



INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW

An International Open Access Double Blind Peer Reviewed, Referred Journal

Volume 5 | Issue 5 | 2026

Art. 22

Maternity Protection Beyond Leave: Preventing Professional Disadvantage After Childbirth in India

Riddhi Garkoti

Law Student,

4th Year, BA.LL.B.,

Maharashtra National Law University, Nagpur

Recommended Citation

Riddhi Garkoti, *Maternity Protection Beyond Leave: Preventing Professional Disadvantage After Childbirth in India*, 5 IJHRLR 246-256 (2026).

Available at www.ijhrlr.in/current-issues/.

This Article is brought to you for free and open access by the International Journal of Human Rights Law Review by an authorized Lex Assisto & Co. administrator.

For more information,
please contact submission.ijhrlr@gmail.com

Maternity Protection Beyond Leave: Preventing Professional Disadvantage After Childbirth in India

ABSTRACT

This paper examines maternity protection in India beyond the formal grant of leave, with particular attention to the risk that a woman may return to employment but lose the functional status, authority, responsibilities, appraisal opportunities, or career trajectory attached to her earlier role. The analysis is anchored in the Delhi High Court's decision in Rakhi Bisht v. Union of India and Another, W.P. (C) 14785/2024, decided on 31 August 2026, and develops the legal issues identified in the supplied research material. The central question is whether the prohibition against varying a woman's conditions of service to her disadvantage under section 12(1) of the Maternity Benefit Act, 1961 can protect substantive professional status, rather than merely salary, designation, and continuity of employment. It argues that maternity protection should be understood as a continuity guarantee: lawful absence for pregnancy and childbirth should not become a pathway to hidden demotion or exclusion from professional advancement. At the same time, the paper recognizes an important policy tension. Research on India suggests that employer-borne costs and poorly designed leave mandates may create labour-market disincentives for women of childbearing age. Effective reform therefore requires more than increasing leave duration. The paper concludes that the emerging judicial approach can strengthen substantive equality if it is implemented through clear rules that distinguish genuine business restructuring from maternity-linked disadvantage.

KEYWORDS

Career; Equality, Maternity, Reproductive, Workplace.

INTRODUCTION

Maternity protection occupies a distinctive place in labour law because it concerns both the worker's employment relationship and the biological and caregiving realities surrounding pregnancy and childbirth. A maternity benefit is not simply paid time away from work. It is a legal mechanism intended to prevent a woman from having to choose between her health, motherhood and

economic security. In India, this objective has been expressed through legislation, constitutional principles and judicial interpretation. Yet the legal problem is increasingly moving beyond the question whether maternity leave is granted at all. A woman may receive the prescribed leave, retain her salary and return to the same formal designation, while nevertheless losing the substance of the position she previously held.¹

The supplied research document presents this problem through Rakhi Bisht's challenge to post-maternity reassignment. The petitioner, a Chartered Accountant with approximately fourteen years of professional experience, had been appointed as Manager, Accounting at a monthly salary of ₹2,60,000. She alleged that after disclosing her pregnancy she was moved to another team, took maternity leave in December 2023, and on returning in July 2024 was assigned to treasury work which she regarded as substantially inferior to her managerial accounting role. The judgment records that she later resigned and obtained employment elsewhere. The High Court nevertheless treated the alleged loss of professional standing as a legal issue worthy of examination and, ultimately, awarded compensation.²

The importance of the decision lies in its treatment of section 12(1) of the Maternity Benefit Act, 1961. The provision does not merely prohibit dismissal during protected maternity absence; it also prohibits an employer from varying to a woman's disadvantage any condition of her service. The interpretive question is therefore whether "condition of service" can encompass the substantive attributes of a job—authority, managerial responsibility, reporting position, professional standing and promotion prospects—even where the employer leaves the salary and designation untouched.

This paper argues that a narrow reading would undermine the protective purpose of maternity legislation. If an employer can comply formally by preserving a title and salary while removing the responsibilities that give those terms professional meaning, maternity protection becomes vulnerable to circumvention. At the same time, the paper does not assume that every post-leave change is unlawful. Organisations may legitimately restructure, abolish positions, redistribute functions or alter reporting

¹ Rakhi Bisht v. Union of India and Another, W.P. (C) No. 14785/2024, decided on 31 Aug. 2026 (Delhi HC).

