benefits to the mother and the foetus/child would tantamount to depriving the nation of its future.

**In The Case of Misha Upadhyay v. State of Uttarakhand & Ors Writ Petition (S/S) No. 241 of 2024** The Uttarakhand High Court has held that a woman, after being duly selected, cannot be denied joining in service merely because she is pregnant. While giving relief to a 13-week pregnant lady, the Single Bench of Justice Pankaj Purohit observed “The motherhood is one of the greatest and noblest blessings to a woman by nature and she cannot be denied public employment for this reason that she is pregnant, even it cannot be delayed by this draconian rule as cited by the State. The Court was of the opinion that the treatment meted out to the lady by the respondent authorities amounts to 'gender bias' and she cannot be denied her employment only because of her pregnancy. On the one hand, a woman is entitled for maternity leave which has now been held as social and fundamental right by the Apex Court time and again, to deny joining on the ground of pregnancy, would be highly discriminatory to a woman. It is certainly in violation of Article 14, 16 and 21 of the Constitution of India.

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#### **4. Maternity Leave Can't Be Denied to Mother Who Has Begotten Children Through Surrogacy**

**Gayatri v. Maharaja Ganga Singh University & Ors. S.B. Civil Writ Petition No.**

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**7853/2020** In this case, the Rajasthan High Court has clarified that a natural biological mother, and a mother who has begotten a child through surrogacy cannot be differentiated for the purpose of granting maternity leave. The right to life contained under Article 21 of the Constitution of India includes the right of motherhood and the right of the child to get love, bond of affection and full care and attention. Making a difference between natural biological mother and surrogate/commissioning mother would amount to insult of motherhood. A mother cannot be discriminated, as far as maternity leave is concerned, only because she begot the child through the process of surrogacy. Right to life under Article 21 of the Constitution of India includes the right to motherhood and also the right of every child to full development. If the Government can provide maternity leave to an adoptive mother, it would be wholly improper to refuse to provide maternity leave to a mother who begets a child through the surrogacy procedure and as such, there cannot be any distinction between an adoptive mother who adopts a child and a mother who begets a child through surrogacy procedure.

#### **5. Maternity Benefits Must Be Granted Even if Period of Benefit Overshoots Term of Contractual Employment**

**Dr. Kavita Yadav v. Secy, Ministry of Health and Family Welfare 2023, Live Law (SC)**

**701** In this case Supreme court held that the maternity benefits have to be granted even if the period of benefit overshoots the term of contractual employment. Maternity benefits can travel beyond the term of contractual employment. The court directed the employer to pay maternity benefits as would have been available in terms of Sections 5 and 8 of the Maternity Benefits Act, 1961 and payment to be made within 3 months. Further the court observed "Section

12(2(a)) of the Maternity Benefit Act, 1961 contemplates entitlement even for an employee who is dismissed/discharged during her pregnancy. Thus, inbuilt in the statute itself there is a provision for extending benefits for a period beyond the term of employment. What the statute contemplates is the entitlement of medical benefit which accrues by fulfillment of condition under section 5 and benefit can travel beyond the term of employment also and it's not co-terminus with the employment period.

## **6. Ad-Hoc Employee Entitled To Maternity Benefits Beyond The Term of Contract For Pregnancy Occurring During Contractual Period**

**Dr. Baba Saheb Ambedkar Hospital Govt. of Nct of Delhi & anr. v. Dr. Krati Mehrotra, 2022 Live Law (Del) 201** In this case the Delhi High Court has held that the object of the Maternity Benefits Act is to grant benefits to the woman both during pregnancy and after child-birth, the High Court said that the benefits cannot be tied up to the tenure of the contract. That an ad-hoc employee will be entitled to maternity benefits under the Maternity Benefits Act, 1961, beyond the period of the contract, for a pregnancy occurring during the tenure of the employment. The object and purpose of the 1961 Act being, to not only regulate employment but also maternity benefits which precede and follow childbirth, point in the direction that tying up the tenure of the contract with the period for which a woman employee can avail of maternity benefit is contrary to the mandate of the legislation i.e., the 1961 Act. Thus, as long as conception occurs before the tenure of the contract executed between a woman-employee and her employer expires, she should be entitled to, in our opinion, maternity benefits as provided under the 1961 Act. Therefore, linking the tenure of employment, in this case, a contractual employee, with the period for which maternity benefits can be availed by a woman employee, is not an aspect that emerges on a plain reading of the provisions of the 1961 Act.

