Article: Are Contractual Employments Rendering Maternity Benefit Act, 1961 Toothless? A Case Law Analysis of Supreme Court of India and Delhi High Court
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Are Contractual Employments Rendering Maternity Benefit Act, 1961 Toothless?
A Case Law Analysis of Supreme Court of India and Delhi High Court

--- Kimsi Sonkar

Abstract
The Maternity Benefit (Amendment) Act, 2017 which provided for twenty-six weeks of paid maternity leave, though progressive in nature, has not been able to fully address the issues associated with its implementation aspect as discussed in the paper through the various Supreme Court and Delhi High Court judgements for the period ranging from 1961 till 2020. Through this paper it has been attempted to analyse how the type of ‘employment contract’ namely, the permanent and contractual type (also known as fixed term), and ‘employment status’ (whether regular, temporary, ad-hoc or on daily wage basis and casual basis etc.) involved in the cases has affected the claim to their maternity benefit, and often denial of maternity benefit if the employment type is contractual and employment status is temporary, ad-hoc, daily wage basis or casual basis. The text of the judgements is analysed for the arguments which are put forth both for providing and not providing the maternity leave to women who are employed on contractual and temporary basis. This paper has also attempted to show through the excerpts of the judgements how contractual period has been used as a tool to cut down on the maternity benefit entitlement of working women.

Key words: Ad-hoc, Case laws, Contractual, Maternity Benefit, Maternity Leave

Introduction
In India, industrialisation started in the pre-independence era. With the increase in industrial workers also grew union movement, and there were demands for improvement in the working and living conditions of workers. Thus, social security legislation which provided the workers with benefits designed to insure them against the risks associated with their employment, to support them when unable to earn, and to revive them to gainful activity gained momentum. At International Labour Organisation (ILO) Conference in 1919, India participated
but did not give its assent to the clause of maternity benefit. First the Maternity Benefit Bill was proposed by the then Labour Union Leader N.M. Joshi. After this there were several maternity benefits acts which were adopted in pre-independent India like in Bombay (1929), Madras (1934), Uttar Pradesh (1938), West Bengal (1939), and Assam (1944). The first central enactment related to maternity benefit however was in the form of the Mines Maternity Benefit Act, 1941, but with a limited application as it was applicable only in mines. In independent India, after the constitution was formulated and adopted in 1950, the Fundamental Rights and Directive principles of the state policy provided impetus to consolidate and enact such legislations which would protect women’s right. Thus, a central legislation in the form of the Maternity Benefit Act, 1961 was enacted. The Maternity Benefit Act, 1961 is a part of such a social security legislation in India. However, there are many legislations which provide social security to women against risks associated with maternity.

In this paper, only Maternity Benefit Act, 1961 as amended in 2017 has been taken into consideration in which liability for payments of maternity benefit has been placed on the employers. Such legislations which were considered to be measures of social security to the women workers are thus found to be inadequate as the employers found out ways to either avoid it completely or come to an undocumented compromise with the employees. The present paper deals with the cases in Supreme Court of India and Delhi High Court in which maternity benefit was denied to women workers, and examines how the ideals of social security namely, human dignity and social justice is meted out.

The Maternity Benefit Act, 1961 is a law that regulates the employment of women in certain establishments for certain period before and after childbirth. The Act extends to the whole of India and covers female employees in any shop or establishment employing 10 or more persons. According to the section 5(3) of Maternity Benefit Act, 1961 as amended in 2017, a female employee is entitled to twenty-six weeks of maternity leave, of which not more than eight weeks shall precede the date of her expected delivery. Further, as per section 5(2) it is required that she has actually worked in an establishment of the employer from whom she is claiming maternity benefit for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery. The Central Government is responsible for administration of the provisions of the Act in Mines and in the Circus Industry, while the concerned State Governments are responsible for the enforcement of the Act in factories, plantations, and other
establishments. The Central Government has entrusted the responsibility of administration of the Act to the Chief Labour Commissioner (Central) in respect to the Circus Industry. Concerning payment, the Maternity Benefit Act states that a female employee shall be paid at the rate of her average daily wage by her employer when she is on maternity leave. It is, according to the Act, unlawful for an employer to discharge or dismiss an employee during or on account of maternity leave. If a woman is deprived of maternity benefit or medical bonus or discharged or dismissed during or on account of maternity leave, she can approach an Inspector appointed under the Act. She can also file her case in court within one year if she is unsatisfied with the orders passed by the Inspector, or if a larger question of law is involved. The Maternity Benefit Act makes clear that an employer shall not employ a woman during the six weeks immediately following her delivery. An employer shall also not make a woman do arduous work, or work that interferes with her pregnancy, during the month before her expected delivery.

