

REDEFINING THE CONCEPT OF FAMILY - A CASE COMMENT ON DEEPIKA SINGH V. CENTRAL ADMINISTRATIVE TRIBUNAL AND OTHERS

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INTRODUCTION

Family is one of the most important and oldest social institutions in the society. The Concept of Family is a deeply embedded social construct that holds a significant value in our society over a long time. The concept of family has undergone a notable transformation and is still transforming. Once defined by traditional roles and rigid structure, the modern definition of family is transcending different customary boundaries and is embracing many new diverse forms. In this case, the Supreme Court discussed and widened the definition of family under Indian Law. The Apex court discussed that atypical families and same-sex couples are deserving of equal protection under the law and benefits available under social welfare legislation.

FACTS OF THE CASE

The appellant was, at the material time, working in the post of Nursing Officer at the Post Graduate Institute of Medical Education and Research (PGIMER) in Chandigarh since her appointment on 25 November 2005. 18 February 2014, the appellant married Amir Singh. The spouse of the appellant, Amir Singh, was married before his marriage with the appellant and his first wife passed away on 16 February 2013. The spouse of the appellant already had two children from the first marriage, one male child born on 1 February 2001 and one female child born on 3 March 2005. On 4 May 2015, the appellant filed an application to the Authority at PGIMER to register the names of two children of her spouse to her official service record. On 4 June 2019, Appellant had her first biological child. Appellant applied for maternity leave on 6 June 2019 for the period from 27 June 2019 to 23 December 2019. 3 July 2019, authorities at PGIMER sought clarification from the appellant regarding her having two surviving children. The Appellant submitted a detailed reply on 24 July 2019. Authorities at PGIMER rejected her grant for leave on 3 September 2019, on the grounds that she had two surviving children and had availed of childcare leave earlier for the two children born from the first

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marriage of her spouse. Authorities at PIGMER stated that according to The Central Civil Services (Leave) Rules 1972¹, the child born by her will be considered as her third child and her application for maternity leave is inadmissible. Aggrieved by the decisions, the appellant moved to the Central Administrative Tribunal at its Chandigarh Bench (CAT). 29 January 2021, CAT upheld the decision of the respondents to reject her maternity leave. The Appellant moved to the High Court in a writ petition under Article 226² of the constitution. 16 March 2021, the High Court dismissed the petition on the ground that there is no illegality in the judgement of the CAT.

ISSUES BEFORE THE COURT

1. Whether the definition of ‘family’ under the Central Civil Services (Leave) Rules, 1972³ is limited to a traditional nuclear family.
2. Whether the denial of maternity leave to a woman who has already availed childcare leave for her stepchildren would violate her right to equality under Article 14⁴ of the Indian Constitution.

ORDER OF THE COURT

In the Judgement, the Supreme Court interpreted the definition of ‘family’ under the Centre Civil Services (Leave) Rules, 1972⁵, to be gender-neutral and inclusive of all forms of families, including single-parent families, same-sex couples, stepfamilies etc⁶. The Apex Court held that the definition of family is not limited to its traditional interpretation as a unit consisting of a husband, wife and their biological children. The Bench reasoned that the traditional notion of family is outdated, discriminatory and does not consider the reality of many families, where children may be born out of wedlock, stepchildren may be a part of the family, or queer couples may be raising children together⁷.

The Court granted relief to the appellant and held that maternity leave and child-care leave are two distinct entitlements and merely because the appellant undertook child-care responsibilities

¹ Central Civil Services (Leave) Rules, 1972

² Constitution of India 1950, art 226

³ Central Civil Services (Leave) Rules, 1972

⁴ Constitution of India 1950, art 14

⁵ Central Civil Services (Leave) Rules, 1972

⁶ Ishan Chauhan and Harshdeep Singh, ‘Deepika Singh v. Central Administrative Tribunal – Path Shone by the Supreme Court’ (*SSC Online*, 24 November 2022) <[Deepika Singh v. Central Administrative Tribunal - Path Shone by the Supreme Court | SCC Blog \(sconline.com\)](#)> accessed 29 August 2023

⁷ *Ibid*

“in ways that may not find a place in the popular imagination”, she was not disentitled from availing maternity leave⁸. The Court concluded that even though the institution (PGIMER) had permitted the appellant to register two non-biological children and avail of child-care leaves, she would still be entitled to maternity leave under Rule 43 (1)⁹ for her first biological child¹⁰. The Court also held that the denial of maternity leave to a woman who has already availed child-care leave for her stepchildren would violate her right to equality under Article 14¹¹. Further, the Bench consisting of Justice D.Y. Chandrachud and Justice A.S. Bapanna, stated that ‘atypical’ families deserve the same equal protection under the laws guaranteed in Article 14¹² of the Indian Constitution and benefits available under social welfare legislation.

RELATED LAWS AND PRECEDENTS

- **Article 14**¹³ of the Indian Constitution ensures equality before the law and equal protection of the law for all citizens.
- **Article 15 (3)**¹⁴ of the Indian Constitution enables the state to enact affirmative provisions for advancing the interests of women.
- **Article 21**¹⁵ talks about fundamental rights to life and personal liberty, and the right to reproduction and child-rearing have been recognized as an important facet of a person’s right to privacy, dignity and bodily integrity.
- **Article 39**¹⁶ of the Indian Constitution falls under Directive Principles of State Policy. These principles are guidelines for the government to frame laws and policies that work towards achieving social and economic justice in the country.
- **Article 42**¹⁷ enjoins the State to make provisions for securing just and humane conditions of work and for maternity relief.

