

CHILD CARE LEAVE- RIGHT OF PARENTS, BENEFIT FOR CHILD

- by *AISHWARYA BHATIA, 3RD YEAR,*
MODI UNIVERSITY OF SCIENCE AND TECHNOLOGY (SCHOOL OF LAW)

ABSTRACT:

Gender equality, specified on grounds to make a society equal for both men and women but it appears to be distant from our labour market. The most basic obstacle in our labour force is gender inequality. It is not always the government to be blamed; it is our collective approach that needs to be monitored. It's time for all of us to advance our thinking and commence change from the grassroots level rather than directly jumping on enormous advancements. All can participate, be it a women's organization, a worker, an employer, or an academician, even you and me.

Violence and harassment should be insupportable and objectionable, because it is one of the common obstructions, towards the growth and upliftment of women, irrespective of country or sector. There are several ways to tackle these problems, which are further discussed in this article.

Some rights, duties should be gender-neutral and some according to the needs of the gender. Parentage, our key focus, the responsibility of the parents, mother, and father, should be tackled on equal footing, as it's a right of the parent and need of the child. The Roles of both mother and father are non-identical and

hence necessary for the child, so why only the Maternity Benefit Act and not Paternity Benefit Act. If not a statutory enactment, then does any benefit be provided to men? All these important issues are the prime factors for the author to write this article.

INTRODUCTION -

Child care leave is a suitable topic to conduct large research in the arena of gender equality. Child care leave is basically for the nourishment of a child, in its initial days, which is required by both mother and father, known as maternity and paternity leave. This leave is provided at times of examination, sickness, or at any time due and permissible.

Since 1972, we only had criteria for obtaining the child care leave for a maximum of two children, below the age of eighteen years, only for mothers, and not for fathers, and that only for once in her entire service. But everything has to keep on changing with the change of time, so, due to our dynamic approach towards our enactments, the 2019 amendment was inserted, which gave this opportunity also to be availed by single male employees.

The amendment of 2019, was not only in favor of males but also in favor of females, which upgraded the maximum level of Child Care Leaves to be taken by a female employee. So, Mrs 2019, a female can avail of this benefit, for a maximum of six spells in a calendar year.

DIVERGENT APPROACH ON THIS TOPIC-

This topic intersects itself, into different aspects like socially, politically, and economically. Firstly, talking about social matters, so child care policy is a family matter and related directly to the well-being of the child, gender pay gap, social inclusion, gender equality, poverty reduction, and equal opportunities, etc.

Politically, it is mostly highlighted, due to concern towards the issue of regulation on the labor market and on influencing freedom of choice in specific ways.¹

Economically, it is directly related to the labor market regulation, participation, state finances, economy, and welfare state sustainability.²

RIGHTS OF WOMEN UNDER MATERNITY BENEFIT ACT, 1961

An act, enacted for the upliftment of women in the employment sector. After 1961, there has been a change in the graph regarding the ratio of employed women to that of unemployed women from 26.1% to 49% till date.³ The basic

1

Jens Warnez, . **Child leave and childcare systems, and their relation to gender equality in labour market participation. A comparative study of Belgium and Denmark**, Research Gate, 5, 2021,

https://www.researchgate.net/publication/237081815_Child_leave_and_childcare_systems_and_their_relation_to_gender_equality_in_labour_market_participation_A_comparative_study_of_Belgium_and_Denmark

2

Ibid.

³ The Gender Gap in Women Employment: What's holding women back? InfoStories, International Labour Organizations, 1, 2018 <https://www.ilo.org/infostories/en>

aim of this act was to provide proper facilities to women, after giving birth to their baby, so that she is easily able to balance their work along with their personal life.

Amendments of 2017 in Maternity Benefit Act-

- It provides, for an overall of twenty-six weeks benefit, conclusive of eight weeks before the expected date of delivery and rests afterward. A restriction of twelve weeks benefits the woman, already having two or more surviving children.
- Surrogate mothers are also entitled to take this benefit for twelve weeks.
- Introducing an option of 'work from home', to be utilized after the expiration of maternity leave.
- Crèche facilities, in every workplace having fifty or more employees, including the right, to visit the crèche, four times a day.⁴

Rights of Women –

- Right against the deduction of wages
- Right to leave in case of miscarriage or adoption for six weeks.
- Right to leave in case of tubectomy for two weeks.
- Right to leave for any kind of illness arising out of pregnancy.