As enlisted in the above paragraph, the law provides for its implementation to all the establishments irrespective of type of employment. But as the subsequent sections would show, beneficiaries of the Maternity Benefit Act, 1961 have approached the court for its implementation in their respective cases. Like the Section 5(2) which deals for the right to payment of maternity benefits has also put forth a criterion that a woman is entitled to maternity benefit only if she has worked with the employer from whom she claims maternity benefit for a period of not less than eighty days in the twelve months immediately preceding the date of expected delivery. Apart from such criteria which are specifically mentioned in the act, the contractual employment often has a fixed term after which the contract has to be renewed. Thus, the continuity of employment is broken, and entitlement becomes difficult to be claimed. It is worth noting how such beneficial legislation is either not implemented fully or a partial fulfilment of it is done taking the route of some of these loopholes. In fact, Chhachhi contends that, ‘Protective legislation for working women has always been viewed as double-edged-laws for providing women with better working conditions in response to their specific needs have often been used against them and at times become an obstacle to their work opportunities’ (1998, p. 21).

The judgements are analysed keeping in mind the different type of ‘employment contract’ namely, the permanent and contractual (also known as fixed term), and ‘employment status’ namely, regular, temporary, ad-hoc or on daily wage basis, either directly or through an agent, including a contractor, with or without the
knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise. The text of the judgements is analysed for the arguments which are put forth both for providing and not providing the maternity leave to women who are employed on contractual and temporary basis. Often the denial of maternity leave to such women are based on the statute governing maternity benefit (as there are various other acts apart from Maternity Benefit Act, 1961 which also provide maternity benefit like The Employees State Insurance Act, 1948; The Beedi Workers Welfare Fund Act, 1976; The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; The Advocates’ Welfare Fund Act, 2001; The Payment of Wages Act, 1936, to name a few) in the organisation where the women is employed.

The following judgement analysis would substantiate this argument further as often contractual employment is taken as a ground for not providing women with maternity benefit that is the paid leave and other associated benefit. Women are often compelled to leave their jobs on account of their pregnancy. D’Cunha (2018) has argued that the increased maternity benefit by the latest amendment can have unintentional effect such as replacement of women by male labour, reduction in women’s wages and labour force participation as employers have been made fully responsible for providing maternity benefits. On similar note, Uma and Kamath (2019) have also argued that women workers were particularly vulnerable to arbitrary and sudden termination when they declared their pregnancy citing reasons like poor performance, attendance, loss of projects, overall downsizing, etc. Many cases are not even recorded as they either do not have the capability to approach for justice or they settle for a compromise evading their immediate difficulties.

The structure of this paper is as follows: first section is case law on maternity benefit in which a detailed analysis of three case laws namely, first in Supreme Court, Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Ors.¹ in 2000, second and third in Delhi High Court, Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors.², and Manisha Priyadarshini vs. Sri Aurobindo College-Evening and Ors.³, in 2013 and 2020 respectively, is done to explicate the main argument made; then in the next section a general overview of the analysis of the case laws on maternity benefit with some statistics collected regarding the number of case laws is provided to further the main argument and finally a concluding remark is provided with a way forward. In this paper, three judgements are selected on the basis of their relevance for a detailed discussion,
while the thorough analysis of judgements covered in the timeline form the basis of the main argument put forth.

