

SC Denying Women Child Care Leave Is Violation Of Constitution

Why In News

- **Participation of women** in the workforce is a constitutional entitlement and denying mothers child care leave violates this, the Supreme Court.

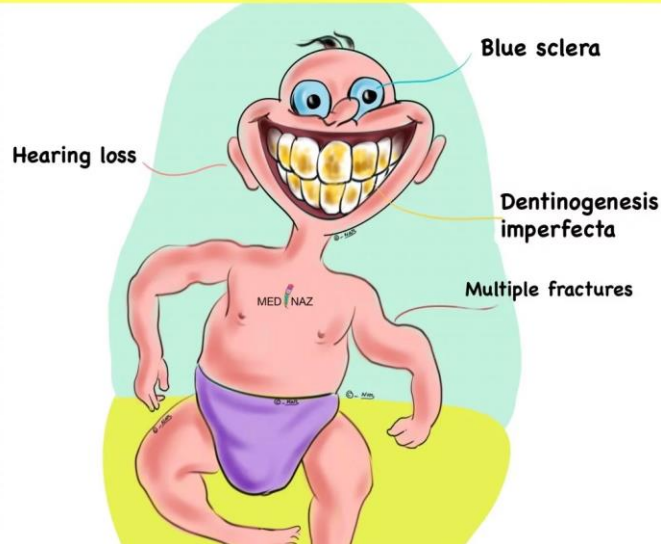


- A bench of Chief Justice of India **D Y Chandrachud** and **J B Pardiwala** was hearing a plea by a woman, an assistant professor in the Government College, Nalagarh, who said the Himachal Pradesh government had denied her child care leave to attend to her child who is suffering from a genetic condition.

What Was The Case

- The woman had **approached the state** seeking child care leave as her son is suffering from **Osteogenesis Imperfecta**, a rare genetic disorder, and had undergone several surgeries.
- Due to his continuous treatment, she had exhausted all her sanctioned leave. But her application was declined on account of non-adoption of the provision of child care leave — as provided under **Rule 43-C of the Central Civil Services (Leave) Rules, 1972** — by the state government.
- The **woman moved the High Court**, which **dismissed her plea** on April 23, 2021, on the ground that the state has not adopted Rule 43 (C).

Osteogenesis Imperfecta



- Appealing against the verdict, the **woman in her plea in the Supreme Court**, filed through **Advocate Pragati Neekhra**, contended that the selective adoption of the rules by the state is against the spirit of concept of a welfare state, Constitution and the India's obligation under various international conventions on women and child rights.



Salient Features
The Rights of Persons with Disabilities Bill 2016

Types of Disabilities have been increased from existing 7 to 21

● Blindness	● Muscular Dystrophy
● Low-vision	● Acid Attack victim
● Leprosy Cured persons	● Parkinson's disease
● Locomotor Disability	● Multiple Sclerosis
● Dwarfism	● Thalassemia
● Intellectual Disability	● Hemophilia
● Mental Illness	● Sickle Cell disease
● Cerebral Palsy	● Autism Spectrum Disorder
● Specific Learning Disabilities	● Chronic Neurological conditions
● Speech and Language disability	● Multiple Disabilities including deaf blindness
● Hearing Impairment (deaf and hard of hearing)	

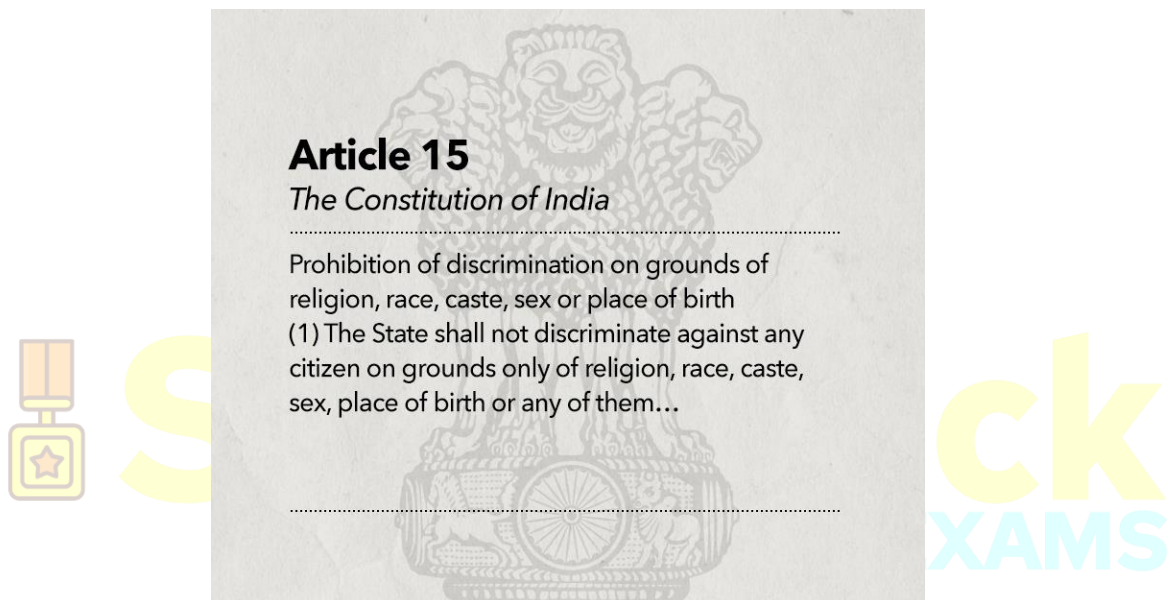
- Taking up the plea, the Supreme Court had issued notice to the state on **September 15, 2022**, and the commissioner under the RPWD Act was asked to

place on record the policies or directions with regard to grant of leave to parents of children covered by statute.

- In reply, the commissioner said no such policy or direction has been formulated.

What Does Bench Said

- “Participation of women in the workforce is a matter not just of privilege but a constitutional entitlement protected by **Article 15 of the Constitution**. The state as a model employer cannot be oblivious to the special concerns which arise in the case of women who are part of the workforce,” the bench said in its order.



- “The provision of child care leave to women sub-serves an important constitutional objective of ensuring that **women are not deprived of their due participation as members of the workforce**. Otherwise, in the absence of provision for child care leave, a mother may be constrained to leave the workforce,” it said.
- This consideration applies **more strongly in the case of a mother who** has a child with special needs, “such a case is exemplified by the case of the petitioner herself”, the bench said.
- It said the state of Himachal Pradesh must be directed to consider the entire aspect of the grant of **child care leave to mothers**, including making special provisions consistent with the Right to Persons With Disabilities (RPWD) Act to mothers with children with special needs.



- The court asked the state chief secretary to **constitute a committee consisting of the** state commissioner appointed under the RPWD Act, secretary of Women and Child Department and secretary of Social Welfare Department to look into all aspects of the matter. The court gave the **woman liberty to make the Centre a party** to the proceedings and asked Additional Solicitor General Aishwarya Bhati to assist it in the matter. It said the report of the state committee shall be prepared before July 31.



- On the request of the appellant, the bench also directed: “In the meantime, pending further orders, application by the petitioner for the grant of special leave be considered by the authorities”.