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**SEXUAL AND REPRODUCTIVE RIGHTS OF WOMEN IN INDIA -
ANALYSIS AND SCOPE OF THE MATERNITY
BENEFIT ACT, 1961**

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- **INTRODUCTION**

Indian labour law has developed over a passage of time in its economic, social, and political contexts with two major objectives. These objectives include, protection of labour and maintenance of industrial peace. Entire labour regime reflects vital stages through which Indian labour law has evolved up to the present time. In India, the labour law is a collection of laws governing the rights of workers and their organisations. Health and safety of workers at work, industrial relations and standard of employment all these components have got covered under labour law. It also aims to control the restrictions imposed on workers at their disadvantage.

With the introduction of welfare state, after India became independent, the country took up the task for establishing through legislation various welfare measures which created equitable rights bringing about social justice and active participations of the workers as the stakeholders in the process of development. The legislations which were passed have been the foundation for creating better health, introducing safety measures and thereby adding to the welfare of the workers. This has also prevented oppression of individual workers and thereby raising their standards to achieve economic betterment and excellent bargaining power to help improve their working standards. The legislations have also helped in the organisation of workers, prevention of industrial disputes,

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enforcement of social insurance and permanent establishment of various schemes which have ultimately led to betterment and welfare of the workers.

- **MATERNITY PROTECTION**

Maternity, in common parlance, may be simply defined as the process of attaining motherhood. The protection provided for this entire process includes the time period used while undergoing the stages of pregnancy, confinement, breastfeeding and early childcare. There are a number of factors that are involved in the maternity protection ranging from health issues of concerned mother and child to the economic ramifications for the woman concerned. The responsibilities of women during this time period become many folds as they play multiple roles of a mother, of a care giver and of an employee who has to undergo a transitioning phase and maintain continued participation in the labour force.

In the contemporary global framework, the fundamental purpose behind maternity protection is to recognise the dignity of 'motherhood' and also recognising the need to provide effective health care to the woman and her children so as sufficient economic protection is provided to enable the worker perform the duties that have been allotted and with the vision to achieve proper health status. It has been argued that congruously implemented provisions pertaining to maternity protection has all the probability of bringing desired results for the working mother and her children which will lead to economic betterment of all the stakeholders.

- **RIGHT TO WORK: CONCEPTUAL FRAMEWORK**

Work has been recognised politically, socially and legally as a right to which all human beings are entitled. Firstly, it indicated towards participation of each and every individual in the producing and servicing activities in human society. It also includes participation in the benefits which is the outcome of the stated activities of human society and this is how a particular standard of living is guaranteed. Inclusion of every individual in the economic sphere is ensured through the work they perform in the economy. Further, the kind of work a person undertakes to perform depends on the accessible level of education, training and availability of resources to be utilised by that person. The distribution of available resources is to be planned in such a way as to allow every

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individual whosoever desires to work to take part in the process. A perfect balance is supposed to be struck between the livings a person earns in lieu of work performed and standard of living maintained through the benefits derived from work.

It has been recognised that, in the economic sphere, one of the crucial characteristics of work is to ensure that persons are able to and allowed to earn their livelihood. Persons undertaking a range of activities included in the ambit of work can be placed in two broader categories. Out of these two categories, one belongs to wage-employed persons and the other pertains to self-employed persons. One of the most important features pertaining to right of a person to undertake work is that it is not sufficient to only participate in any kind of economic activity rather work has to necessarily include the freedom of choice and acceptance. The important element of choice and freedom has to be exercised by every individual in order to be capable of availing the opportunity of earning one's living by of the work a person has chosen freely without any influence and restriction.