**The Case of Female Workers on Muster Roll**

In the year 2000, Supreme Court gave its landmark judgement in Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Ors., in which it held that maternity benefit should also be given to workers on muster roll like the regular workers. In this case, the appellant, Municipal Corporation of Delhi, used to grant maternity leave only to its regular female workers and not to the female workers on muster roll. Female workers of the latter category raised a demand for grant of maternity leave and the Delhi Municipal Workers Union, the union concerned, espoused their cause. Consequently, a reference was made to the Industrial Tribunal to adjudicate upon the question: ‘Whether the female workers working on muster roll should be given any maternity benefit? If so, what directions are necessary in this regard?’ The union claimed that the workers on muster roll were recruited perennially and were engaged on the same nature of duties and responsibility as regular workers, yet denied maternity benefit under the Maternity Benefit Act, 1961, while the Corporation argued that since the workers on muster roll were on daily basis, they could not be granted maternity leave under the Act. The Industrial Tribunal allowed the claim of the female workers (muster roll) and directed the Corporation to extend the benefits under the Maternity Benefit Act, 1961 to muster-roll workers who were in continuous service of the Corporation for three years or more. The Corporation’s writ petition and writ appeal were dismissed by the High Court. The subsequent litigations and the issues involved: whether the Corporation comes under the definition ‘undertaking’ and ‘industry’ or not as per the Industrial Dispute Tribunal Act?

Before the Supreme Court, the Municipal Corporation contended that since the provisions of the Maternity Benefit Act, 1961 had not been applied to the Corporation, such a direction could not have been issued by the Industrial Tribunal. The Corporation further contended that the benefits provided by the Maternity Benefit Act, 1961 could be extended only to work-women in an ‘industry’ and not to the muster roll women employees of the Municipal Corporation. The Supreme Court upheld the decision of Industrial Tribunal that Municipal Corporation was an industry under the Industrial Disputes Act, 1947 and all the statutory provisions applicable in Industrial Law including Maternity Benefit Act, 1961 would be applied. The judges were of the view that as per the
Maternity Benefit Act, 1961, there is no provision which says that only the regular employees are entitled to maternity benefit and not those on casual basis or on muster roll on daily-wage basis. The court finally affirmed what the Industrial Tribunal had directed the Municipal Corporation of Delhi, that is to grant the maternity leave to muster roll workers who were in service for more than or equal to three years. It is important to note the reasoning given in the judgement as it explains the underlying philosophy of maternity benefit. The excerpts:

A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. When 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 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. (Municipal Corporation of Delhi vs. Female Workers and Ors., para 30)

The Case of Contractual Paramedics in Government Hospitals

In Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors., the Delhi High Court itself has pointed out how the employees working on contractual basis are having grievances in terms of denial of entitlements of wages and other benefits, including the maternity benefits. However, they have taken a consistent view that the contract appointed employees could not be equated with regular employees. It is worth noting here that in the judgement it is mentioned how the Government of NCT of Delhi had issued an office order directing that the contract appointed
paramedics would be entitled to the various leaves including maternity leave for 135 days for delivery and paternity leave for 15 days. Further, the judgement gives the excerpts of a circular by the Government of NCT of Delhi on November 19, 2012, which was issued enclosing therewith ‘Proforma of consent’ to be accorded by those who were engaged on contract basis, condition No.10 which expressly said that Maternity Benefit Act, 1961 would be applicable to them.

