

**CASE COMMENT - DEEPIKA SINGH V. CENTRAL  
ADMINISTRATIVE TRIBUNAL**

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Introduction

India is a country that has its foundations in outdated patriarchal, cis-gendered, heteronormative norms. These foundations play a decisive role in the public and private sphere in terms of division of labour, access to resources, legal rights, and more. When these societal norms find legal validation in the legislations in place, people from marginalised communities have no recourse except the judiciary in ensuring the protection of their rights. The judiciary thus moves beyond the role of being a mere interpretative authority of law to a body whose decisions can have severe consequences on the lives of people. Keeping this in mind, this case comment aims to analyse the case of *Deepika Singh versus Central Administrative Tribunal and Others*.<sup>76</sup>

The case in question revolves around the issue of maternity leave. This piece analyses how the court, by taking a purposive stance while interpreting the law at hand, expands the applicability of the rule in question and how the remarks made by the court with respect to 'atypical' families such as single-parent households, queer relationships etc. is evidence of the court moving away from the conservative sensibilities of society. This piece also aims to appraise the judgment from the lens of legal

realism, legal positivism, feminist legal studies, and queer theory.

Facts of the Case

Deepika Singh, the appellant, was working as Nursing Officer in the Post Graduate Institute of Medical Education and Research (PGIMER) at Chandigarh. She married Amir Singh on 18 February 2014, who had two children from his previous marriage, both of whose names were entered into the official records of PGIMR at her request. The appellant gave birth to her first biological child, from her marriage to Amir Singh on 4 June 2019, and consequently applied for maternity leave for the period from 27 June 2019 to 23 December 2019 in terms of Rule 43 of the Central Civil Services (Leave) Rules, 1972.<sup>77</sup> (hereinafter referred to as 1972 Rules). This request was rejected on the grounds that she already had two surviving children from her first marriage for whom she had availed child care leave earlier. Consequently, maternity leave for her first biological child, who would now be considered her third child as per official records, was found to be inapplicable in terms of the 1972 Rules. She challenged this decision in the Central Administrative Tribunal, which ruled in favour of the PGIMR. The decision was then challenged in the High Court, which dismissed the petition on the fact that the judgment had no "perversity or illegality."

The case was finally brought before the Supreme Court, where the appellant's side argued that though she had been given the benefit for child care leave for her step-children, maternity leave should be considered distinct from child care leave, while the respondents argued that since she had taken child care leave benefit taken in respect of the two step-children already, she was not entitled to maternity leave in respect of the birth of her first biological child. Thus, the core issues of whether the appellant who availed child-care leave for two non-biological children could be barred from being granted maternity leave for her first

<sup>76</sup> Deepika Singh v. Central Administrative Tribunal, (2022) SCC OnLine SC 1088.

<sup>77</sup> Central Civil Services (Leave) Rules, 1972, DEPARTMENT OF PERSONNEL AND TRAINING (September 24, 2022, 12:30 pm), <https://documents.doptcirculars.nic.in/D2/D02est/ConsolidatedCCSRulesiAmwP.pdf>.

biological child and third child as per official records under Section 43 of the Rule of 1972 can be broken down into two parts-

A- Is maternity leave the same as child care leave?

B- Does having two non-biological children disqualify a woman from availing the benefit of maternity leave under section 43 of the Rule of 1972 for her first biological child considering the fact that the provision has a two- children cap for availing the benefit?

### Judgement

The court granted the appellant leave by taking a purposive stance while interpreting Section 43 of the 1972 Rules. It also held that child care leave is distinct from maternity leave, the former being available anytime and not just for the post-birth duration, for example, for examination, sickness etc.

### Analysis of the judgement

Despite the short length of this judicial judgment, the underlying assumptions and conclusions made here act as a landmark case in advancing women's rights. Furthermore, they also have important implications for both the sociological and legal understanding of parental care and the heteronormative, biological children-centric traditional concept of a family.

The court, in this case, could have chosen to focus on one of two things to reach an outcome, the first being focusing on the word 'children' and the second being focusing on the object of this legislation, i.e., the woman. Since the legislation does not define 'children', it could be interpreted to mean biological children only, thus giving the appellant the benefit of maternity leave. This, however, would create an anomalous situation with respect to the provision for leave for child care. On the other hand, if the word 'children' included non-biological children, as argued by the respondents, the appellant would not be given the

benefit of maternity leave. Thus, the court then focused on the target subject of the legislation.<sup>78</sup>

By drawing support from the judgments of *KH Nazar v Mathew K Jacob*<sup>79</sup> and *Badshah v. Urmila Badshah Godse*<sup>80</sup>, the court classified the concerned piece of legislation as beneficiary legislation and held that a "social justice adjudication" approach would be the most appropriate to stay true to the ideational source of this law by ensuring that motherhood does not become a barrier for working women.

