

Conceptual And Contextual Framework Of Maternity Rights Of Women

Neeraj Kumar¹ & Dr. Pranav Ranga²

¹Research Scholar, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana,
Email id: advneerajrewa@gmail.com

²Assistant Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana

Abstract

This study explores the conceptual and contextual framework of maternity rights of women, focusing on their legal, social, economic, and health dimensions. Maternity rights encompass a set of protections and entitlements aimed at safeguarding the well-being of women during pregnancy, childbirth, and postpartum periods, ensuring gender equality in the workplace and access to quality maternal healthcare. Conceptually, these rights are rooted in fundamental human rights principles, including the rights to health, non-discrimination, and decent work. Contextually, the framework varies significantly across countries and cultures, influenced by legal systems, socioeconomic conditions, labour market structures, and cultural norms. This paper critically examines international legal instruments such as ILO conventions and CEDAW, as well as national policies and practices, to identify gaps and challenges in the realization of maternity rights. By analysing the interplay between legal norms and real-world practices, the study emphasizes the need for stronger enforcement mechanisms, inclusive policies, and societal support systems to uphold and advance the maternity rights of all women.

Keywords Maternity rights , International Labour Organization, Medical benefit .

Introduction

In the light of the statement that “human rights has to go local to be truly effective,” it has been argued that state has to play a major role in the capacity of a central actor in the implementation of human rights despite human rights efforts at international level. The state remains very close to the ‘real people with real problems.’¹

The domestication of international instruments has been recognised to be the most important and challenging way to implement and enforce gender-egalitarian measures.²The legal implementation of international documents such as treaty encompasses two conditions; ratification of the treaty, which is entirely a political process, by the state and secondly, provisions contained in the treaty are required to be legally enforced at local levels.³ Further, the successful implementation of human rights instruments is often dependent on national legislative framework and prevalent local conditions of a particular country. For instance, despite

¹ Jaclyn Ling-Chien Neo, “Calibrating Interpretive Incorporation: Constitutional Interpretation and Pregnancy Discrimination under CEDAW” 35 Human Rights Quarterly (2013)

² Ibid

³ Ibid

the clear provision in Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) regarding pregnancy and maternity, pregnancy discrimination has been found to be still rampant in member states of CEDAW.⁴The achievement of the goal to successfully guarantee basic human rights to women, in terms of maternity protection, depends largely on the level to which international commitments to protect and promote maternity rights and benefits in the national regime have been complied with. In United Kingdom alone it has been estimated that about thirty thousand women have been dismissed from their jobs yearly due to pregnancy .

Virtually a number of countries around the world have enacted some type of legislation concerning maternity protection and many others have also designed different measures in terms of specific programmes and policy measures to support workers in reconciling their productive and reproductive roles successfully and to secure equal opportunities and treatment in employment without any adverse impact on their health or economic security.

In adoption of legislative framework to regulate maternity protection, different countries of the world commonly refer to human rights instruments addressing different aspects of maternity rights. Maternity protection has various dimensions and elements attached to it and each of these dimensions can be comprehensively looked at from different perspectives.⁵ The fundamental human right of maternity protection is an integral part of women's human right to work which is further linked with various other human rights significantly impacting their right to live with human dignity. The intersection of maternity and work has, over a period of time, become a critical focal point for measures to improve health, equality and social security.⁶The right to attain the highest standards of health requires absolute acceptance of gender equality and includes the right to see complete physical and mental well-being and it has become one of the most powerful instruments for advocating women's liberty, autonomy and equality around the world.⁷In the direction of protection and promoting health rights, states have been obligated to ensure not only the availability and accessibility of health care.

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.⁸ These rights are directed towards protecting human dignity.⁹They 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.¹⁰ 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

⁴ Convention on the Elimination of All Forms of Discrimination against Women, art. 11(2)(a).

⁵ Nidhi Buch, "Maternity Benefit Act, 2017 - A Game Changer for Women's Economic Empowerment" 9 GNLU Journal of Law Development and Politics 138-149 (2019).

⁶ Ibid

⁷ Hilary Hammell, "Is the Right to Health a Necessary Precondition for Gender Equality" 35 New York University Review of Law & Social Change 132-133 (2011).

⁸ Raj Kumar Gupta, *Essentials of Human Rights* (Universal Law Publishing Co. Pvt. Ltd, New Delhi, 2013)

⁹ Ibid

¹⁰ Michael Haas, *International Human Rights: A Comprehensive Introduction* (Routledge, USA, 2008).

constituting a different 'class' of human being. This experience has been reflected in different books and speeches by renounced persons.¹¹

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.¹²

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."¹³ It is noted that the empowerment of women is closely linked to the opportunities they have in education, health, employment and for political participation.

Maternity protection has been incorporated in human rights documents and has been linked to the attainment of major rights and development objectives. It is a significant component of decent work agenda and provides the fundamental human rights for women in order to enable them to work in a just and decent work conditions well supported by equal opportunity and economic security.¹⁴ The real aim goes in the direction of removing the fear of discrimination from the mind of working women of reproductive age. For instance, the CEDAW's central mission has been to restrict and discourage the state from not valuing and using role of women in maternity as an instrument of discrimination against them.¹⁵ Human rights responses to maternity protection have been designed at all the international, national and regional levels, but at the international level most specific and detailed legal documents concerning the field of maternity protection can be found.¹⁶

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.¹⁷ 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.