² The Economic Times, "Woman went on maternity leave as a manager returned to find a clerk role waiting for her," 2 Sept. 2026.

arrangements for reasons unrelated to maternity. The legal task is to identify when such changes are genuine and when they operate as a maternity-linked disadvantage.³

The discussion therefore proceeds on two levels. First, it analyses the statutory and constitutional foundations of maternity protection. Secondly, it considers the institutional consequences of stronger protection, including the concern that the financial burden of maternity leave can itself affect employers' incentives to hire or retain women. A sustainable maternity regime must protect women from discrimination without unintentionally reinforcing the expectation that women of childbearing age are more costly employees.⁴

The paper adopts a doctrinal and socio-legal approach. It uses the supplied judgment material as the principal case-study source, supplemented by legislation, leading constitutional decisions, international standards and recent academic research. The aim is not to reproduce the judgment, but to assess the legal principle emerging from it and its implications for future maternity-protection policy.

LITERATURE REVIEW

Scholarship on maternity protection in India reveals a recurring gap between formal entitlement and practical access. One strand of literature treats maternity leave as a labour-rights and social-protection measure, emphasising maternal health, infant care, income security and continuity of employment. Another strand asks whether the design of maternity law can itself produce a "motherhood penalty" by increasing the expected cost of employing women. A third, increasingly important strand examines the quality of workplace reintegration: whether women are able to return to meaningful employment with the same professional status and prospects.⁵

Dadke's feminist analysis is particularly useful because it questions the assumption that statutory maternity benefits automatically produce substantive equality. Her analysis

³ Suma Dadke, "Reading Between the Lines: Maternity Benefit Law in India and Whom It Truly Benefits," 31(2) Indian Journal of Gender Studies 2024.

⁴ Saheli Bose & Somdeep Chatterjee, "Motherhood Penalty Revisited: Impacts of Maternity Leave Mandates on Nature of Employment Contracts," 60(9) Journal of Development Studies 1394-1411 (2024).

⁵ Saheli Bose & Somdeep Chatterjee, "Motherhood Penalty Revisited: Impacts of Maternity Leave Mandates on Nature of Employment Contracts," 60(9) Journal of Development Studies 1394-1411 (2024).

examines how legal regulation of motherhood can interact with patriarchal expectations and corporate practices. This perspective suggests that maternity law should be assessed not only by the benefits it formally provides but also by the assumptions about women's caregiving roles that may be reproduced through its design.⁶

Empirical and organisational research adds a second dimension. A 2025 qualitative study of female employees and HR managers in India found that maternity policy interacts with awareness of rights, managerial support, employability concerns and family support.⁷ The study is important for the present inquiry because it demonstrates that legal entitlement is embedded in workplace relationships. A right that exists on paper may be weakened if employees fear career consequences or if managers treat maternity absence as an organisational inconvenience.⁸

RESEARCH METHODOLOGY

This research adopts a qualitative doctrinal methodology supplemented by a focused socio-legal literature review. The primary source is the judgment material supplied by the user concerning W.P. (C) 14785/2024, together with the final decision in *Rakhi Bisht v. Union of India and Another*, decided by the Delhi High Court on 31 August 2026. The case is treated as the central unit of analysis because it directly addresses post-maternity role reduction, section 12 of the Maternity Benefit Act, constitutional rights and the limits of writ jurisdiction against a private employer.

DISCUSSION AND ANALYSIS

1. From leave entitlement to continuity of professional status¹¹

The conventional understanding of maternity protection begins with absence from work. Section 12 of the Maternity Benefit Act, however, indicates that the legislature contemplated more than the preservation of employment in the most basic sense. It makes

⁶ Purna Banerjee, Shreya Biswas & Debojyoti Mazumder, "Maternity Leave and Labour Market Outcomes," *Journal of Economic Behavior & Organization*, Vol. 247 (2026), 107602.

⁷ Vrashali Khandelwal & Divya Ravindranath, "Maternity protection for informal workers in India: Possibilities and limits of employer and state action," 26(2) *Global Social Policy* 264–283 (2026).

⁸ *Rakhi Bisht v. Union of India and Another*, W.P. (C) No. 14785/2024, decided on 31 Aug. 2026 (Delhi HC).

it unlawful to dismiss a woman during protected maternity absence and, in the same sentence, prohibits variation of conditions of service to her disadvantage.⁹ The second limb is significant because it addresses the quality of the employment relationship.¹⁰

The High Court's reasoning in *Bisht* treats this language purposively. The judgment observes that a woman may remain on the payroll, retain the same salary and continue to use the same designation, yet suffer a substantial diminution in authority, responsibility and professional prospects. Such an arrangement may constitute what can be described as "formal continuity without substantive continuity." The legal danger is obvious: if the statute protects only the visible incidents of employment, an employer could comply with its letter while defeating its purpose.¹¹