The court had further cited the judgement by itself in 2013 in the writ petition Government of NCT of Delhi and Anr. vs. Suman Singh that a female contractual employee who is working for eleven years would be entitled to maternity leave, while a male contractual employee to paternity leave. However, the point to be noted here is that it neither went into the reasoning for taking the eleven years, and not ten or nine years. The discretion and consequently the arbitrariness in deciding the time period of the court on case-to-case basis without providing a reasoning would interfere with the laws uniform application and the precedent would be subsequently followed. The quote:

*A lady contractual employee who is working for 11 years would certainly be entitled to maternity leave and so would a male contractual employee to paternity leave.* (Government of NCT of Delhi and Anr. vs. Suman Singh, para 12)

The court has directed for one-time policy of regularisation in which existing contractual employees shall be considered for appointment to these new posts. It is worth noting that if such a direction could be made in some sectors of service, why the same has not been implicated in education sector where huge number of ad-hoc professors are appointed in Higher Education Institutions (HEIs) and consequently denied the other benefits including the benefit of paid maternity leave.

Despite the above mentioned point, the court in Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors. deciding on the writ petition of petitioners, who are paramedics in different hospitals established by the Government of NCT of Delhi 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 declared by a Victoria Massey casevi, directed that all contract appointed employees shall be paid wages by the Government of NCT of Delhi and shall be entitled to leave of all kinds including maternity and sick leave. It further directed that the
Government of NCT of Delhi to carry out a personnel requirement assessment in all its departments, sanction the number of posts as are necessary, thus, framing a one-time policy of regularisation amending the existing rules in different departments and considering the existing contractual employees for appointment to these new posts. The legal reasoning in this case thus came out to be that if personnel were recruited in service in accordance with the recruitment rules, they were entitled to regularisation.

The Case of Ad-Hoc Assistant Professors in University of Delhi

In Manisha Priyadarshini vs. Sri Aurobindo College-Evening and Ors., the petitioner, who was employed by the University of Delhi on ad-hoc basis since 2013 and completed tenure of more than five years with the University, of which tenure of four and a half years are at Sri Aurobindo-Evening College, the respondent No.1, through the writ petition sought directions quashing the impugned letter of termination dated 29.05.2019 issued by the respondent No.1 – the college, and the direction to the respondent No.1 to reinstate the petitioner to the post of Assistant Professor on ad-hoc basis from 20.03.2019. The court noted the petitioner’s counsel argument that the petitioner’s contract, which had a specific term of four months each, had been continuously renewed from 2014-2019, after a working day’s break, till the end of every academic session; but when she proceeded to go on her maternity leave, the college removed the petitioner from the rolls of the college. However, the single judge bench court dismissed in limine\textsuperscript{vii} the petition\textsuperscript{viii} stating that the petitioner’s contract with the respondent – college was with effect from 19.11.2018 to 18.03.2019, which had already ended, and she was no longer on the rolls of the respondent; therefore, no question arose for allowing the petitioner to resume her duties unless the period of contract was extended by the college.

When the petitioner filed an appeal against single judge bench judgement dated on 20.08.2019 via Manisha Priyadarshini vs. Aurobindo College-Evening and Ors., the Division Bench Court quashed the termination order and directed the respondents No. 1 & 2/College to appoint the appellant/petitioner forthwith to the post of Assistant Professor in the English Department on an ad-hoc basis till such time that the vacant posts were filled up through regular appointments.

The court specifically noted that the reason for the denial of the petitioner’s re-employment as an Assistant Professor on an ad-hoc basis in the respondents No.1
& 2/College, despite being the senior-most and no issues raised on her performance as a teacher, to be only that she applied for maternity leave from the respondents No. 1 & 2/College to take care of her newborn.

The judgement further mentioned the AC Resolution which stated the rule of the university which excluded ‘maternity leave’ from the list of admissible leaves, wherein the court itself had pointed out that there were other kinds of leave which could have been granted to her ‘such as half pay leave on medical grounds, casual leave and earned leave’ix.

The judgement still further mentioned how extension was granted during the entire five years of her service with at least one day break and that declining the extension was not on the basis of her proficiency and ability. It also noted how similar ad-hoc and guest appointments were continued thereby highlighting the arbitrariness and whimsicality of the administrative authority of the college. Unlike other cases discussed so far, the court in this case noted that denial of maternity leave could not be said to be on the argument that the ad-hoc appointment contract was not liable to extension as their very own engagement of the petitioner and other ad-hoc Assistant Professors made clear that the extension was also required and the need for appointment of professors was also there.