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**Smt. Dr. Deepa Sharma v. State of Uttarakhand & others Writ Petition No. 54 of 2015**

(S/B) In this case the Uttarakhand High Court was held that the Maternity benefits is a social Insurance. There should be a system for breast feeding/ nursing care at the workplace. The maternity leave is key for maternal and child health and family support. The maternity leave is of utmost importance to fight against social injustice, poverty and gender inequality. The High Court was issued the directions to the state govt. The writ petition is allowed with the following mandatory directions:-

1. The State respondent is directed to grant maternity leave to all the female employees with full pay for 180 days, even working on contractual basis, ad hoc/tenure or temporary basis.
2. The State Government is further directed to grant at least 60 days maternity leave to the daily wage female employees working for more than 240 days' in a block of 12 months calendar with full wages.
3. The State Government is also directed to grant Child Care Leave (CCL) of 730 days' to all the female employees, whether appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis having minor Children with a rider that the child should not be more than 18 years of age or older. The female employees shall be entitled to paid leave equal to the pay drawn immediately before proceeding on leave. CCL can be combined with leave of the kind due and admissible.
4. The State Government is also directed to grant 15 days' paternity leave to a male employee appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis to enable the father to look after the mother and child. This leave can be combined with leave of any other kind.

5. The State Government is also directed that a female employee appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis, with fewer than two surviving children, on valid adoption of a child below the age of one year be granted child adoption leave for a period of 135 days' immediately after the date of valid adoption.

6. The State Government Shall not dismiss, terminate, remove any female employee whether appointed on contractual basis, ad hoc/tenure or temporary basis immediately before her delivery and thereafter to deprive her of maternity leave, adoption leave and child care leave etc.

7. The State Government is directed to provide every establishment to have the facility of crèche having 50 or more than 50 employees with liberty reserved to the mother to visit the crèche/nursing care at least four times daily, including the interval for rest allowed to the employees.

## **7. Refusing Paternity Leave to Father Violates Child's Right to Life under Article 21**

**B. Saravanan v. The Deputy Inspector General of Police, Tirunelveli Region, Tirunelveli and others 2023 Live Law (Mad) 235** In this case the madras High Court has while holding that the right to protection of life guaranteed to every child by Articles 21 and 15(3) of the Constitution of India "culminates" in the fundamental human right of the biological parents/adopting parents seeking maternity/paternity/parental leave. Importantly, the Court also said that though paternity/paternal leave is a kind of labour law benefit, the same has "stemmed" from the right of a child to be protected under Articles 14, 15(3) and 21 of the Constitution of India. A welfare state is at the bounden duty to provide the foetus with dignified pre-natal care and the child with proper health care, hygiene and sanitation in the post-natal care days. Perhaps



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grant of maternity/paternity leave to the biological parents and paternal leave to the adoptive parents is to ensure proper pre-natal/post-natal care, upholding the child's right to protection of life as guaranteed under Article 21. The Court held that the refusal of the Police Department to cancel and refuse paternity leave to the petitioner would amount to a "violation" of right to life of the child guaranteed under Article 21 of the Constitution of India.

The Fundamental Rights and Directive Principles of State Policy contained under the Constitution of India which recognise the significance of child welfare, protection and development, the Court said that such development of a child "commences from the pre-natal care days, that is from the day one of the mother's pregnancy and continues all along the post natal care days, till the age of attaining majority". In this regard, emphasising the need to provide for maternity/paternity/parental leave to the adoptive/biological parents, the Court said that the same would ensure proper pre-natal/post-natal care, upholding the child's right to protection of life as guaranteed under Article 21 of the Constitution of India. Further the court held that The petitioner's child's right to live, survive, health and development of childhood which flows from Article 21 of the Constitution of India, guarantees the petitioner's right to seek paternity leave to attend his wife's delivery.