This approach is consistent with the character of maternity legislation as beneficial social legislation. In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, the Supreme Court linked maternity benefit to Article 42 and held that the constitutional commitment to just and humane conditions of work is relevant when examining denial of maternity benefits.¹⁰ The decision demonstrates that maternity protection cannot be detached from the constitutional conception of humane work.¹²

The same reasoning is reinforced by the constitutional development of dignity and reproductive autonomy. In *Suchita Srivastava v. State (UT of Chandigarh)*, the Supreme Court recognised reproductive choice as an aspect of personal liberty under Article 21.¹³ Although that case concerned reproductive decision-making rather than employment, its conceptual importance is considerable. A legal system that recognises reproductive autonomy must also consider whether exercising that autonomy carries an employment penalty.

2. Equality and the problem of indirect disadvantage

Articles 14 and 15 provide a second foundation. Article 14 is concerned with arbitrary state action and equal protection, while

⁹ *Suchita Srivastava v. State (UT of Chandigarh)*, (2009) 9 SCC 1.

¹⁰ *Rakhi Bisht*, supra note 1.

¹¹ *St. Mary's Education Society v. Rajendra Prasad Bhargava*, (2023) 4 SCC 498; *Army Welfare Education Society v. Sunil Kumar Sharma*, (2024) 16 SCC 598.

¹² The Maternity Benefit Act, 1961, § 27.

¹³ *Federal Bank Ltd. v. Sagar Thomas*, (2003) 10 SCC 733.

Article 15 prohibits discrimination by the State on specified grounds including sex. Article 42 expressly directs the State to secure just and humane conditions of work and maternity relief. The combined constitutional framework supports substantive, rather than merely formal, equality.¹⁴

In the employment context, the central question is not necessarily whether an employer expressly says that a woman is being demoted “because she took maternity leave.” Discrimination can be difficult to prove when adverse decisions are explained through neutral language: restructuring, redistribution, business needs, role realignment or performance management. This is why the quality of contemporaneous evidence matters. A genuine restructuring should normally leave an evidentiary trail that is coherent across internal communications, organisational charts, role descriptions and treatment of similarly situated employees.¹⁵ The Bisht judgment is notable because it pays attention to the absence of a consistent explanation concerning the petitioner’s role.¹⁶ This does not mean that every inconsistent managerial explanation establishes discrimination. It does, however, demonstrate why employers should document significant changes affecting an employee who is pregnant or on maternity leave.¹⁷ Documentation protects both sides: it can reveal discriminatory motive where it exists and establish legitimate business reasons where it does not.

3. *Writ jurisdiction against private employers*¹⁸

A further difficulty is institutional. The employer in Bisht was a private commercial entity and therefore was not “State” under Article 12. Ordinarily, contractual employment disputes are governed by private law. The Supreme Court has repeatedly cautioned against using Article 226 to enforce purely private service contracts.¹⁹

The distinction becomes more nuanced where the employee seeks enforcement of a statutory obligation rather than a contractual promise. Section 27 of the Maternity Benefit Act gives

¹⁴ Whirlpool Corporation v. Registrar of Trade Marks, (1998) 8 SCC 1; Radha Krishan Industries v. State of Himachal Pradesh, (2021) 6 SCC 771.

¹⁵ Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759.

¹⁶ Whirlpool Corporation v. Registrar of Trade Marks, (1998) 8 SCC 1; Radha Krishan Industries v. State of Himachal Pradesh, (2021) 6 SCC 771.

¹⁷ Saheli Bose & Somdeep Chatterjee, *supra* note 5.

¹⁸ Rakhi Bisht, *supra* note 1.

¹⁹ Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.

the statute overriding effect over inconsistent contracts or agreements, while preserving more favourable benefits. In *Federal Bank Ltd. v. Sagar Thomas*, the Supreme Court identified circumstances in which a writ may lie against a private body, including where it is subject to a statutory duty or positive obligation of a public nature.²⁰

4. Alternative remedy and Article 226

The existence of a statutory labour remedy does not automatically eliminate Article 226 jurisdiction. The Supreme Court in *Whirlpool Corporation v. Registrar of Trade Marks* and later in *Radha Krishan Industries v. State of Himachal Pradesh* recognised established exceptions, including enforcement of fundamental rights, breach of natural justice, lack of jurisdiction and challenges to vires.²¹ The Bisht judgment applied this principle because the petition raised issues extending beyond an ordinary service dispute.