The court in its decision denied the ground for declining the extension of tenure to be legitimate, and stated that when the petitioner needed such leave, the denial would mean penalising a woman for choosing to become a mother together with her employment. The court also mentioned that it would violate the basic principle of equality before law and equality of opportunity enshrined in Articles 14 and 16 respectively and also her right to employment and protection of reproductive rights as a woman enshrined in Article 21 of the Constitution of India. The excerpts:

...Such a justification offered by the respondents for declining to grant an extension to the appellant/petitioner as she had highlighted her need for leave due to her pregnancy and confinement would be tantamount to penalizing a woman for electing to become a mother while still employed and thus pushing her into a choiceless situation as motherhood would be equated with loss of employment. This is violative of the basic principle of equality in the eyes of law. It would also be tantamount to
depriving her of the protection assured under Article 21 of the Constitution of India of her right to employment and protection of her reproductive rights as a woman. Such a consequence is therefore absolutely unacceptable and goes against the very grain of the equality principles enshrined in Articles 14 and 16. (Manisha Priyadarshini vs. Sri Aurobindo College-Evening and Ors., para 17)

However, it is to be noted that since the present appeal was not concerned with the regular appointment of the appellant/petitioner to the post of Assistant Professor with the respondents No. 1 & 2/College, the court did not decide upon it and merely mentioned that the process had already commenced, and the appellant/petitioner would be entitled to participate therein. The court finally quashed the termination order and directed Aurobindo College-Evening to reinstate Manisha Priyadarshini to the post of Assistant Professor in the English Department on an ad-hoc basis till such time that the vacant posts were filled up through regular appointment.

Socio-legal Observations on the Judgements

A careful analysis of judgements from Supreme Court of India and Delhi High Court was done from the year of passing of the Act that is 1961 till 2020. The judgements which involved the benefits of maternity as per the Maternity Benefit Act, 1961 or any related legislation having the provisions of it were analysed. The contractual appointment here covers all, variously referred as contract-basis, casual-basis, daily-basis, and ad-hoc basis. The number of cases in which the women involved were employed on contractual or casual or daily basis was numerically higher than the number of cases which involved other issues of contention. When compared with other cases, a clear trend could be seen that the majority of the women who did not get maternity benefit were either employed on contractual basis or casual or daily basis. They were either given termination letters when they applied for maternity leave or denied any maternity benefit at all, irrespective of the fact whether they were employed in public or private sector. However, the judgements related to public sector in which permanent employment was the case, the issues involved were clearly different namely, related to the calculation of period of maternity leave or amount of leave and the likes. Apart from these issues, the contractual employment cases had a common matter related to the contract period of their employment which either did not
coincide with the maternity leave sought or wrongfully terminated so that maternity benefit could not be availed on account of non-fulfilment of the criteria given in the Act.

From the above discussion, it is clear that despite the fact that court itself in Chief Secretary, Govt. of NCT of Delhi and Ors. vs. Satish Kumar and Ors.\textsuperscript{xi} interpreted that the Maternity Benefit Act, 1961 to be applicable to all establishments, irrespective of the nature of employment, 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.

Further as discussed above, though it had been settled in the Supreme Court of India that workers on muster roll having same responsibilities as regular workers of Municipal Corporation of Delhi were entitled to maternity benefits, yet a number of cases had been filed which involved contractual workers and employees being denied maternity benefit. Often in the contractual, non-regular, casual, or daily wages employment, the woman is terminated when she applies for the maternity leave as was also established in Bharti Gupta vs. Rail India Technical and Economical Services Ltd. (Rites) and Ors.,\textsuperscript{xii} K. Chandrika vs. Indian Red Cross Society and Ors.,\textsuperscript{xiii} Vishakha Kapoor vs. National Board of Examination and Ors.,\textsuperscript{xiv} Vandana Shukla vs. Indian Institute of Public Administration and Ors.,\textsuperscript{xv}, etc.

