# PROCEEDINGS OF A POLICY DIALOGUE

ON

MATERNITY ENTITLEMENTS AND WOMEN
IN THE UNORGANISED SECTOR

Held on

February 28,2001

at

Vishva Yuvak Kendra, Chankya Puri New Delhi

Organised By

FORCES

(Forum for Creche and Child Care Services)

c/o Mobile Creches

D.I.Z. Area, Sector - 4,

Raja Bazar, Near Gole Market,

New Delhi - 110001

Ph. # 3363271, 3347635

Fax # 3347281

Email # forces@vsnl.com

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#### Introduction

The FORCES Secretariat organised a one-day brainstorming session on the issue of Maternity Entitlements for Women Working in the Unorganised Sector on February 28, 2001 (Annexure-I). The meeting, which was held at Vishva Yuvak Kendra, New Delhi, was organised as a dialogue between government and non-government organisations concerned with the problems of both women and children. The meeting was held in the background of the decision taken at the third policy committee meeting in Mumbai that the network should concentrate on the issue of maternity entitlements as a key factor for the survival and development of the young child. The landmark Supreme Court's Judgment of March 8, 2000 in the case Municipal Corporation of Delhi Versus Female Workers (Muster Roll) and Another (AIR 2000 SC 1274) (Annexure-II), as well as the ILO Convention 183 on Maternity Protection further strengthened the resolve of the Forces partners to have a joint campaign with other like minded organisations. The main aim was to influence government policy and to force it provide maternity benefits to all women, especially in the unorganised sector.

The diverse groups that were present at meeting included trade unions, mass organisations concerned with women's issues, NGOs concerned with the rights of the young child and working women, international organisations, organisations affiliated with or feeding into government policies and the government. Some of those present like Mina Swaminathan (ACCESS) and Amarjeet Kaur (AITUC/NFIW) and Mridula Bajaj (Mobile Creche and National Convenor FORCES) have been active in raising these issues for a long time within the FORCES network. Representatives of other organisations who were present have been either founding members or active supporters and allies of the FORCES. These were people like Hemlata from NMPS, Ranjana Narula from CITU, Brinda Karat from AIDWA, Kumud Sharma from CWDS, Prof Amit Dhanda NALSAR law university, as well as representatives from the Bharat Gyan Vigyan Samiti, Joint Womens Programme, YWCA and others. Apart from this several state chapters of FORCES were also represented in the meeting. These were representatives of Tamil Nadu FORCES, Orissa FORCES and Rajasthan FORCES. Big networks like the Social Security Association of India and Breast Feeding Association of India were also represented and present in the meeting. Finally FORCES had also invited opinion from experts like Mr. Chaturvedi Secretary DWCD, Justice Sujatha Manohar of NHRC, Mr. S.K. Das from Labour Department, Mr. Subrahmanya from the Social Security Association of India, Ms. Krishna Singh of Population Council, Ms. Jyoti Tuladhar from ILO and Dr. Kalyani Menon from Jagori (refer list of participants, Annexure-III). These people came with a wealth of experience and diversity of opinions that was openly shared in the meeting of 28th February, 2001.

Introductory Session: 9:30 - 10:45 (Chair: Devika Singh, FORCES)

The meeting began with an introduction by Vandana Prasad (FORCES Secretariat). She said that the meeting was a first step in the direction of having a dialogue for the need

for a long campaign on maternity entitlements. All organisations present recognised the importance of the issue about which two or three main points could be highlighted:

- The government had not signed the Maternity Protection Convention of the International Labour Organisation. She said that maternity entitlements were essential to the survival of the young child and the health of the mother.
- The question of maternity entitlement needs to be seen in the context of the current
  economic scenario especially in cases where the number of women in the unorganised
  sector was increasing rapidly and one third of the households in the country were
  female headed. Thus the rights of women were integrally linked to the rights of the
  child (Annexure-IV).
- Finally Dr. Prasad raised the maternity entitlement question in the context of the population policy. She stated that population policies were historically linked to racial discrimination in developed countries. Giving examples she mentioned that the motherhood endowment campaign of the 1920s in England was sponsored by the Eugenics society that wanted to the benefits to a few aristocratic families so that the purity of line could be maintained. Similarly the avoidance of universal maternity benefits in the USA were linked to fears of a burgeoning black population and the first maternity entitlements in Australia were only granted to while women in 1912. In India too, similar discrimination will be practised once the issue of maternity entitlements is linked to the two-child norm. Thus the fight for maternity entitlements is closely linked with the opposition to the two-child norm.

Amita Dhanda (NALSAR School of Law) and Jyoti Tuladhar (TLO, SAHT.) made two other presentations in this session. Amita Dhanda's presentation concentrated on the legal framework available for maternity entitlements while Jyoti Tuladhar concentrated on the ILO conventions.

