

Maternity Leave And The Exercise Of Political Power: Against Gender Political Violence

Author

Abstract

This article aims to provide an initial reflection on gender political violence in the context of maternity leave. It starts by examining the international human rights framework on women's rights, focusing on nondiscrimination and political participation. Next, it discusses gender political violence. Then, maternity leave and women's rights to self-determination in the context of political power. It concludes by claiming that in the context of the exercise of political power, women have the right to decide whether and how to enjoy maternity leave.

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I. Introduction

Imagine that a woman, elected to a political function, who expresses her will to exercise her political mandate during maternity leave and was barred from doing so on the ground that maternity leave is an irrevocable right. This situation raises a broader question that this article aims to discuss: during maternity leave, women have the right to choose if they will exercise their political power or not? If yes, such a bar to the exercise of political power means political gender discrimination and violence against women?

This paper's discussions are based on a human rights-based approach. To develop the initial debate proposed, qualitative research was developed. A review of scholarship and United Nations (U.N.) and Organization of American States (O.A.S.) treaties was conducted. The data from bibliographic review was analyzed using the hypothetical-deductive method. This article is also grounded on a feminist approach, envisioned as the political project that focuses in women's lives and equality.¹ However, feminist approaches also present limits of focusing only on gender, disregarding motherhood specificities.

The analysis is conducted through a feminist lens and human rights approach. The paper starts by discussing the international human rights law normative framework regarding nondiscrimination against women and the right to political participation. Next, it provides a general framework for gender political violence. Then it discusses gender political violence in the context of maternity. It concludes that women in political power have the right to decide on how and if they will go on a maternity leave or else to have their mandate extended.

The International Normative Framework

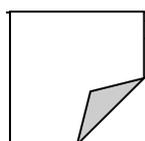
The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) foresees that discrimination is any distinction, exclusion, or restriction based on sex that aims at or impairs or nullifies "the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."² In the same sense, article 6 of the Belém do Para Convention states that womans' right to live free from violence includes, the right to be free from all forms of discrimination; and the right "to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination".³

The right to political participation is also expressly assured by CEDAW, and States must act aiming to eliminate discrimination against women in the political and public life of the State. In this regard, States must ensure, in equal terms with man, the right to vote and be voted in all elections as well as to "participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public

¹Hilary Charlesworth, (2012). 'Feminist Approaches to International Law', UN Audiovisual Library of International Law (2012). <https://legal.un.org/avl/ls/Charlesworth_IL.html>

² United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Article 1.

³ The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the Convention of Belém do Pará.



functions at all levels of government”.⁴ The Belém do Pará Convention also states that “(e)very woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.”⁵

In sum, the global and regional Conventions on Women’s Rights assure the right to nondiscrimination and the right to participate in political life.

The Gender Political Violence

At the beginning of the 20th century, the drastic reality was no woman legislator among all States that had a parliament. Despite the increasing participation and quota policies, women are still underrepresented in terms of political power. As of 2022, among all states that have at least one legislative chamber, there were only 3,47% with 50% women or more, and 13,79% with 40-50% women among their representatives. In most states, women legislators are a minority. In a 1.73% there are none.⁶

If the reality is latent under-representation, the worst part is that when they reach the power position, violence is often directed against them for shaking the prevailing regime, for transcending the boundaries of children, home, and, more recently, work.

Violence against women in politics aims at re-establishing the reigning belief of politics as a male sphere “by compelling women to leave the public sphere or by highlighting their private sphere obligations. Women’s bodies —as connected to stereotyped social roles— thus become a central focus of violence.”⁷

In this regard, the Inter-American Model Law On the Prevention, Punishment and Eradication of Violence Against Women in Political Life states that:

“Violence against women in the political life shall be understood, among other actions, as any conduct, action or omission that, based on gender:

k) Discriminates against women in the exercise of their political rights, on the basis of pregnancy, childbirth, puerperium, maternity leave or any other valid form of leave, in agreement with the applicable regulation.”⁸

In the same sense, Brazilian law 14.192 of 2021 “considers gender political violence against woman all actions or omissions aiming at barring, creating obstacles or diminishing woman’s political rights. It also considers gender political violence any exclusion or restriction to fundamental political rights and freedoms based on sex.”⁹

Maternity leave and women’s rights to self-determination in the context of political power

Given this foundational framework of the concept of discrimination, the right to participation in political life, and the concept of political violence, we turn back to the question we pose in this paper: Does a Woman have the right to exercise political power during maternity leave? A bar to such power is political violence against woman?

This article claims that barring a woman from exercising political power during maternity leave, if she wants to do so, is violence against women in politics. This is precisely what happened in the hypothetical situation described in the introduction: a woman was bared to exercise her elected political power on the argument of a private sphere obligation, namely, to remain at home taking care of the children. Her puerperal body was labeled as an incapable body, and stereotyped social roles were evidenced to her: Women must remain home taking care of the children and cannot cope with the exercise of power. The male predominance was reinforced while other women received the message that political power and having children are two almost incompatible tasks.

If a woman is elected to exercise power, she has the right to do so. If a woman is on maternity leave, she is not less capable of deciding for herself. Understanding that maternity leave bars the exercise of political power

⁴ United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) article 7.

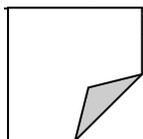
⁵ The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the Convention of Belém do Pará article 5.