The court in many case laws is cautious of the real motive being different than what is cited for termination in case of probationary or contractual appointments, especially when an event has followed related to the person concerned which might warrant any other motive. This is clear when the court observes in National Board of Examinations vs. Rajni Bajaj and Ors.\textsuperscript{xvi} that it is ‘open to court to lift the veil’. The court has itself held that merely the form of order cannot be conclusive of its true nature.

Similarly, in many cases, the maternity leave was not given due to expiry of contract like in Artiben R. Thakkar vs. Delhi Pharmaceutical Sciences and Research University and Ors.,\textsuperscript{xvii} Kavita Yadav vs. The Secretary, Ministry of Health and Family Welfare Department and Ors.
Has Maternity Benefit Act, 1961 been Rendered Toothless by Contractual Employment?

Considering what women go through during their pregnancy, paid maternity leave and other facilities like crèche needs to be given to women irrespective of their type of employment and status of employment. The 2017 amendment made it mandatory crèche facility for every establishment having fifty or more employees and four visits to the crèche including the interval for rest allowed to her xviii. The requirement of minimum number of employees is important to note for two reasons: first, this makes the claim of women working in establishments with less than fifty women employees to crèche entitlement difficult to make, and at the mercy of employers in such organisations as they have no statutorily sanctioned requirement to be fulfilled. Also, this would discount the efforts to realise the objective of Maternity Benefit Act, 1961 ‘to protect the dignity of motherhood by providing maternity benefit for the fuller and healthier maintenance of woman and her child when she is not working’ xix. Second, that the Act is unclear on the eligibility as it does not specify on the number of female workers for crèche to be provided unlike The Factories Act, 1948 which mentions it to be thirty or more female workers as per section 48. However, this could also be read as progressive legislation since by making it only minimum criteria to be fifty workers, it would help in making childcare more gender-neutral.

There are other issues regarding the implementation of the crèche facility, as pointed out by D’Cunha (2018), that the Act neither defined common facilities nor gave guidelines governing crèche accessibility, infrastructure design standards, child enrolment and retention ages, competence standards for personnel and care. He has further argued that the crèche provisions do not consider the childcare support from the extended family in middle-class Indian families and the domestic workers help. He argued that the Act also overlooked the physical and monetary costs of transporting children to and from worksites nor did it make provision for subsidising the cost for childcare support by domestic worker. Even similar arguments were made by the respondents in the field study on the need of crèche. Not only the crèche facility but feeding room at every public place was suggested by many respondents. The maternity benefit which comprises paid leave and crèche facilities should be available to working women in each and every sector at each level. However, as it can be seen from the overall analysis of judgements, this is not the case despite legislation of a separate Act for the same namely, Maternity Benefit Act, 1961.
Most of the cases in which maternity leave was denied pertained to contractual appointments. This was the trend even after the landmark judgement by the Supreme Court in Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Anr (Supra) in which the apex court held that even workers on muster roll are eligible for maternity benefits. To take an example of HEIs where a trend of ad-hoc appointment to teaching positions is followed, thereby effectively denying women maternity benefits on account of being non-permanent employment status. The ‘Absorption Demand’ by the Assistant Professors of Delhi University is a testimony to the agonies faced by such ad-hoc female assistant professors. The process of regular appointment or what is called permanent employment, in which maternity benefits comes under other benefits to be given to the employee, is decreasing, and if at all they are happening, the process is extremely slow. In such a situation, the judgement in Manisha Priyadarshini vs. Aurobindo College-Evening and Ors., wherein the termination order was quashed and reinstatement on an ad-hoc basis as was done earlier. Such judgements are anything but a norm. They come as exceptions and often leave us to think as to why at all a statutorily given right needs to be enjoyed by fighting a lawsuit? There can be no straight jacket answer to this. The Act puts the obligation of payment of maternity benefit solely on employer and an employer running a business wants to increase its profits. The measures adopted for increasing their profits involve reducing their expenditure and payment of maternity benefit in the form of paid maternity leaves is an expenditure they want to surely cut on. Since this cannot be done statutorily, the mechanism is not direct but through some loopholes, in this case it is a contractual employment of short durations. So, then, are contractual employments rendering Maternity Benefit Act, 1961 toothless for formal workers? Indeed, the trend shows some evidence to answer this in the affirmative.