Amita Dhanda pointed out that maternity benefits were a positive and undisputed entitlement under Article 21 and the ESIC and Maternity Benefits Act that provided maternity leave for a period ranging from 80 days to 12 weeks (Annexure-V). Ms. Dhanda noted that the coverage of these acts was very limited even in establishments where all workingwomen were covered by the Act. To prove this she quoted a study by Niru Chaddha that only 0.25% of the women avail maternity benefits in a situation where 94% were entitled to it. In this context she also pointed out that it was not enough to rely on the laws, as the problem of providing maternal benefits was more than legal in character. The demands for maternity entitlements were often contradicted by and had to fight the recent policies of economic reforms and the consequent withdrawal of the state from the social sector. She highlighted the need for broad based alliances in this context and opined that the structure of maternity entitlements should be carefully thought out.

Responding to the discussion on the population policy and the economic reforms, the representative of the Population Commission, Krishna Singh, argued that the NGOs should

see the two-child norm with the correct perspective. The norm was not binding at the national level and should be only implemented if informed groups of people were supporting it at different levels. She further stated that the national commission was not imposing its will on the states, as its document was merely indicative and not prescriptive. Finally she also stated the word 'control' was now being replaced by other phrases to represent the socio-economic and demographic transition that was taking place.

However, the participants did not accept this view even though they believed that it was important to limit the burgeoning population of the country. They broadly accepted the FORCES view that coercion was not desirable way of achieving this aim. Brinda Karat (AIDWA) pointed out that the two-child norm showed that the state considered it a crime for women to have babies. She said that the two-child norm had already been imposed in Maharashtra and Rajasthan. In these states women with more than two children were not even allowed to avail of the PDS. It was also noted that the interface between population policy and maternity entitlements would needed to be emphasised in future also.

Thereafter *Jyoti Tuladhar* made her presentation on the ILO conventions regarding maternity entitlements (Annexure-VI). The main points of her presentations were as follows:

- Maternity benefits were to include all women workers, whether full time or part time or employed in atypical dependent forms of work.
- Leave upto 14 weeks with a minimum of 6 weeks as compulsory in the postnatal period.
- Cash benefits that included not less than 2/3rds of a woman's insured earnings. It should also cover pre-natal, post-natal as well as hospitalisation care where necessary.
- Employment security that included protection from dismissal with the woman having the right to return to the same job. It also meant that dismissal could not take place if a woman was pregnant or ill. The burden of proof in case of dismissal was to lie with the employer in case the dismissal took place.
- Finally the convention also enjoins upon the signatories to ensure that maternity entitlements is not a source of discrimination in employment.
- As an additional recommendation, the ILO Convention also asked for the health protection of the pregnant woman.

Winding up before the tea break, Ms. Tuladhar made an appeal to the NGOs and movements that they should pressurise the government to sign the Maternity Protection Convention, 2000.

### Maternity Entitlements: Why And For Whom

Why Maternity Entitlements are Necessary?

- India has one of the highest rates of IMR i.e., 78.
- The maternal mortality is 540 per 1000, one of the highest in the world
- More than 60% of the under five mortality is because of lack of after care and malnutrition.
- In low income groups, the daily food deficiency of pregnant women is as high as 500 kilo calories and they need an additional fifth of food they habitually eat to meet their requirements.
- This is reflected in a high incidence of low birth weight babies which is 52% amongst women with severe under-nutrition, 42.2% with moderately malnutirioned and 37.1% with mildly under-nutritioned mothers.

Who Should Get Maternity Entitlements:

It is often stated that all women workers should get Maternity Benefits
But

Fast changing patterns of work in rural and urban area was steadily including 60-70 days of unpaid work. Therefore women who were not paid for their labour should also be regarded and treated in the same way as other workers. The recent economic survey had taken both the money as well as the care economy into account.

#### Therefore

Maternity Benefits and Entitlement Should Be Universally Applicable to All Women: Paid or Unpaid Workers, CR Working in the Care Economy.

Perspectives on Maternity Entitlements: 11.00 - 1.05 (Chair: Kumud Sharma, CWDS)

Representatives of trade unions, women's organisations and NGOs made presentations in this session. Thereafter there was a set of panelists who represented international organisations, government and other agencies who led the discussion. *Hemalata* of the Nirmana Mazdoor Panchayat Sangh made the first presentation on behalf of R. Geetha. Speaking from the point of view of women working in the unorganised sector, she made three basic points:

- 1) That maternity entitlements was a basic right of all working women, 98% of whom were working in the unorganised sector
- 2) The case of Tamil Nadu (Annexure-VII) showed that even in cases where laws and schemes were enacted they, suffered from at least three major flaws:
  - that benefits were only applicable one year after registration.