⁸ Karan Gupta et al., ‘ ‘Atypical’ Love: The Supreme Court’s Decision in Deepika Singh vs CAT’ (Wordpress, 31 August 2022) < [‘Atypical’ Love: The Supreme Court’s Decision in Deepika Singh vs CAT – Indian Constitutional Law and Philosophy \(wordpress.com\)](#) > accessed 29 August 2023

⁹ Central Civil Services (Leave) Rules 1972, Rule 43 (1)

¹⁰ Karan Gupta et al., ‘ ‘Atypical’ Love: The Supreme Court’s Decision in Deepika Singh vs CAT’ (WordPress, 31 August 2022) < [‘Atypical’ Love: The Supreme Court’s Decision in Deepika Singh vs CAT – Indian Constitutional Law and Philosophy \(wordpress.com\)](#) > accessed 29 August 2023

¹¹ Constitution of India 1950, art 14

¹² *Ibid*

¹³ *Ibid*

¹⁴ Constitution of India 1950, art 15(3)

¹⁵ Constitution of India 1950, art 21

¹⁶ Constitution of India 1950, art 39

¹⁷ Constitution of India 1950, art 42

- **Article 25(2)**¹⁸ of the **Universal Declaration of Human Rights** provides that motherhood and childhood are entitled to special care and assistance.
- **Article 11(2)(b)**¹⁹ of **CEDAW** requires states to introduce maternity leave with pay or comparable social benefits.
- **The Central Civil Services (Leave) Rules, 1972**²⁰, govern the leave matter of all central government employees. It specifies the types of leave, the eligibility criteria, the application process, and the leave benefits. Maternity leave for female government servants is one of the key provisions of the rule.
- **Maternity Benefits Act 1961**²¹ regulates the employment of women in certain establishments for certain periods before and after childbirth and provides for maternity benefits and certain other benefits.

Navtej Singh Johar v. Union of India²² is a landmark judgement of the Supreme Court of India that decriminalised all consensual sex among adults, including homosexual sex. The use of this case as a precedent in the Deepika Singh case is significant because it affirms the right of all people, regardless of their sexual orientation, to form and maintain a family.

Joseph Shine v. Union of India and Ors²³ is a landmark judgement in which the Supreme Court struck down section 497 of IPC²⁴ on the ground that it violated Articles 14, 15 and 21²⁵ of the Indian constitution. The five Judge Bench held that the law was archaic, arbitrary, and oppressive, and infringed upon a woman's autonomy, dignity, and privacy.

In this ever-evolving world where societal changes lead to changes in laws and changes in laws lead to changes in society, this judgement is a quintessential example, of how progress in societal structure brings the need for more progressive laws. In a Country like India where the majority of people still think of a family as a unit consisting of husband, wife and their biological children, this judgement gave a new lens to interpret this institution. In this case, the court recognised that the family as a unit can adopt and exist in many diverse forms and the traditional definition of family is no longer adequate to reflect the realities of modern society.

¹⁸ Universal Declaration of Human Rights, art 25(2)

¹⁹ Convention on the Elimination of All Forms of Discrimination Against Women, art 11(2)(b)

²⁰ Central Civil Services (Leave) Rules, 1972

²¹ Maternity Benefits Act, 1961

²² Navtej Singh Johar & Ors vs Union of India thru. Secretary Ministry of Law and Justice

²³ Joseph Shine v. Union of India and Ors., 2018

²⁴ The Indian Penal Code 1860, s 497

²⁵ Constitution of India 1950, art 14, 15 and 21

The landmark judgement in *Deepika Singh v. Central Administrative Tribunal and Others*²⁶ will have a positive impact on the lives of many women and families in India. In a traditional patriarchal society, in India, works are assigned based on gender. Gendered roles assigned to women and societal expectations attached to them mean that women are always pressed to take a disproportionate burden of work, both in the office and household. According to a 'time-use' survey conducted by the Organisation for Economics Co-operation and Development (OECD), women in India currently spend up to 352 minutes per day on unpaid work, 577% more than the time spent by These unpaid work includes, household work, childcare etc. This judgement will help make it easier for women to balance their work and family responsibilities.

In this landmark judgment, The Honourable Court widened the definition of family which also includes the same-sex couple. Thus this judgment is likely to have implications for other areas of law, such as adoption, surrogacy, and inheritance. At a time when the demand for equal rights for LGBTQI+ is rising this judgment could lead to a more inclusive and progressive approach to these issues.

CONCLUSION

In a progressive and diverse country like India, judgments like these come as a big hope for common people. In culmination, the landmark judgment in *The Deepika Singh v. Central Administrative Tribunal and Ors*²⁷ not only gave hope to many women but to other marginalised communities too. This judgment will also help break down the stigma related to non-traditional family structures. The judgment is a significant victory for women's rights in India. It is a reminder that the law should reflect the diversity of our society and that all families deserve to be treated with respect and dignity.

²⁶ *Deepika Singh v. Central Administrative Tribunal and Ors.*,2022

²⁷ *Ibid*