Table 1 below illustrates the number of cases related to maternity benefit in Supreme Court and Delhi High Court as given on Manupatra from the year 1961-2020.
TABLE 1: NUMBER OF CASES IN SUPREME COURT AND DELHI HIGH COURT (1961-2020)

<table>
<thead>
<tr>
<th>Name of the Court</th>
<th>Total No. of Cases for Word Search ‘Maternity Benefit’</th>
<th>No. of Cases Actually related to Maternity Benefit</th>
<th>Employer/Maternity Benefit Granting Authority</th>
<th>Nature of Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Public Sector</td>
<td>Private Sector</td>
</tr>
<tr>
<td>Supreme Court of India</td>
<td>56</td>
<td>8</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Delhi High Court</td>
<td>69</td>
<td>34</td>
<td>31</td>
<td>3</td>
</tr>
</tbody>
</table>

From Table 1 it is clear that most of the cases in Delhi High Court involve the Public Sector as an Employer/Maternity Benefit Granting Authority and contractual type of employment.

The point to be noted is that, contrary to the assumption that employees are granted maternity benefits in public sectors easily as compared to private sector, here we see a trend that majority of the cases involved the public sector as an employer. The point further to be noted is that a mode of contractual employment is increasingly taken in public sector where most of the contention related to maternity benefit relates to. All these strengthen the main argument that contractual employment is rendering Maternity Benefit Act, 1961 toothless.

The Maternity Benefit Act, 1961 categorically puts the burden of maternity benefit to be paid to women employees on the employers. From hindsight, it is logical to assume that the employers, whether in public sector or private sector, are always trying to reduce their cost and expenditure. In a mixed economy like India, though the government is guided by welfare of its citizen, it has also embarked on downsizing economy and efficiency in its governmental functioning and increasingly seeing the viability of its economic undertakings, which makes them look for ways to reduce cost and expenditure. In India, the social security provisions are given in various statutes comprising both pre-independence as well as post-independence statutes. To name a few, The Factories Act, 1881; The
Mines Act, 1901; The Workmen’s Compensation Act, 1923; The Trade Union Act, 1926; The Payment of Wages Act, 1936; The Employees’ State Insurance Act, 1948; The Industrial Disputes Act, 1947; The Industrial Employment (Standing Orders) Act, 1946; The Factories Act, 1948; The Minimum Wages Act, 1948; The Employees’ Provident Fund and Family Pension Fund and Deposit-Linked Insurance Fund Act, 1952; The Payment of Bonus Act, 1965; and The Maternity Benefit Act, 1961. Approaches to Social Security as per ILO is, ‘The underlying idea behind social security measures is that a citizen who has contributed or is likely to contribute to his country’s welfare should be given protection against certain hazards’xxiv. Though there is no dearth of social security legislations in India, as the statutes listed out would show, yet the workers are denied in many instances. As in this case, one would discern from the analysis of judgement that even court has noted that regularisation of employees needs to be done by proper manpower assessment and giving them social securities. However, we see that contractual employment as a type of employment is increasingly being opted by the employers in every sector of economy, be it public or private, where the employer has found out a loophole to avoid such social security payments like maternity benefit which tend to reduce the burden on them. As explained through the three case laws, Maternity Benefit Act, 1961 is rendered toothless with the contractual type of employment.