- that there was no rational basis for the selection of beneficiaries
- that the two child norm was applied in the implementation of laws and schemes.
- 3) She said that NMPS favoured the formation of tripartite boards to facilitate the process of entitlement to all workingwomen.

Mina Swaminathan (ACESS and FORCES) and Shanmuga Velayutham (TN - FORCES) added to this. Shanmuga Velayutham pointed out that Tamil Nadu had 12 labour boards for those working in the unorganised sector and some of these boards had proportional representation of women. Mina Swaminathan pointed out that the government of Tamil Nadu had levied an annual collection of 0.1% under the Construction Labour Act for meeting the requirements of maternity benefits. She said the state had raised 28 Crores through this method and the interest of this would be used to make claims. However there was no specific plan about how this money would be used.

This presentation was followed by the intervention of Ranjana Narula (CITU) who made the following points:

- 1) All movements and voluntary groups should lobby for maternity entitlements to all women and the government should also be forced to sign the ILO Convention on maternity entitlements.
- 2) She pointed out that maternity entitlements provided a disincentive to employ women workers in both the formal and the informal sector. She said many contract workers lost their jobs when they became pregnant or had to leave to look up after their small children. She said that CITU had already made a suggestion for creches in premises of all industrial areas.
- 3) CITU also saw the state as having the main responsibility for ensuring maternity benefits. Ms. Narula pointed out that the current legislation for maternity entitlements did not provide adequate protection because: the government had the power to decide who to exclude, the rate of benefit was minute, the penalty for non-compliance was low and cost of hospitalisation was not included.
- 4) Finally she also focused on the need for protection of maternity benefits and employment security of women workers in the wake of liberalisation.

Elaborating on and adding to these points, Amarjeet Kaur of AITUC, said that ensuring maternity entitlements and childcare as a part of basic needs were an important way of ensuring the survival of the child and consequently lay down the basis for the reduction of population. In this context Ms. Kaur made a plea for putting in more resources into provision for basic services as well as improving peoples access to such resources. She also stressed the importance of maternity entitlements as an important basis for the acheivement of the goals of ECCD. The health, nutrition and socialisation of the child were

of utmost importance in this period and maternity entitlements could contribute towards this.

Mridula Bajaj (Mobile Creches) also stressed the link between health and nutrition of children and maternity entitlements. Seeing creches as an important way of supporting the mother she shed light on the condition of both, health and childcare infrastructure. Mridula Bajaj held that in most cases Mobile Creches found that the creches on construction sites were located in cramped spaces and had no basic amenities. Finally she added that looking from the point of experience of Mobile Creches, the voluntary agencies could play a good role in facilitating the implementation of child and maternal care services Maternity Entitlements is only for a period of 4 months or 80 days. What happens to the mother after that - how can she rejoin work? Crèche has major implications for the right to work for the mother as well as for the optimism survival, growth and development of the child. (Annexure-VIII).

Brinda Karat (AIDWA) made the last presentation in this session. Like others she highlighted that the State was withdrawing from its commitment towards providing social security benefits in the wake of the economic reforms. She also highlighted the assault on food security and added that food entitlements should form an important component of maternity entitlements. The third component of maternity entitlements that she stressed on was the aspect of women's work. She said that work patterns were changing rapidly where most women had 60 to 70 days of unpaid work. In this situation the process of eligibility, identification etc. was very difficult and therefore maternity entitlements should be universal in character. In terms of recommendations for a long-term campaign for maternity entitlements Ms. Karat stated that the demand for these benefits should be linked to the availability of health for all, state medical insurance of all women and the rights of the child corer. Finally she stated that childcare and maternity benefits should be community based and work in a decentralised system where the allocation of resources would be through the Panchayats.

winding up the presentation aspect of the session Kumud Sharma said that the main thrust of the discussion thus far had focused on the need for the state to show some degree of commitment and allocate resources for the purpose of maternity entitlements. The panelists responded to different aspects of this theme. Justice Sujata Manohar highlighted the need for an employee neutral scheme. Mr. B.K. Chaturvedi, Secretary Department of Women and Child Development, highlighted, both, the efforts of the government and the obstacles before it. He stated the following points:

- 1. The need for sensitisation of people vis-à-vis the unpaid work of women. The government had taken a first step towards this by including the care economy in the economic survey of 2000-2001.
- Defending the ICDS he stated that the ICDS was today covering a population of 5-6 lakh workers. It had 10 lakh workers who were over worked and receiving Rs. 500 per month as honorarium for work in the ICDS. In future if they were made to do any

other work than the corresponding programme for which they were working would have to pay them extra money for it. He further admitted that the CAG had made some serious observations about the non-functionality of ICDS and these would have to be addressed in the 10<sup>th</sup> Five Year Plan. Under this plan the ICDS would receive a grant of Rs. 1100-1200 Crore and the states would be expected to contribute Rs 500 Crore each towards child development in their state. He felt that there was a 50% staffing gap in ICDS and the Central scheme faced a major challenge of making the state contribute their share towards filling this gap.