In this context of the purpose of the legislation, the court took a feminist stance by confronting gender prejudice and according due recognition to historical injustice towards women by recognised the fact that a disproportionate portion of child-rearing responsibilities falls on women; however, it was careful to frame its words in a way that did not essentialise women with childcare by stating that this is a product of patriarchal societal expectations. In doing so, the court also shows awareness of what Carol Smart termed as 'legal imperialism', where the legitimacy claimed by law spills into other social spheres. By recognising the contribution of women to childcare but not crystalising this as their duty solely, it prevented the misinterpretation of observation of a sociological reality into a factual reality or necessity. Moreover, the acknowledgment of inherent inequalities of certain sections of society and extending additional benefits to those at the receiving end of these inequalities is a recognition of the unjustness of formal equality. This concept can be better understood with the following example-

If a law is formed stating 'No person will sleep under the bridge', on the face of it, it applies to the rich and the poor equally, but considering the fact that no rich person will

<sup>78</sup> Karan Gupta, 'Atypical' Love: The Supreme Court's Decision in Deepika Singh vs CAT, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (September 22, 2022, 6:30 pm), <https://indconlawphil.wordpress.com/2022/08/31/atypical-love-the-supreme-courts-decision-in-deepika-singh-vs-cat/#:~:text=In%20a%20recent%20judgment%20delivered,her%20two%20non%2Dbiological%20children.>

<sup>79</sup> K.H. Nazar v. Mathew K. Jacob, (2020) 14 SCC 126.

<sup>80</sup> Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188.

sleep under a bridge irrespective of such a law, we can then see how this law disproportionately affects poor, homeless people.

If the court had opted for a bare-bone interpretation of the law, it would similarly disproportionately affect women who were in a situation mirroring that of the appellant or women who wanted to avail maternity leave after giving birth to twins and the like. Furthermore, this would have overturned the precedent set in *KH Nazar v. Mathew K Jacob*, where it was held that for a beneficial legislation, the court should ascertain the purpose of the legislation and then give it a “purposeful or functional interpretation.” Thus, by setting another precedent for moving beyond an acontextual, positivist approach to law that does not take into account societal realities, it opens the door for a similar practice in cases beyond those of maternity leave.

Much of Indian law focuses on a heteronormative, biological children-centric understanding of what constitutes a ‘family’, a case in point being *The Carriage by Air Act, 1972*<sup>81</sup>, where a member of a family “means wife or husband, parent, step-parent, grandparent, brother, sister, half-brother, half-sister, child, step-child, and grand-child” and *The Factories Act, 1948*<sup>82</sup>, where “Standard family means a family consisting of the worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.” In the case in question, the appellant had transcended this traditional understanding of what it means to be family with respect to her two non-biological children. The court, in this context, said that such ‘atypical’ manifestations of a family, including unmarried partnerships, queer couples, and single-parent households have an equal claim to both legal protection and the benefits provided by social welfare legislations and that, “the black letter of the law must not be relied upon to disadvantage families which are different from traditional ones.” From a queer rights lens, this

statement, though it is not legally binding by virtue of being obiter dicta, may have significant ramifications for the cases pending before the Supreme Court for legalization of same-sex marriage where the Centre argued that ‘spouse’ only means a male with respect to a female and vice versa. This judgment can hold persuasive value in expanding the definition of ‘spouse’ beyond the ‘typical’.