GB/Stories/Employment/barriers-women#:~:text=The%20current%20global%20labour%20force,more%20than%2050%20percentage%20points.

⁴ Maternity Benefit Act, 1961, S 11A.

The legal obligation of Employer-

- Not to assign any kind of strenuous, long-standing hours work to women before six weeks of her expected date of delivery.
- Section 5 of the Act, obligates the employer to pay 'average daily wages' to the woman, in her absence.
- Cannot dismiss her during her absence.

Other benefits-

- Maternity benefit and adopted children.
- Work from home.
- Nursing breaks.
- Crèche facility.
- Medical bonus.

JUDICIAL PRONOUNCEMENTS

In *B. Shah v. Labour Court, Coimbatore*⁵The issue that arose was, whether Sundays will be included in calculating the wages in the maternity leave period or not. So, it was held that according to Section 5(1)(3), it has been specified 'week', so, a week will constitute all seven days in a week. Hence, Sundays will be included.

⁵ B. Shah v. Labour Court, Coimbatore, AIR 1978 SC 12 (India).

In the case of *Municipal Corporation of Delhi v. Female Workers & Anothers*⁶, it was held that the maternity benefit will only be given to the regular female workers and not to the muster rolls workers.

The Court, following Article 14 and Article 15 of the Indian Constitution held that “labor to whichever sector it may belong in a particular industry will be treated on an equal basis”. (*Hindustan Antibiotics Ltd. v. Workmen*⁷). Thus, it was held that all women are entitled to receive the benefits of maternity leave from their respective organizations.

*Mrs. Bharti Gupta v. Rail India Technical and Economical Services Ltd. [RITES] and others*⁸, in this case, it was held that maternity benefit is a social, sympathetic, and thoughtful act, which should be followed without any failure. So, RITES, being an instrument of the State and falling under Article 12 of the Indian Constitution, is compelled to obey the orders specified in the Maternity Benefit Act.

ALTERNATIVE LAWS PROVIDING MATERNITY BENEFITS IN INDIA

- ***The Employees State Insurance Act, 1948***- Another such legislation that helps in safeguarding the maternity benefits of women in case of her health and aims at providing medical benefits and other periodical payments in case of any mishappening like miscarriage, other illness arising out of pregnancy, etc. Also prescribes punishment against employers for dismissing or discharging any woman during her medical leave.

⁶ *Municipal Corporation of Delhi v. Female Workers & Another’s*, (2000) 3 SCC 224 (India).

⁷ *Hindustan Antibiotics Ltd. v. Workmen*, 1967 AIR 948, 1967 SCR (1) 652 (India).

⁸ *Mrs. Bharti Gupta v. Rail India Technical and Economical Services Ltd. [RITES] and other*, 123 (2005) DLT 138, 2005 (84) DRJ 53 (India).

- ***The Maternity Benefit (Mines and Circus) Rules, 1961-*** It provides rules necessary for the health of the women, institution of crèches, breaks for nursing the child, muster rolls, payment at maternity leave.
- ***Central Civil Services Rules of 1972-*** These rules are significant to the government service employees, which provides for one hundred and thirty-five days, maternity leave, and also forty-five exceeding days, in case of marriage.
- ***The Mines Act, 1952-*** This Act is connected to the women employed in management, supervision, or in direction of mine with the benefit of not more than twelve weeks, paid leave in case of pregnancy.
- ***The Factories Act, 1948-*** It also provides benefits to women working in factories, for not more than twelve weeks and also mandates to maintain a room, where there are more than thirty employees, for proper care of children under six years of age.
- ***The Plantations Labour Act, 1951-*** It also facilitates its women, working in plantation fields with a maternity allowance, during her pregnancy and a separate room as required in factories act.

FACTORS NOT IN FAVOUR OF WOMEN EMPLOYMENT-

Some factors which are a hindrance in the employment of women are-

- Not paid equal remuneration for the same kind of work as that of men. As women are more serious and dedicated towards their work.
- According to a report of the International Labour Organization, which depicts that there are less than one-third female managers globally, over the past thirty years, there can be ample reasons behind it. One is their responsibility towards their child and other household stuff.
- Violence and harassment at the workplace.
- Non Acceptance of a female leader in societies.
- Underestimating women on their capability for handling pressures.