**Conclusion**

The Maternity Benefit (Amendment) Act, 2017, which provided for twenty-six weeks of paid maternity leave, though progressive in nature, has not been able to fully address the issues associated with its implementation aspect as discussed in the paper by analysing three case laws from Supreme Court and Delhi High Court judgements for the period ranging from 1961 till 2020. Through this paper, it has been attempted to analyse how the type of ‘employment contract’ namely, the permanent and contractual type (also known as fixed term) and ‘employment status’ (whether regular, temporary, ad-hoc or on daily wage basis and casual basis, etc.) involved in the cases has affected the claim to their maternity benefit, and often denial of maternity benefit, if the employment type is contractual and employment status is temporary, ad-hoc, daily wage basis or casual basis. Both the government and private employers are parties to the judgements analysed, and both have denied maternity benefits on the ground of contractual employment.

This paper argues for a need of legislative amendment by inclusion of text clearly
mentioning the employment types and statuses in section 3 (o), which defines ‘woman’ as a woman employed, whether directly or through any agency, for wages in any establishment, so that its reading is not left to the employer to decide and giving a scope of discretion to deny maternity benefit. This paper also argues that the judgement pronounced in Manisha Priyadarshini vs. Aurobindo College-Evening and Ors. related to maternity benefit claim of an Assistant Professor working on ad-hoc basis is a landmark judgement for the contractual employees who are often denied maternity leave on the ground of their contractual employment type and ad-hoc, temporary, casual, daily basis of employment status. This paper has also attempted to show through the excerpts of the judgements how contractual period has been used as a tool to cut down on the maternity benefit entitlement of working women. This paper has argued overall that keeping in line with the objectives of the Maternity Benefit Act, 1961 ‘to protect the dignity of motherhood’ would be achieved only when every working woman is provided with maternity benefit irrespective of type and status of employment.

Notes:

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

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


iv Muster roll worker is a worker on daily wage rate basis whose attendance register is maintained by the establishment.

v The paramedics are specialist healthcare professionals who provide emergency medical treatments and work with diagnostic tools like X-rays and ultrasound etc., in testing labs. In this case, the paramedics referred to are working as Nursing Attendants, O.T. Technicians, Laboratory Assistants, E.C.G. Technicians and Junior Radiographer in different hospitals established by the Government of NCT of Delhi.

vi On July 23, 2008, deciding O.A. No. 1330/2007, the Full Bench of Tribunal held that contract employees working in various hospitals established by the Government of NCT of Delhi as also Municipal Corporation of Delhi would be entitled to wages at par with the regular employees including increments. However, this decision was modified by a Division Bench of this Court on May 22, 2009, when WP(C) 8476/2009 Government of NCT of Delhi vs. Victoria Massey was decided. The Division Bench held that contract employees would be entitled to wages in the minimum of the pay scale applicable to regular employees but not increments. This decision was challenged in Supreme Court but was unsuccessful, consequent upon which on November 19, 2012, the Government of NCT of Delhi had issued an order which is challenged in the present case.
The Latin word *in limine* mean at the threshold. Here, used by the High Court as it did not even consider the case worthy of being discussed in the first place.

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ibid at note 3

See Table 1

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


As per Section 11A, sub-section (1) and (2) of Maternity Benefit (Amendment) Act, 2017.

The objective of Maternity Benefit Act, 1961 as described by Labour Commission Government of NCT of Delhi.

In the field study, assistant professors, who were ad-hoc appointees in various colleges of the Delhi University, were interviewed, who were running the Absorption Campaign during January-February, 2020 near the Vice Chancellors’ house where the demand was essentially to regularise them and give them the social security benefits prominently the maternity benefit.

According to the Ministry of Labour and Employment, formal workers are all those workers who are employed in an enterprise with ten or more workers. It also includes all government workers as formal workers.

Total no. of cases for word search ‘Maternity Benefit’ has been taken from Manupatra. Though same word, search has been done for triangulation from two other sources namely, SCC Online and India Kanoon, which revealed different number of cases. Through a careful reading of the same, it was ascertained that only the number of cases which were given on Manupatra were relevant for this study.

In a field study done on ‘Maternity Benefit in Higher Education Institutions in India’, the respondents mentioned that maternity benefit was easily available to public sector employees than the private sector employees.

REFERENCES:


Court Cases:


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


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