FINDINGS

The research produces seven principal findings.

First, maternity protection in India is moving from a leave-centred model towards a broader continuity model. The statutory phrase prohibiting disadvantageous variation of service conditions provides a textual basis for protecting more than dismissal and salary. The Bisht decision gives substantive meaning to this protection by considering professional authority, responsibilities and advancement.

Second, formal equality is inadequate where the employee's designation and pay remain unchanged but the substance of the position is diminished. A legal framework focused only on salary and title would allow employers to create a functional demotion without an express demotion.

Third, the constitutional framework strengthens the purposive interpretation of maternity legislation. Articles 14, 15, 21 and 42 collectively support equality, dignity, reproductive autonomy and humane working conditions. Maternity protection is consequently connected to the broader constitutional objective of enabling women to participate in employment without being penalised for

²⁰ *Federal Bank Ltd. v. Sagar Thomas*, (2003) 10 SCC 733.

²¹ *Radha Krishan Industries v. State of Himachal Pradesh*, (2021) 6 SCC 771.

motherhood.

Fourth, the distinction between contractual rights and statutory obligations is central to the availability of constitutional review. A private employer may ordinarily be outside the scope of Article 226 for a purely contractual service dispute. The position changes where the employee seeks enforcement of a statutory maternity obligation backed by welfare legislation and public-law duties.

Fifth, stronger maternity protection must be accompanied by better financing and institutional design. Recent empirical research suggests that employer-borne costs associated with extended paid leave can have adverse labour-market effects for women of childbearing age. This does not justify reducing maternity benefits; it demonstrates the need to distribute their cost more broadly.

RECOMMENDATIONS

1. Adopt a statutory return-to-work protocol. The Central Government should prescribe minimum standards under the Code on Social Security for returning employees, including preservation of equivalent professional status and reasonable continuity in duties.
2. Define substantive equivalence. Rules should clarify that equivalence is not determined solely by salary or job title. Reporting level, managerial authority, decision-making responsibility, professional skill requirements, team supervision, appraisal access and promotional prospects should be considered.
3. Require reasons for significant role changes. Where an employee's role is materially changed during maternity leave, the employer should maintain written reasons and relevant organisational records. This would assist legitimate restructuring as well as future adjudication.
4. Protect appraisal and promotion. Maternity absence should not, by itself, result in a missed appraisal, automatic exclusion from promotion, or adverse performance assessment. Where a cycle genuinely cannot be completed, employers should use a neutral mechanism that does not penalise the period of protected absence.
5. Establish time-bound grievance procedures. Employers

covered by maternity legislation should provide a designated internal officer or committee for maternity-related employment grievances, with clear timelines and protection from retaliation.

6. Strengthen crèche and lactation support. The legal requirement of crèche facilities should be accompanied by disclosure, accessibility and functionality standards. Mere availability of a nominal facility should not be treated as full compliance.

CONCLUSION

Maternity protection is often described as a right to leave, but the deeper legal purpose is to ensure that motherhood does not become a reason for exclusion from economic and professional life. The contemporary Indian position increasingly supports this broader understanding. The Maternity Benefit Act, 1961, read with Articles 14, 15, 21 and 42 of the Constitution, provides a foundation for protecting women against employment consequences that make the exercise of maternity rights professionally costly.

The significance of *Rakhi Bisht v. Union of India* lies in its treatment of substantive professional status. The decision shows why an employer cannot necessarily satisfy maternity law merely by retaining a woman's salary and designation. Where the practical substance of her role—authority, responsibility, reporting position or advancement—is materially reduced because of maternity, formal continuity may conceal substantive disadvantage. The judgment therefore contributes to an important shift from protecting the existence of employment to protecting the quality and continuity of employment.

However, legal protection must be accompanied by sound policy design. Research indicates that extended employer-funded leave can have unintended effects on women's employment opportunities, while informal workers remain insufficiently covered by formal maternity law. A mature maternity-protection framework must respond to both problems. It should preserve generous protection for health, childbirth and caregiving while distributing the economic cost more fairly and extending social protection beyond conventional employment.

The appropriate goal is consequently neither unlimited employer discretion nor rigid protection against every organisational change. It is a principled return-to-work guarantee. Genuine

restructuring should remain possible, but maternity absence should not become a convenient trigger for demotion, professional marginalisation or lost advancement. Transparent decision-making, documented reasons, substantive equivalence, protected appraisal and promotion, accessible grievance mechanisms, childcare support and pooled financing can turn maternity protection from a formal entitlement into an effective equality guarantee.