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An Institute for Civil Services



THE THIRD CHILD NORMS

Gist of **RStv** **Debate**
RAJYA SABHA

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THE THIRD CHILD NORMS

CONTEXT

The Uttarakhand High Court passed an order denying maternity leave to women in government jobs in case they have a third child. In an order dated September 17, Chief Justice Ramesh Rangnathan and Justice Alok Kumar Verma of the Uttarakhand High Court quashed an earlier order by a single bench. The double bench of the High Court overruled the single bench order accepting the contention of the state government, which had challenged the single bench order issued by Justice Rajeev Sharma in July 2018. The single bench order had been delivered on a PIL filed by Haldwani-based nurse Urmila Masih challenging a government rule not to provide maternity leave to women in case of a third child. Masih had said that the government's rule to not provide maternity benefits in case of a third child violates Article 42 of the Constitution of India and Section 27 of the Maternity Benefit Act. The government challenged the order of the single bench by filing a special appeal and contending that the petitioner could not claim benefits of the maternity act as she already had two children and could not be granted maternity leave for her third child in consonance with the "second provision of the fundamental rule 153".

BACKGROUND

- The Maternity Benefit (Amendment) Act, 2017 increased the Maternity leave from 12 weeks to 26 weeks for women employed in factories, shops, mines and establishments with more than 10 employees and other notified establishments. During this period, women employees are entitled to full wages. However, in cases where a woman has two or more children, the maternity leave is limited to 12 weeks only.
- The policy is problematic because it imposes the liability on the employer to pay wages to absent employees. Increasing concerns have been raised that this may worsen the labour market for women.
- The concern raised is that the employers will begin to discriminate against women of childbearing age, both in hiring as well as in salaries, since this group is entitled to the benefit of paid family leave and is most likely to use it.
- The solution could lie in imposing the cost of the paid leave policy on employees through a tax. It means imposing tax only on employees to minimize any additional costs on the employer when providing paid leave.
- The paid leave law must be gender-neutral and thus available to both fathers and mothers.

EDITED EXCERPTS FROM THE DEBATE



How rights of mother and child conflict with the Uttarakhand HC judgment?

- **Violation of Reproductive Right:** Every woman in the country has right to reproduction. It is the prerogative of woman how many children she wants to have. Denying women the maternity benefits only on the ground of third child is arbitrary and in violation of the fundamental right to live a life with dignity.
- Violation of spirit and principle of Maternity Benefits Act that aims to take care of the health issues of child and mother and reproductive rights of women by rules brought in by Uttarakhand government denying maternity benefits to women bearing third Child. The HC judgment has endorsed the arbitrary executive action.
- **Social Taboo:** It promotes stigma being attached to a women giving birth to third child. It is highly denigrating and has drastic social implications.



How to strike a balance between the population control and rights of mother and children?

- **Incentivize Birth Control:** Some innovative measures like incentivizing/dis-incentivizing birth control should be established instead of denying the rights of child and mother because at pregnancy stage a balanced nutrition is fundamental for overall development of child. When a child is already born and denial of good nutrition to him/her will result in malnourished children and then country will have to spend more on them than saving this way. For this reason maternity leave was provided after much deliberation.
- **Easy Availability of contraceptives for both men and women:** It has been found in many case studies and surveys that women often don't have a choice to pregnancy and they don't have access to contraceptives. Therefore, to strike a balance between population control and reproductive rights of women easy availability of contraceptives is indispensable.



What is the law status regarding the multiple children?

- Maternity Act does not say anything that benefits should be given for a certain number of children. However, health is a state subject and every state is entitled to determine the benefits to its subjects. What benefits a state is providing to its subject are not applicable at national level.
- Uttarakhand state in order to check population control has brought in the rule not to extend maternity leave to women bearing third child.
- Similar measures were also brought in by other states like Assam in its draft population policy proposes that those with more than two children will not be able to get government jobs or avail benefits like government housing or contest local body elections.



What will happen to the mothers who have availed the maternity benefits?

- The HC judgment can't have any retrospective effect. The women with third child enjoying benefits under the law can't be deprived of them this stage. They will continue to enjoy the benefits. The judgment is given by double bench of High Court. The decision will likely be challenged in Supreme Court.
- The judgment is going to create immense pressure and trauma in the women who are going to give birth to their third child.



How Government does draw the line for maternity benefits?

- This judgment is not saying anything on the reproductive right of women. It is just on the maternal benefits given to mothers bearing third child. The women still have right to third or fourth child. By allowing the maternity leave to mothers for third child will actually mean that government is endorsing 'three child policy' that goes against the government measures of controlling population explosion.
- The states of Uttarakhand, Uttar Pradesh, Bihar and Jharkhand have higher fertility rate and under this backdrop no government can think of providing maternity benefits to women bearing third child.
- Incentivizing/dis-incentivizing birth control must be adopted for better family planning.
- Iran as an option to Saudi Arabia.



From the perspectives of population explosion and strain on economy how the issue of family planning without encroaching on rights of women and children can be addressed?

- **Spread Awareness:** The objective of population control can't be solved by stopping maternity benefits to mothers bearing third child but by increasing the awareness of reproductive measures. It has been brought in that due to social pressures women conceive. The questions have been raised whether women have access to contraceptives. Do women have a choice to third pregnancy? Most of the women are unaware of the benefits under Maternity Act.
- **Improve Socio-economic and Gender Equality:** Family planning and other development indicators are inextricably linked with the socio-economic and gender equality in our country. Poor health of child and women can become a liability for the state in the longer run.
- **Behavioral Changes:** There are many families having two daughters and they want third or fourth child till they don't get a male child. At some level and at some point mentality and mindset of people should be changed.
- **Incentivizing Birth Control:** The benefits in the form of leave, financial aids etc. to both husband and wife will actually not be a financial burden on the state and national exchequer as it will serve twin objectives of population control and healthy children.
- Incentivize Corporates so that they should not feel burdened under the Maternity Benefits Act.
- The paid leave law must be gender-neutral and thus available to both fathers and mothers.

- **Holistic Approach:** It is a complex process and we must address the root causes. If women are going for third child due to particular gender preference or religion based norms then gender awareness can solve the problem. The programs like beti bachao and Beti Padhao can be effective or if women are forced for pregnancies more strict laws should be made. You must ensure the strict adherence to sex determination laws. If it is due to some other causes we must address the problem accordingly. In rural areas a women is giving birth to five or seven children and the birth is unchecked. The government has not looked into the unemployed women where there are no checks on births.