⁶ Bastian Herre (2024) - “Women have made major advances in politics — but the world is still far from equal” Published online at OurWorldInData.org. Retrieved from: 'https://ourworldindata.org/women-political-advances' [Online Resource]

⁷ Krook, Mona Lena y Restrepo Sanín, Juliana (2016). Gender and political violence in Latin America Concepts, debates and solutions p. 144. Volume xxIII · number 1 · I semester 2016 · PP. 125-157 Política y gobierno

⁸ <https://www.oas.org/en/mesecvi/docs/LeyModeloViolenciaPolitica-EN.pdf> Article 6. Manifestations of violence against women in the political life

⁹ Brazil, Law 14.192 of Augt. 4th, 2021



means viewing puerperal women as diminished in their autonomy and capacity to decide means discriminating against women on the basis of maternity leave and puerperium. This implies violence against women in political life, as stated by the Inter-American Model Law on the Prevention, Punishment and Eradication of Violence Against Women in Political Life, which describes it as any gender-based conduct that “discriminates against women in the exercise of their political rights, on the basis of pregnancy, childbirth, puerperium, maternity leave or any other valid form of leave, in agreement with the applicable regulation.”¹⁰

The violence we envision there is twofold: psychological violence against the woman, who was treated as incapable of exercising power, and symbolic political violence since the victim, as well as all other women, received a message that political power is not as accessible to them as it is to male.

Symbolic violence renders invisible those who finally accede to power. On symbolic violence Krook and Restrepo Sanín recall that it can be more harmful than physical violence since it reinforces a pattern of social roles. It is rooted in a culture that normalizes these forms of violence, which makes some victims change their behavior, and have a blind eye to the real tools of oppression.¹¹ Symbolic violence contributes to woman discrimination as it is “(...) “subtle, euphemized, invisible,” such that even when some women recognize these acts as exercises of power, they may not be believed, even in societies with greater levels of gender equality.”¹² (...).

Barring a woman to exercise political power during maternity leave is symbolic violence against women in politics since this bar maintains the male dominance and the prevailing power structures and delegitimizes the woman’s exercise of power due to a gender-related situation – puerperal status and maternity leave- conveying the message woman is not viable or capable or suitable to exercise political power.

Once it is evidenced that barring a Woman to exercise political power during maternity leave is gender-political violence, it is necessary to dig into the argument used to bar the exercise of political power, another fundamental right: maternity leave.

As Wendy Brown notes, rights “must be specific and concrete in order to reveal and redress women’s subordination, yet potentially entrench our subordination through that specificity.”¹³

Maternity leave is a fundamental right, and CEDAW States that to prevent discrimination against women due to maternity and to ensure their effective right to work, States must “introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances”;¹⁴ It is relevant to note that CEDAW states that the adoption of special measures aiming at protecting maternity shall not be considered discrimination.¹⁵

This article agrees with CEDAW and reinforces the essentiality of maternity leave. However, this article draws a distinction between two situations: one in which women are exercising subordinated labor, which is out of the scope of the present debate, and the other where women are exercising political power. Women in power have the right to enjoy a maternity leave if they want, but they also have the right to exercise power during this period if they decide to do so. The argument that women might be discriminated against if they choose to enjoy their maternity leave does not apply to the context of political power. This is so because there will always be someone interested in exercising power if the woman decides she needs to stay a part of her political duties during the period of maternity leave; there is no vacuum of power. Political power is different from the relation of employment, in which the argument of discrimination is very relevant. Maternity leave cannot be an argument to withdraw women from the exercise of power.

Political power pertains to positions for which women were elected, which is, per nature, temporary in democracies. Women in power ought to decide if and to what extent they will go on maternity leave or even which activities among all the duties of power they want to exercise during this period. If they decide to reduce or not go on leave, the other parent has to have the right to enjoy it for the child's benefit. Another excellent option would

¹⁰ <https://www.oas.org/en/mesecvi/docs/LeyModeloViolenciaPolitica-EN.pdf> Article 6. Manifestations of violence against women in the political life

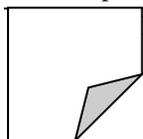
¹¹ Krook, Mona Lena y Restrepo Sanín, Juliana (2016). Gender and political violence in Latin America Concepts, debates and solutions p. 138. Volume xxIII · number 1 · I semester 2016 · PP. 125-157 Política y gobierno.

¹² Krook, Mona Lena y Restrepo Sanín, Juliana (2016). Gender and political violence in Latin America Concepts, debates and solutions p. 138. Volume xxIII · number 1 · I semester 2016 · PP. 125-157 Política y gobierno.

¹³ Brown, W. (2000). Suffering Rights as Paradoxes. Constellations, 7(2), 208-229. p. 238

¹⁴ United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 11 ... (2).b

¹⁵ United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) article 4 par 2.



be to propagate the mandate for the period of maternity leave. However, this is not always possible due to legislation and mandate structures. The possible alternatives have to be the object of further studies. In short, maternity leave cannot be an argument to withdraw a woman from the exercise of power if they want to exert it.

II. Final Considerations

This paper aimed to spark the discussion on gender political violence, maternity leave and exercise of political power. It argues that in the realm of power, a woman cannot be silenced on the grounds of maternity leave if she wants, in the use of her free will, to remain in power and the claims she is not renouncing her right to maternity leave since her plea was not to return to her subordinate worker functions, but only to take part in political decisions. In this sense, we recall a famous quote by Bell Hooks “When women with class power opportunistically use a feminist platform while undermining feminist politics that helps keep in place a patriarchal system that will ultimately re-subordinate them, they do not just betray feminism; they betray themselves.”¹⁶

Further studies have to be conducted to deepen the debate understand other perspectives and develop possible standards and safeguards to foster women and children's rights and also to develop measures to ensure that the other parent enjoys the full or part of the leave if the woman in power decides to remain.

¹⁶ Bell Hooks (2000). *Feminism is for Everybody: Passionate Politics*, **South End Press**.