METHODS TO MODIFY THE WORK ENVIRONMENT FOR WOMEN-

- It is the need to gear the vast discrepancy on the matter relating to unpaid care authorities between the male and female workers.
- Substantial requirement of flexible policies with the correct approach towards the working hours along with the assistance of proper equipment at the workplace can make a change.
- Due to physical inability at times, men need to be forced to work a little more, to balance the pressure on women.
- The government by embracing some policies, which will work in the favor of women at not only labor level but in highly skilled paid opportunities, will empower women more. This will lead to the investment in professional care services.

- Gender-based brutality and sexual harassment should be strictly insupportable and be dealt with according to the ILO's Violence and Harassment Convention, which furnishes a comprehensive framework and practical approach towards this type of violence. Acceptance and execution for this Violence and Harassment Convention by ILO should be the prime agenda for every country.
- This all can only be implemented successfully if there is transparency in the process of hiring and promoting women, irrespective of any discrimination to fill these obstinate gaps once and for always.
- Lastly, women should be supported at all walks of life from an employee to a leader. Her voice should never be pressed and left unheard.

Now, it's the time to be courageous and to fulfill our duties towards the women of the country. During Covid-19, women were the most to be harassed due to several invalid reasons, one amongst them being her employment. Anything can be achieved with togetherness, so why not give a fair representation to women at her workplace.

PATERNITY LEAVE UNDER CENTRAL CIVIL SERVICES LEAVE RULES, 1972

Paternity Leave should be a right for males as concerning females. Both, father and mother, together, collectively have the responsibility in the growth of a child. It is not only the mother, who is always liable for fulfilling the duties towards the child, a father should also be entitled with the leave, for proper care and nourishment of the newborn child.

Under Section 43A of this, Paternity leave⁹ cannot be denied under any condition and shall be availed as described below-

- It shall be provided to a male member of the service with a period of fifteen days before and six months after the delivery of the child, in case of less than two surviving children.
- Salary shall be paid according to the normal salary, as was paid before such leave.
- It can be combined with a leave of absence in any other kind of situation.
- The payment during this period, shall not be refused by the male employee.
- If the leave is not utilized in the manner provided above, then it shall be termed as lapsed.

Paternity Leave in case of adoption-

Section 43AA, provides for the paternity leave, in case of adoption to the-

- It shall be provided to a male member of the service with a period of fifteen days for adopting a child, below the age of one year and only in case of less than two surviving children.
- Salary shall be paid according to the normal salary, as was paid before such leave.
- It can be combined with a leave of any other kind of situation.
- The payment during this period, shall not be refused by the male employee.
- If the leave is not utilized in the manner provided above, then it shall be termed as lapsed.

According to the Paternity Benefit Bill, 2017, men, working in unrecognized and private sectors, were also entitled to avail benefits of paternity leave, for fifteen

⁹ CCS (Leave) Rules, 1972, S. 43A.

days to a maximum of three months and hence all other benefits, as mentioned in the maternity benefit leave like leaves for seven days in case of miscarriage and fifteen days in case of adoption, etc.

JUDICIAL PRONOUNCEMENTS

*Chander Mohan Jain v. N.K. Bagrodia Public School*¹⁰, in this case, a male employee applied for paternity leave, his leave got rejected and his salary also got debited of his being absent in lieu of taking care of his wife and newborn baby.

The issue that arose was, whether he is entitled to paternity leave and a refund of his salary or not. So, here the Court granted relief to the private sector employees also and held that he is entitled to the leave and his salary should be duly refunded.

PARENTAL LEAVE POLICIES AROUND THE WORLD

- **Norway**- It provides parental leave, either for 49 weeks at 100% paid salary or for about 80% salary for 59 weeks to be divided between both parents. The father can utilize the leave for two weeks at the time of birth of the child and further for fourteen weeks before the child attains the age of three years. The remaining leaves can further be taken by parents, at the time of need.¹¹

¹⁰ **Chander Mohan Jain v. N.K. Bagrodia Public School, W.P. (C) No. 8104 of 2009 (India).**

¹¹ Abubhav Pandey, Paternity Leave Policies in India, iPleaders, 2018, <https://blog.iplayers.in/paternity-leave-india/>

- **Iceland**- In Iceland, both, mother and father have a right to benefit, from leave provided for three months separately, and for additional three months jointly.
- **Sweden**- In Sweden, parents are obliged to get 80% parental paid leave for 480days, with a bonus of 180days, in the case of twins. This leave can be exercised thrice, till the child grows up to the age of eight years.¹²
- **Spain**- Fathers here are entitled to thirty days, paid leave with 100% salary.