¹¹ Rita Cantos Cartwright, "Women's Human Rights: Equality and Empowerment Dilemmas," 10 *Trinity Law Review* 171 (2000)

¹² *Ibid.*

¹³ Allen Buchanan, *The Heart of Human Rights* (Oxford University Press, New York, 2013)

¹⁴ Lalita Dhar Parihar, *Women and Law: From Impoverishment to Empowerment- A Critique* (Eastern Book Company, Lucknow, 2016).

¹⁵ Tonya Plank, "Human Rights, Women's Rights and Welfare Reform: An Analysis of H.R. from an International Human Rights Perspective," 17 *Women's Rights Law Reporter* (1996).

¹⁶ Andrea E. Stumpf, "Redefining Mother: A Legal Matrix for New Reproductive Technologies," 96 *Yale Law Journal* 187 (1986).

¹⁷ Dara E. Purvis, "The Rules of Maternity," 84 *Tennessee Law Review* 368 (2017).

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.¹⁸

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 countries, it may be a good model to emulate.¹⁹ 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.²⁰ 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.

Further, a woman employee has been guaranteed the right to return to the same position. After their return to the same position or an equivalent position, payment at the same rate has been guaranteed to them at the end of their maternity leave.²¹

Cash and Medical Benefits as Key Element of Maternity Protection

Maternity protection is one of the important branches of social security. Cash and other non-cash benefits to support maternity leave benefits under this category include medical care during pregnancy, confinement, and recovery, plus income replacement during leave.²² The monetary benefits in terms of maternity allowances and other financial assistance is a kind of replacement of women's income during abstention from work in the form of income security for the well-being of new mothers and their families.²³ During the absence due to leave, the woman is entitled to receive cash benefits and the cash benefits are derived, generally, out of public funds or by means of insurance sufficient system. The utilization of this funding has been, primarily, intended to be for the full and healthy maintenance of both mother and child which includes necessary services, such as medical services.²⁴

The lack of financial security during this critical phase of pregnancy, childbirth and related medical conditions has the tendency to force many mothers especially those in the informal economy to prematurely

¹⁸ Erin Gielow, "Equality in the Workplace: Why Family Leave Does Not Work," 75 Southern California Law Review 1531 (2002).

¹⁹ Ravi Chandran, "Entrenching the Right to Maternity Leave," 18 Singapore Academy of Law Journal (2006).

²⁰ Ibid

²¹ ILO's Maternity Protection Convention, 2000, art. 8(1).

²² Key Elements of Maternity Protection at Work, available at: https://www.waba.org.my/whatwedo/women_and_work/pdf/02.pdf (last visited on September 15, 2024).

²³ Gillian Lester, "A Defense of Paid Family Leave," 28 Harvard Journal of Law & Gender (2005).

²⁴ Ibid

return to work, thereby leaving their own health as well as the health of their new-born at significantly increased risk. In this background, paid leave is of great importance. Other facilities like day care can only assist to some extent but cannot be expected to entirely replicate the value of personal time away from work for caregiving. The availability of paid leave increases and improves the quality of life and benefits those who are on the margin between working and staying home for care work. Favourable financial security has the probability of making workplace more attractive for workforce.

Protection of Health and Wellbeing of Mother and Child at the Workplace The maternal and child health care needs become crucial part of the maternity protection. Looking into the history of maternity benefits and leave, it comes to light that maternity legislation had been originally designed in such a way as to protect the health of pregnant women, new mothers and their babies.²⁵ It is part of the recent development that a number of countries have widened their policy thrust to take into consideration the concerns over the protection to be accorded for the economic contribution women make to the income of the family without their having to face undue stress or penalty in different ways.²⁶

Many women of reproductive age, who are or may become pregnant, are actively participating in the labour market. In common parlance, attending to regular work during pregnancy is not in itself a risk. Risk arises in certain circumstances and its probability increases especially during the period immediately before and after childbirth. Their need to take rest and recuperate around the time of childbirth is primarily taken care of through maternity leave. In case of the paid work, most of them continue to work throughout their pregnancy and return to work after childbirth in good health. Here, it becomes important to ensure that these women are not allowed get exposed to hazardous substances and adverse working conditions as they might face particular risks during maternity. This kind of protective measure has been covered under the area of 'Health Protection' which further falls under the broader category of 'Occupational Safety and Health' (OSH)²⁷.

Conclusion

The conceptual framework of maternity rights is grounded in the broader principles of human rights, gender equality, and social justice. It recognizes maternity not just as a biological process, but as a critical period that requires legal, social, and economic protection to ensure the health, dignity, and well-being of women and their children. Maternity rights encompass key components such as maternity leave, healthcare access, job security, and protection from discrimination, all of which are essential for empowering women and promoting equitable societies. By situating these rights within the framework of international human rights standards and labor laws, the conceptual understanding provides a foundation for policy development and advocacy. However, to fully realize these rights, there must be a concerted effort to address systemic barriers, ensure enforcement, and promote awareness. Ultimately, a strong conceptual framework not only defines the scope of maternity rights but also serves as a guide for building inclusive, rights-based approaches to maternal protection globally.

²⁵ Carmel R. Matthias, "Neglected Terrain: Maternity Legislation and the Protection of the Dual Role of Worker and Parent in South Africa," 15 *Industrial Law Journal* 23 (1994).

²⁶ Health protection at the workplace, available at: <http://mprp.itcilo.org/allegati/en/m8.pdf> (last visited on june 2,2025).

²⁷ Ibid.