3. The government had already started the process of involving communities and voluntary agencies in the process of implementation. However this participation should not be limited only to process and form but also in terms of contribution of funds.

The Director of Labour Welfare, Mr. S.K. Das also agreed with Mr. Chaturvedi that service delivery mechanisms needed to be improved. He said that there were 170 million workingwomen in the country and it was difficult to implement the Maternity Benefit Act for all of them. Apart from these two other points were also raised by the panelists. Kalyani Menon of Jagori said that the childcare worker should not be over burdened in the name of providing her more money. Dr. Sobti (BPNI) said that there was an urgent need to highlight the links between maternity entitlements and breast-feeding,

The session came to a close with an exploration of the links between the right to education and maternity and childcare. Raising the issue, Janaki Rajan of the State Council of Education, Research and Training stated that the right to post-natal care of mothers and children should be considered a part of pre-school education. She said that the state had so far viewed the child in a fragmented way. Thus while the DCWD deals with the 0-6 years, the MHRD has been dealing with the 6-14 years. The 83<sup>rd</sup> Amendment only mention the right to free education for children between 6-14 years, thereby leading to a contravention of Article 45 that mentions all children. Thus the argument for inclusion of pre-school as an important support for both mothers and children is both a part of the fight against the 83<sup>rd</sup> amendment as well as the struggle for maternity entitlements.

Mr. Chaturvedi responded to Ms. Rajan's argument by stating that though the government considered the education and care of the 0-6 years as very important, it was unable to commit resources for it because of the lack of funds. Currently Rs. 30,000 to 40,000 Crores were earmarked for the education of all children over the period of 5 years. Of this the DCWD had demanded Rs. 500 Crore to be earmarked for pre-school education but no money was allocated for this purpose. As, a rejoinder to this, Jaya Srivastava of Ankur stated that the money allocated so far was on the basis of a meagre Rs. 948 per child per year and a severe reassessment was needed if proper quality education was to be provided to all children.

Alternatives Mechanisms for Implementation: 2:00-4:00 (Chair: Shanmuga Velayutham)

In the context of the lacunae of the schemes described in previous sessions, Mina Swaminathan proposed an alternative statutory scheme (Annexure-IX). In addition to this scheme Renana Jhabvala shared the SEWA experience with the house. She stated that the SEWA Bank provided money support and Ghee as nutritional support to all women who were contributing to the bank for a certain period in time. This scheme worked quite well and the Government of Gujarat had adopted it for agricultural labourers. However the scheme wound up after five years. Today SEWA has an integrated insurance scheme that insured the life, assets and health of a woman with a contribution of Rs. 600 per year. Maternity benefits were also provided as a part of this scheme.

The discussion that followed these two presentations concentrated on two main questions. First whether the statutory scheme was better than a social security scheme or not. Second, whether cash benefits were enough to meet the maternity needs of a woman. Raising the first question Mr Subrahmanya, Social Security Association of India, sought a clarification about how this scheme was different from any other social security scheme. He felt that it was similar to a social security scheme that was sponsored by the state. Seeking further clarifications Renana Jhabvala wondered whether or not a fund would be better than the scheme. She further pointed out that the difference was between a statutory and a non-statutory scheme rather than between a scheme and a fund. Agreeing with this Amita Dhanda pointed out that the National Creche Fund (an example used by Mina Swaminathan) was not a statutory fund and all funds would need associated schemes to channel their money. Finally Mr. Subrahmanya also suggested that alternative schemes should be suggested at three levels: National, State and Local.

Vandana Prasad and Mridula Bajaj raised the second question. Vandana Prasad stated that the provision for cash benefits only would not be a sufficient incentive for women to stay back from work to care for their children and breast feed. Supporting this argument Mridula Bajaj stated that cash benefits do not prevent from women in the unorganised sector from going to work. The representative from Madhya Pradesh BGVS, Dr. Rahul also qualified this argument and stated that in most case the patriarchal system would ensure that the woman's husband would misuse cash.

Clarifying these issues Mina Swaminathan made three points.