CHILD CARE LEAVE TO A FEMALE MEMBER OF THE SERVICE-

According to the Section 43C of the same act, the child care leave shall be granted to-

- A female member of the service for taking care of her maximum of two minor children below the age of eighteen years, for a maximum of 730 days, anytime during her uninterrupted service. (7th Pay Commission)
- Salary shall be paid according to the normal salary, as was paid before such leave.
- It can be combined with a leave of any other kind, which is permissible.
- It can be beneficial more than once.
- The payment during this period, shall not be refused to the female employee, during her leave.¹³

¹² *Ibid.*

¹³ *Supra* note 9, at 6.

JUDICIAL PRONOUNCEMENTS-

*Kakali Ghosh v. Chief Secretary, Andaman and Nicobar Administration, and Other*¹⁴The only question raised in this case was, whether a female can take an uninterrupted child care leave for a total of 730 days, in one go, for her son's (below the age of eighteen years) board examination, which got rejected, without any reasonable explanation. So, after this case, reached in the appellate case, it was held that due to failure of any reasonable answer, on why they refused the leave, it was held that a female can take an uninterrupted leave of 730days in a go.

Child care leave can be taken in parts but the total for 730 days and hence cannot be denied as held in *Dr. Mrs. Usha Rani (Pathak) Bhatt v. State of Uttrakhand and others*.¹⁵

AMENDMENTS IN CCS (Leave) RULES, 1972-

In 2018, "Government of India Ministry of Personnel PG & Pensions Department of Personnel & Training", amended these rules keeping in mind the recommendations made on the 7th Pay Commission-

- Child Care Leave granted for the first 365 days, shall be paid with 100% of the leave salary and with 80% of the leave salary on the remaining 365 days.

¹⁴ *Kakali Ghosh v. Chief Secretary, Andaman and Nicobar Administration and Other*, 2014, SC (India).

¹⁵ *Dr. Mrs. Usha Rani (Pathak) Bhatt v. State of Uttrakhand and others* (2019) (India).

- Now, single male parents, including unmarried, widowed, or divorced employees can also enjoy the benefits of the leave.
- The benefit of CCL can now be utilized for six spells in a calendar year, by single female government servants.¹⁶ Other government servants can also avail of this, but only for a maximum of 3 spells in a calendar year.

After a long struggle for males, to be entitled to child care leave, finally this battle ended in 2018 and the main aim behind this amendment was to increase the level of participation and potential of a government employee, towards his service.

SUGGESTIONS AND CONCLUSION

The Government of India has taken many necessary steps to balance the gender inequality in cases of Child Care, Maternity, and Paternity Leaves. The Amendment of 2017 and Paternity Benefit Bill of 2017, fill the huge gap in the theory of gender biases after providing leaves to male parents and even to the single male parent in the society, to understand and take the responsibility in caring and nitrifying the newborn baby and getting close to the baby as that of the mother. The child is the responsibility of both the parents and cannot be denied by one. This concept also applies to the private sector employees as well, as they are also fathers.

16

Important Amendments in CCS Leave Rules 1972 – DoPT order dated 30.8.2019, gservants, 2019 <https://www.gservants.com/2019/09/17/important-amendments-in-ccs-leave-rules-1972-dopt-order-dated-30-8-2019/22916/> .

The Paternity Benefit 2017, is only mandatory for the government sector, which should be also strictly applied to the private sector and separate legislation should be made for paternity leave along with the child care leave for males. Secondly, leave provided to the males, only for fifteen days, is not sufficient in maintaining the child and her mother.

The initiative of 2017, was a commendable one, but India is still lacking behind in having a proper legislature for men like the Maternity Benefit Act. Child Care Leave for men is still an issue, the government has made rules for child care leave, but only for single male parents, and not for male parents.

The steps cannot be ignored, as these are the stepping stones towards gender neutrality, still, more such rules and Acts are awaited as both father and mother are responsible for the growth and upbringing of a child. The main reason for fathers being less attached with their child as compared to mothers, I think, is their non-capacity of investing time in their children, as they are not getting handsome amounts of paid leave from their mothers. So, one has to go out to work to earn a living, which is also equally important for the child.