Work, as per the dictionary meaning, is defined as “an activity involving mental or physical effort with a view to achieve a result or it can be said to be a mental or physical activity as a means of earning income through employment.” Further, the right of the workers has been particularly used to include the opportunity for finding a living through a given working condition which a person is entitled to freely choose. This also includes the right of everyone to take appropriate measures to safeguard this right.⁷

- **WOMEN'S EMPOWERMENT THROUGH EMPLOYMENT**

The role of paid employment in financial independence of women and their overall empowerment is remarkable. In developing countries, improved participation of female labour force and their greater decision-making in the economic, political and social spheres assume special importance. It is said that comparatively they have a greater possibility to achieve greater empowerment than those who work from their homes only. From a socio-cultural perspective, it is quite evident in the present modern societies, that females involved in an employment outside the family and drawing a good salary or income are getting more recognition and respected than those women who are only involved in unpaid care work without a gainful job. At the same time, care work

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rendered for the family has its own significance. In order to assist the institution of family to grow and contribute towards the development of nation, it becomes the responsibility of the state to provide such a work-family policy wherein the state is able to make best utilisation of its human resources in terms of female talent and at the same time it is easy to strike a perfect balance between work and family responsibilities for women, especially the reconciliation between productive and reproductive function.

In the economic sphere, paid employment is seen as an essential tool to empower women workforce. Access to employment opportunities and then suitable and congenial working conditions making it a decent work have been focused while traversing the nexus between employment and empowerment. In addition to this, capability of women to have control over the available resources and their financial contribution to the family earnings have been regarded to play an important role in discussing the relationship between employment and empowerment.

V. STANDARD SETTING TO PROMOTE WOMEN WORKERS' RIGHTS AND GENDER EQUALITY

Since the 1990s, a human-rights-based approach towards development has gradually assumed importance. It offered a normative framework that has been very relevant and useful to standards and standard setting. This kind of approach naturally includes exclusion of all types of discrimination. Discrimination on the basis of sex been a major type of discrimination, and has remained at central position for the entire international community since the time of second world war.

In the early decades of the twentieth century, it was perceived that women were more fragile as compared to men, both physically and socially. As a consequence of this perception, they were not found to be best suited to certain types of work, in particular any work that might have the possibility of endangering their health and specifically the childbearing function. The protection and promotion of rights of all workers, especially women workers have always found important place in ILO's mandate.¹⁴⁹ The ILO Conventions cover a wide area of social and labour issues including basic human rights, minimum wages, industrial relations, employment policy, social dialogue, social

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security and other issues. ILO Conventions concerning gender-specific issues have a long history.

The issues pertaining to equality and maternity protection, which remains a key issue with respect to gender equality, took central position in the ILO's standards. Minimum standards regarding maternity benefits and maternity leave had been among the first instruments adopted by the ILO. The concerns over employment of women before and after childbirth have been an important part of one of the first conventions of the ILO in the year 1919 that is the very first year of the establishment of the ILO.

- **Philosophy of Women's Human Rights Concerning Maternity Protection**

Human Rights are the fundamental, basic and inalienable rights which can be, possessed, enjoyed and claimed by everyone without any discrimination. These rights are directed towards protecting human dignity. They are based on philosophical, religious and legal foundations promoting equal and fair treatment for all and discouraging discriminatory practices leading to unwanted inequalities in different spheres. Historically, women belonging to diverse cultural settings throughout the world have collectively experienced different treatment for centuries in such diverse areas as education and employment, as if they were in some way or the other constituting a different 'class' of human being. This experience has been reflected in different books and speeches by renowned persons.

It is only in the modern times that nations have been more conscious about curbing discriminatory practices by having in place laws of equality between the sexes. Protest and persistent work in the direction of creating an awareness of existing inequities in societies throughout the world have led to coming out of legal remedies.²³ In this regard, while emphasising a higher standard of universality, it has been stated that "while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

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- **Maternity Protection: A Multidimensional Concept**

With the expansion of the definition of mother, expanded maternity protection with several dimensions has also assumed significant importance requiring a multi-pronged approach and the array of strategies to be adopted. Traditionally, the definition of 'mother' has carried an unshakeable presumption that "mother was the one from whose womb the child came." Her identity was much easier to be defined as compared to mother's incumbent rights and obligations. The arrival of new reproductive technologies, such as in vitro fertilization (IVF), artificial insemination, embryo transfers, and surrogate motherhood, have made the traditional definition debatable and thereby have shaken the unshakeable.