- First, she said that other social security schemes only covered the women working in the organised sector while the proposed scheme would cover all women.
- Second, because the scheme was statutory in character the main responsibility of its implementation would lie with state. Women would be liable to avail of benefit irrespective of whether they could pay a contribution or not.
- Finally she stated that the cash was the minimum benefit that all women would get and would be especially applicable to women in unpaid, self employed and home-based work.

The session came to a close with a short discussion on how much money was needed if maternity entitlements were to be provided to all women in the unorganised sector. Calculating the amount of money that would be needed, Mina Swaminathan laid down the following basis. She said that there were 18m births per year in 1981 census. If we assumed that even 60% of the mothers availed of maternity benefits than 10.8m mothers would avail of the benefit. If the daily wages of these mothers were to be protected for 120 days at the rate of Rs. 85 per day then the total amount of required yearly for maternity entitlements would be Rs. 11016 Crores. This figure would go upto Rs. 15912 Crores if the calculation were made on the basis of current figure of 26.1 m births per year as projected by the latest economic survey.

Action Plan: 4:00-5:30

The meeting concluded by reaffirming its faith in the universal right of women to maternal and childcare. On the suggestion of *Amarjeet Kaur* the following points were identified for immediate action:

- Lobbying for maternity entitlements in parliament by using the March 2000 Supreme Court's judgment in the case of Municipal Corporation of Delhi versus Female Workers (Muster Roll) and Another. It was suggested that FORCES should circulate a summary of the judgement and amendments to Maternity Benefits and Employees State Insurance Act to MP's in order to get questions raised in the Budget Session.
- Lobbying for pressurising the government to sign the ILO Convention on Maternity Benefits, 2000. Media advocacy would be an important method of doing this.
- Legal codification of the proposed statutory scheme through broad based discussion so that it can be raised in Parliament as a private members bill after 6-9 months.
- It was suggested that FORCES continue support to the ongoing the campaign for regularisation of Anganwadi Workers.
- FORCES remain alert to the possibility of introduction of the 83<sup>rd</sup> amendment in this session and continue to lobby for the inclusion of 0-6 years in this bill.

Amita Dhanda and Mr. Subrahmanya (as a member of National Labour Commission) took the responsibility of working out the amendments to the act and making suitable changes in the suggested statutory scheme to present it as an alternative. Mina Swaminathan said she would help with the creation of campaign materials revising and getting campaign spots (already made by ACCESS) dubbed if the FORCES secretariat found funds for the endeavour. On this note the one-day session came to an end.

How Much Do We Need Calculating the amount of money that would be needed. There were 18m births per year in 1981 census. If we assumed that even 60% of the mothers availed of maternity benefits than 10.8m mothers would avail of the benefit. If the daily wages of these mothers were to be protected for 120 days at the rate of Rs. 85 per day then the total amount of required yearly for maternity entitlements would be Rs. 11016 Crores. This figure would go up to Rs. 15912 Crores if the calculation were made on the basis of current figure of 26.1 m births per year as projected by the latest economic survey.

## A Policy Dialogue on "Maternity Entitlement for Women in the Unorganized-Sector" 28th February 2001 at Vishwa Yuva Kendra, New - Delhi

#### **Programme**

9.00-9.30 a.m.

Registration

**Session One** 

Chairperson: Ms. Devika Singh, FORCES

9.30-9.45 a.m.

Introduction to the Workshop Dr Vandana Prasad, FORCES

9.45-10.15 a.m.

Presentation on existing Legal and Policy Framework for Maternity Entitlements Dr Amita Dhanda, NALSAR Univ. of

Law, Hyderabad

10.15 - 10.25

ILO and Maternity Protection - Ms Jyoti Tuladhar (ILO)

10.25 - 10.40

Tea

**Session Two** 

10:40-1:45 p.m.

Chairperson: Dr Kumud Sharma, CWDS

Panel: Sri Chaturvedi (Sect. WCD), Justice Sujata Manohar (NHRC), Ms. Patrice Engle (UNICEF), Dr Kalyani Menon – Sen (Jagori), Ms Jyoti Tuladhar (ILO), Sri S.K Das (DG Labour Welfare), Ms Krishna Singh (National Commission on

Population), Ms. Reva Nayar (NCW)

Presentations by

Ms. R. Geetha, Hemlata (NMPS)

Ms. Ranjana Nirula (CITU)

Ms. Amarjeet Kaur (AITUC)

Ms. Mridula Bajaj (Mobile Crèches)

Ms. Brinda Karat (AIDWA)

1:45 - 2:15 p.m.

Lunch Break

PTO

**SessionThree** 

Chairperson: Dr Shanmugamvelayutham, Loyola College Chennai

2.15-3.00 p.m.