Looking at the judgment from a lens of legal realism, we can see how the judges, in this case, bypassed a mere textual interpretation of the law to take into account social realities. It substantiates the claim of rule skeptics that discretion of judges creeps in while interpreting the law. While the tribunal and high court opted for a bare-bone interpretation of the law, the SC took a more purposive stance. Legal positivism can be seen in the respondent’s arguments as well as the judgment of the Central Administrative Tribunal and the High Court. The Supreme Court’s ruling also applied feminist legal principles and feminist legal reasoning by firstly, placing the case within a broader framework beyond the law and demonstrating empathy for the appellant involved in the case; secondly, by demonstrating awareness of the impact their judgment would have on marginalised communities and lastly, by recognising the historical patriarchal bias in terms of child-care. From a Queer theory perspective, this judgment, by expanding the definition of a “family”, is an overt opposition to the dominant narrative of heterosexuality, whose retention in the position of a foundational norm and subsequent shaper of social structures has resulted in queer oppression. This is in line with Laurie Kepros’s definition of what queer theory aims to achieve, i.e., “Queer theory focuses —on the manner in which heterosexuality has, silently but saliently, maintained itself as a hidden yet powerfully privileged norm; and an implicit, if not explicit, questioning of the goals of formal equality that, on their face simply reify the very categories that have generated heterosexual privilege and Queer oppression.”<sup>83</sup> Overall, the court displays a leaning towards a legal realism-rooted,

<sup>81</sup> *The Carriage by Air Act, 1972*, MINISTRY OF LAW AND JUSTICE (September 23, 2022, 9:30 pm).

[https://legislative.gov.in/sites/default/files/A1972-69\\_0.pdf](https://legislative.gov.in/sites/default/files/A1972-69_0.pdf).

<sup>82</sup> *The Factories Act, 1948*, MINISTRY OF LABOUR AND EMPLOYMENT (September 23, 2022, 9:30 pm).

[https://labour.gov.in/sites/default/files/Factories\\_Act\\_1948.pdf](https://labour.gov.in/sites/default/files/Factories_Act_1948.pdf).

<sup>83</sup> Martha Albertson Fineman, Introduction: Feminist and Queer Legal Theory (September 24, 2022, 10:30 am), <https://scholarblogs.emory.edu/vulnerability/2020/05/18/introduction-feminist-and-queer-legal-theory/>.

progressive liberal ideology with reference to women and queer rights.

### Conclusion

*Deepika Singh versus Central Administrative Tribunal and Others* acts as a landmark judgement in advancing woman's rights. Additionally, it is evidence of the changing nature of the judiciary in terms of greater recognition of LGBT rights, keeping in line with the emergence of a society showing greater acceptance of queer individuals. It creates a precedent for extending additional benefits to those at the receiving end of societal inequalities and expands the definition of what 'family' means. However, while the judgement sets a binding precedent with respect to maternity and other beneficial legislation, the obiter relating to 'atypical families' needs enacted legislation or a legally binding judgement to back it up.

Looking at the judgement from the lens of various legal theories, legal realism is observed in the way the court bypasses a strict, textual interpretation of the law to opt for an interpretation keeping in mind the purpose of the law and emergence of new social realities. Furthermore, the judgement utilises feminist and queer legal principles by demonstrating much needed empathy for the appellant and opposing the dominant heterosexual narrative of what constitutes a family.

### References

- Deepika Singh v. Central Administrative Tribunal, (2022) SCC OnLine SC 1088.
- Central Civil Services (Leave) Rules, 1972, DEPARTMENT OF PERSONNEL AND TRAINING (September 24, 2022, 12:30 pm), <https://documents.doptcirculars.nic.in/D2/D02est/ConsolidatedCCSRulesiAmwP.pdf>.
- Karan Gupta, 'Atypical' Love: The Supreme Court's Decision in Deepika Singh vs CAT, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (September 22, 2022, 6:30 pm),

<https://indconlawphil.wordpress.com/2022/08/31/atypical-love-the-supreme-courts-decision-in-deepika-singh-vs-cat/#:~:text=In%20a%20recent%20judgment%20delivered,her%20two%20non%2Dbiological%20children.>

- K.H. Nazar v. Mathew K. Jacob, (2020) 14 SCC 126.
- Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188.
- The Carriage by Air Act,1972, MINISTRY OF LAW AND JUSTICE (September 23,2022, 9:30 pm), [https://legislative.gov.in/sites/default/files/A1972-69\\_0.pdf](https://legislative.gov.in/sites/default/files/A1972-69_0.pdf).
- The Factories Act,1948, MINISTRY OF LABOUR AND EMPLOYMENT (September 23,2022,9:30 pm), [https://labour.gov.in/sites/default/files/Factories\\_Act\\_1948.pdf](https://labour.gov.in/sites/default/files/Factories_Act_1948.pdf).
- Martha Albertson Fineman, Introduction: Feminist and Queer Legal Theory (September 24, 2022, 10:30 am), <https://scholarblogs.emory.edu/vulnerability/2020/05/18/introduction-feminist-and-queer-legal-theory/>.