## **8. Paternity Leave Provisions in Different States of India**

There are a few states in India which have formulated specific provisions regarding paternity leave. In 2017, the state of Maharashtra announced that the male employees who are widowers or whose spouses are bedridden thus unable to care for their children are entitled to avail a special 180-day leave until the child reaches the age of 18. This leave

can be granted for two months per year in three separate intervals. However, this provision is applicable exclusively to the public sector.

Kerala grants a paternity leave of 10 days each for two children to its government male employees “*at the time of delivery of his wife.*” Furthermore, according to section 103a of the Rajasthan service rules, 1951, male government employees are eligible for paternity leave of 15 days which can be granted up to a maximum of two times.

In July 2023, chief minister of Sikkim announced one month paternity leave to its male government employees, and similar provisions are implemented by the state of West Bengal in 2016. In June 2023, Karnataka government made single male parents eligible for a 6 months paternity leave. However, the provisions specify that if the male gets married during this leave, their leave will automatically end from that day. In September 2023, Uttarakhand government announced that single male employee adoption leave. The state also made contractual and outsourced employees eligible for a 15-day paternity leave, aligning with government employees.

One might argue that there are several states which provide paternity leave to several male employees, which indeed is true. However though intended to be beneficial, these provisions fall short in providing comprehensive and satisfactory solutions, thus are not really helpful in the longer run due to the following reasons:-

Firstly, recently when the Madras High Court held that “*refusal of paternity leave to a father violates the child's right to life under article 21,*” the High Court did not mean fathers who are government employees alone. It is high time that we acknowledge the

social reality of India which is that, majority of the Indian workforce operates in the private sector and absence of a legal mandate for paternity leave in these sectors contributes to a sense of inequality in family support.

Secondly, the conditional nature of the aforementioned leaves upon specific circumstances like widowhood or a bedridden spouse, restricts the inclusivity of paternity leave. Along with that, by linking paternity leave to the presence of the spouse, health status of the spouse or specific circumstances such as being a single male parent, we perpetuate the stereotypes that men's caregiving role as fathers is an exception rather than an intrinsic responsibility.

Thirdly, the lack of uniformity throughout the country is also concerning. Piecemeal implementation perpetuates a fragmented system, creating disparities among states in providing family-oriented benefits.

Additionally, limited duration of paternity leave ends up making the entire endeavour tokenistic. For instance, Sikkim's one-month paternity leave, though an improvement, may fall short in providing fathers with sufficient time for meaningful engagement in the early stages of a child's life. Along with that, ongoing medical appointments, vaccinations, and the gradual adjustment to parenthood requires a more sustained period. Therefore, when a father leaves for the job after one month, all these responsibilities fall on the shoulders of the mother alone.

While the number of days allocated to the mothers can be partly justified, considering the physical recovery that the body needs after childbirth. However, when a mother who has

begotten a child through surrogacy is also made eligible for 180 days of maternity leave, then the stark disparity between the maternity and paternity leave policies exposes the potential patriarchal biases inherent in their formulation.

These kinds of policies perpetuate the innately problematic narrative of “*mothers are superhumans*,”. Mothers are no celestial creatures with boundless strength and inexhaustible energy. Instead, they are mere mortals, just like the fathers, navigating a maze named parenthood.

Through above mentioned judgments makes clear is that, the court sees women who get a child through surrogacy as no different from women who gives birth to a child. This way, the courts have definitely tried to robustify the existing maternity leave mechanism; however, it would reap no sustainable results if the courts don't start seeing fathers as integral and equal partners in the parenting journey.

## **9. Conclusion**

Childbirth is a profound process that transcends the mere act of bringing a new life into the world. It is a transformative experience that significantly shapes the identity of individuals, particularly that of the parents. Therefore, to assist the parents in dealing with various emotional, psychological, and social transitions, the concept of “*maternity leave*” was implemented. It is a harsh reality that but for such provisions many women would be compelled by social circumstances to give up work on the birth of the child if they are not granted leave and other facilitative measures. Child birth has to be construed in the context of employment as a natural incident of life and the provisions of the Maternity Benefit Act are required to be construed in that perspective. In Conclusion this paper emphasizes the need of the maternity and paternity

leave is inherent right of the employees. On the basis of the various judgements of the courts now we can say every employees have right of maternity and paternity leave irrespective of their nature of employment.

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