Convener, Tamil Nadu FORCES

Presentation on Alternative Models for Legislation and

Implementation Structures for Maternity Entitlement

Presentations by

Ms Renana Jhabvala (SEWA and Member of IInd National

Commission on Labour)

Ms. Mina Swaminathan (ACCESS)

**Session Four** 

Small Group Work; Future Action and Strategies

3.00 - 5:00 p.m.

Resource Persons: Dr. Amita Dhandha, Ms. Renana Jhabvala

Discussion on:

Recommendations for Legislation and Policy

Possible partnerships and alliances for realization of Maternity

Entitlements (including GO-NGO partnerships)

5.00 - 6:00

Presentation of Working Groups and discussion on Direction for

**Future Action** 

Chair and Summation: Ms. Mina Swaminathan

# Summary of Supreme Court's Judgment Municipal Corporation of Delhi Ve

Female Workers (Muster Roll) & others, AIR 2000 Supreme Court 1274

Maternity Benefits for Women on Daily Wages

Far reaching judgement of the Supreme Court – 8 March 2000 – but will it work against women's employment?

THE CASE

(SLP. (C) No 12797/1998 – between Municipal Corporation of Delhi and Female Workers (Muster Roll) and another.

Women employees (muster roll) claimed their right to Maternity Benefits from the MCD. The Industrial Tribunal allowed their claim and directed the Corporation to extend the benefits to all women employees (muster roll) who had been in continuous service of MCD for three years. MCD contested this ruling arguing that MCD had not been brought under the provisions of the Maternity Benefits Act and hence were not liable. The tribunal ruled that this was a lacunae and a notification to that effect must be issued as MCD was both an "industry" the employees 'workmen" and therefore the Act applied.

The matter went to the Supreme Court and it ruled:

"We have scanned the different provisions of the Act and do not find anything contained in the Act which entitles only regular women employees to the benefit of the Act".

They directed that the Tribunal should approach the Central Government and State Government to issue the necessary Notification bringing MCD under the Maternity Benefit Act, 1961 if it had not already done so. "In the meantime, the benefits under the Act shall be provided to women (muster roll) employees who have been working with them on daily wages."

The Hon'ble Judges quoted from the Constitution and Convention on Elimination of all Forms of Discrimination against Women United Nations saying,

Principles of Art. 11 should have to be read into the contract of service between Municipal Corporation and the women employees (muster roll).

They also drew on the Chapter on Fundamental Rights, Chapter 111, Art, 14 and Chapter IV, Directive Principles, Art. 38, 39, 42, 43 which direct the state to strive to minimize inequalities in income and minimize inequalities in status, facilities and opportunities.

Art. 42 specifically speaks of just and humane conditions of work and maternity relief.

The judges stated:

"To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of a child to a woman who is in service, the employer has to be considerate and sympathetic lewards her and must realize the physical difficulties which a working woman would face in performing her duties at work while carrying a haby in the womb or while rearing up the child after birth."

The Nagging Question

While celebrating the judgement, and the recognition of the importance of protecting the period of Maternity, the nagging question that arises is: "What will be the impact of such a judgement on women's employment when such obligations are placed upon the employer?" The need for a social security cover and access to it through mechanisms not dependent directly on the employer seem to be the only directly on the employer seem to be the only directly in which to go. Protection of wages during maternity need to be accessed through a Maternity and Childcare Fund to which employers' contribution needs to go irrespective of the gender of employees. Also state and employee contributions.

Detailed Indgement Avaloise with Forces Teit.

## List of Maternity Entitlements Workshop Participants 28th February, 2001 at Vishva Yuvak Kendra

S.No.	Name and Address	Telephone No.
1.	Kumud Sharma CWDS 25, Bhai Veer Singh Marg, New Delhi – 110001	3345530, 3365541 3346044 (fax)
2.	Dr. N.B. Mathur President BPNI 187. Rose Avenue, New Delhi – 110001	
3.	Anu Jha Co-ordinator Nav Srishti Flat No. 122A, Sector 17, Rohini – 110085	
4.	Chanderkanta Mobile Crèches D.I.Z. Area, Sector – 4, Raja Bazar, Gole Market, New Delhi – 110001	3363271
5.	Lotika Sarkar Joint Secretary CWDS 25. Bhai Veer Singh Marg, New Delhi – 110001	3345530, 3365541 3346044 (rax)
6.	S.K.Das Joint Secretary Ministry of Labour Shram Shakti Bhawan Rafi Marg, New Delhi – 110001	3383684
7.	Dr. Sobti , Dr. Jagdish Co-ordinator, BPNI BP-33. Pitampura New Delhi	7443445