Motherhood in the form of a customarily rewarded and respected status has been argued to be associated with the internal and empowered judgment of mother who possesses the ultimate power to decide as to "when to become a mother, how to become a mother, where to give birth, what parenting philosophy to follow, and what kind of parent to be." Apart from this internal aspect, external regulation by law is required to fully support the maternity protection and associated human rights. Childbirth and child rearing occur during a critical period in the career of most of the women. They have been found to spend a considerable amount of time in reproductive and subsistence

- **Maternity Leave as an Important Element of Maternity Protection**

The issue of maternity leave is among one of the most discussed and pressing issues in the sphere of employment law. This issue has also given rise to number of disputes in relation to maternity leave as it is not as simple term as it appears to be. There are several terms and conditions attached with the same, such as, duration of leave, number of days they have worked for the employer immediately before the beginning of the confinement, conditions for availing leave, payment during leave period, rights against discrimination and dismissal during leave period, right to return to same place and position following the expiry of leave period *etc.*

The minimum standards in relation to maternity protection including maternity leave have been set by the International Labour Organisation (ILO). The ratifying countries to some extent are bound to adhere to these standards. Moreover, for non-ratifying

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countries, it may be a good model to emulate. ILO's maternity protection convention relates to maternity leave and benefits and entitles all women employees to maternity leave and other related benefits irrespective of the number of days they have worked in the past for the employer. The said convention provides specifically that:

It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave ... or during a period following her return to work ... except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

CONCLUSION

Maternity protection is an umbrella term having multiple dimensions attached with it which accelerates the demand for comprehensive protection. It has been argued that the functions associated with bearing a child and breastfeeding, being women centric individual roles to be performed by women, fall in the specific domain of women. Child care responsibilities, on the other hand, has assumed the character of a social function and makes the demands stronger for collective responsibility. The development of maternity protection, as an integral part of the right to work has witnessed a gradual progression. This progression towards inclusivity is evident in a number of international instruments. The ILO has recognised maternity protection to be one of its priorities since its inception in the year 1919.

Maternity protection can be concluded to be an important component of gender-sensitive social protection that takes a significant place in the overall legislative framework and governmental policies in order to ensure gender equality in the arena of work. In light of the recognised association between increased participation of women in the productive work and economic development, the labour standards set at the global level and legislative measures taken by governments at national level have consistently enlarged the scope of maternity protection over the years. It is a universally recognised protection with two major aims. Firstly, it is aimed at preserving the health of the mother and her new-born and secondly, this protection aims to guarantee financial security not only for the women availing maternity benefits but also their respective families. It is said that

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the robust provisions for successful implementation of law pertaining to maternity protection has the all the probability of bringing positive results for the entire society and nation at large.

Right to paid work has been seen to be closely associated with parenthood. Placing the issues related to child care on top of the priority list of governments, the CRC emphasises that “for the purpose of guaranteeing and promoting the rights set forth in the present convention, states parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.” It also states that “states parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.”

SUGGESTION

- It can be observed that despite being one of the fastest-growing economies of the world, India is still confronting the issue of considerable gender gaps in labour force participation by women. Based on this observation, it is suggested that better infant care facilities are required to be provided jointly by government and by employers. Infant care being an integral part of the maternity care can be a key constraint to labour force participation by women in the absence of good quality and affordable access to child care facilities for working mothers.
- On the basis of the finding that a number of employers in private sector in India are flagrantly ignoring the legal mandate with respect to creche, it can be suggested that there is an urgent need for a better management and regulation of the network of creches in private sector.
- In private sector in India, paternity leave and related benefits for male employees are largely voluntary in nature. Many a time, Indian and foreign companies are providing for paternity benefits as per their own internal policies in the absence of any independent and specific legal provisions in this respect. There is a requirement to

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design leave policies in such a way that leads to creation of a culture in India wherein maternity leave and paternity leave are both preferred and valued equally.

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