8.	Sujata Manohar	3340891, 3347065
	NHRC	3340016, 3366537 (fax)
	Sardar Patel Bhawan,	nhrc@ren.nic.in
	Sansad Marg,	
	New Delhi – 110001	
9.	Bulu Sareen	3340294
	YWCA of India	
	10, Parliament Street,	
	New Delhi – 110001	
10.	Reena Thomas	3340294
	YWCA of India	
	10, Parliament Street	
	New Delhi – 110001	
11.	Ajeet	6968121, 6858940
	Peace	
	F-93, Katwaria Sarai, New Delhi	
	New Deim	
12.	Dr. Rahul	461086
	Health Co-ordinator	
	M.P.B.G.V.S. Bhopal	
	E-7386, Arora Coloney Bhopal	
	Biopar	
13.	Nandi Thomas Mobile Crèches	3363271
	D.I.Z. Area, Sector – 4,	
	Raja Bazar, Gole Market,	
	New Delhi – 110001	
14.	R.K.A. Subramanya	6580797
	Secretary General	0300797
	SSAI	
	573, 10th Cross, J.P. Nagar,	
	Bangalore - 78	
15.	Geeta Potsang	6194746
	Student	
	229, Tapti Hostal	
	J.N.U.	
	New Delhi – 110067	

6.	Bobby Sanokhabur Student	6194746
	230, Tapti Hostal	
	J.N.U.	v
	New Delhi – 110067	
17.	Naim Akhtar	3356655
	Sr. Reporter	
	TVUVE	
	2, Hailey Road, New Delhi	
	New Deini	
18.	Adriyana	7014105, 7026652
	Co-ordinator	
	Nirmala Niketan C-189, Pushpanjali Enclave,	**
	Pitampura	
	Delhi - 110034	*
19.	Jessey George	7042417, 7054765, 7443445
•	Executive Director	
	Surakshit	
	D7/10, Sector – 6, Rohini, Delhi – 110085	
	Rollin, Denn - 110065	
20.	B.K. Chatuvedi	3383586, 3381495
	Secretary WCD Shastri Bhawan	*
	New Delhi – 110001	
21.	Renana Jhabuala	3932405
	National Co-ordinator SEWA - Ahemdabad	
	SEWA- Pholidaese	
22.	Ritu Priya	6102752, 6102638
	Asst. Professor	ritupriya@vsnl.com
	CSMCH, JNU New Delhi – 110067	
	11011 20111	
23.	S.G.Thakur	3348994
	Jt. Secretary, WCD	
	Jeewandeep Building Parliament Street,	
	New Delhi - 110001	

24.	Mina Swaminathan	044 – 2541229, 2541698,
	Hon. Director	2541319 (fax)
	ACCESS, MSSRF	access@mssrf.res.in
	3 <sup>rd</sup> Cross Street,	
	Taramani Institutional Area	
	Chennai – 600113	
	Ondina.	
25.	Raj Kumari Dogra	301037
	Freelancer	rajkumaridogra@usa.com
	5TA 16, Housing Board Colony	
	Shastri Nagar,	
26.	Dr. Sarojini	0141 - 510039, 700332,
20.	President	
	RUWA	519221 (fax)
		550060 ®
	B182A, Mangel Marg, Bapu Nagar,	ruwa_ruwa@usa.net
	Jaipur	
27.	Devika Singh	3363271, 3347635,
	Consultant	3347281 (fax)
	FORCES	forces@vsnl.com
	C/o Mobile Crèches	10.1000,00,10.11.00.11
	D.I.Z. Area, Sector - 4,	
	Raja Bazar, Near Gole Market	
	New Delhi – 110001	
	TYPE THE TABLE	
28.	Dr. K. Shanmuga Velayutham	044 - 8265544
	Convenor	ksvelayutham@yahoo.com
	TN-FORCES	
	Dept. of Social	
	Loyola College	
	Chennai	
20	A	
<b>29</b> .	Anjali Alexander	
	Mobile Crèches	
	D.I.Z. Area, Sector – 4,	
	Raja Bazar, Gole Market,	
	New Delhi – 110001	
30.	Basanti Pathak	
	Mobile Crèches	
	D.I. Z. Area, Sector – 4,	
	Raja Bazar, Gole Market,	
	I NAIG DAZAI, UUIC IVIAIKEL	
	New Delhi – 110001	

31.	Preeti Bhardwaj Mobile Crèches D.I. Z. Area, Sector – 4, Raja Bazar, Gole Market, New Delhi – 110001	
32.	Jyoti Tuladhar ILO – SAAT India Habitat Centre New Delhi – 110002	4602101 – 4
33.	Neerja Jain Mobile Crèches D.I. Z. Area, Sector – 4, Raja Bazar, Gole Market, New Delhi – 110001	
34.	Salikavathy Secretary Baly Memorial Services Group 28A, GNG Colony Varadjaryapuram Chennai – 53	044 – 6259661
35.	Mridula Bajaj Mobile crèches D.I. Z. Area, Sector – 4, Raja Bazar, Gole Market, New Delhi – 110001	
36.	Archana Prasad FORCES C/o Mobile Creches D.I. Z. Area, Sector – 4, Raja Bazar, Gole Market, New Delhi – 110001	
37.	S. Pushpa Supervisor TN-FORCES, W.V.S. 19, V.R. Ramanathan Street, Chet Pet, Chennai – 31	044 – 8264025
38	M.Meera Creche Teacher TN- FORCES, W.V. S.	- do-

39.	K. Shantha Crèche Teacher TN - FORCES, W.V.S.	- do –
40.	T. Gouri Baby Memorial Services Group 340/19, S.M. Nagar, Chennai – 39	044 - 6255121
41.	Krishna Singh Member Secretary Population Commission Govt. of India	3710051, 4674631
42.	Janki Rajan Director SCERT Varun Marg, Defence Colony New Delhi – 110024	4623543, 4611921 (fax) scertdel@nda.vsnl.net.in
43.	Bhagya Laxmi Mobile Crèches D.I. Z. Area, Sector – 4, Raja Bazar, Gole Market, New Delhi – 110001	
44.	Amita Dhanda Professor NALSAR University of law 3-4-761, Barkat Pura Hyderabad	7657960
45.	Brinda Karat General Secretary AIDWA 121, V.P. House, Rafi Marg, New Delhi – 110001	3319566, 3710476
46.	Ranjana Nirula CITU BA Rouse Avenue, New Delhi – 110002	3221306, 3221288

47.	Hemlata Kansotia Co-ordinator	356112, 308568
	NMPS Plot 38, Moti Nagar,	
	Queens Road, Jaipur	
48.	Amarjeet Kaur	3387320, 3319541
	Secretary/Gen. Secretary AITUC/NFIW	
	1002, Ansal Bhawan,	
	Kasturba Gandhi Marg, New Delhi - 110001	
49.	Subhash Bhatnagar	7013523, 7072243
	Secretary NMPS	
	B - 19, Subhavna Niketan,	
	Pitampura, Delhi – 110034	
	Deini - 110034	
<b>5</b> 0.	Jeewanti	- do-
	NMPS	
51.	Prescila	- do-
	NMPS	
52.	Valeria	- do -
	NMPS	
53.	Nitin Jugran	3711700
	Senior Correspondent	nitinjug@del3.vsnl.net.in
	UNI 9. Rafi Marg,	
	New Delhi – 110001	
54.	Jaya Srivastava	6523395, 6521411
	Director	
	ANKUR 7/10, Servodaya Vihar	
	New Delhi	
55.	Reeta Malhotra	
	Mobile Crèches D.I. Z. Area, Sector – 4,	
	Raja Bazar, Gole Market,	
	New Delhi – 110001	

56.	Kamla Thakur Mobile Crèches D.I. Z. Area, Sector – 4, Raja Bazar, Gole Market, New Delhi – 110001	
57.	Vandana Mahajan Alarippu 8, Samaj Kalyan Appatments, Vikas Puri, New Delhi – 110018	5624385, 6524389
58.	Gouri Choudhary Action India 5/27A Jungpura B, New Delhi – 110014	4327470, 4314785
59.	Runu Chakraborty Neenv Group D-1, 59/3 DLF, Dilshad Plaza, Gaziabad	91-4622296
60.	Kalyani Jagori C-54, WBSE, New Delhi – 110017	
61.	Ramakant Orissa FORCES C/o CLAP 367, Markat Nagar, Sector – 6, C.D.A. New Cuttuck – 14, Orissa	0671 - 605680 603980 (fax)
62.	Sreelatha Menon Journalist Indian Express B31, Express Appartments. Mayur Vihar I Ext Delhi	3702100 (o) 2717357 ®

63.	E. Singh Surakshit D7/10, Sector – 6, Rohini Delhi	7044792
64.	Pratibha Journalist Amar Ujala	6822486
65.	Roma Soloman Executive Member YWCA of India B8/15, Vasant Vihar, New Delhi	6151772
66.	Pamela Bhagat Correspondent WFS A - 157, Defence Colony New Delhi - 110024	4622102

## FORCES' Background Note – Maternity and Childcare in the Current Context

## MCC Code: Concept and Content

The proposal for a Maternity and Child Care Code was first put forward in SHRAM SHAKTI, (1986) the Report of the National Committee on Women in the Unorganized Sector. It was the first official recognition that the needs of women and young children are intimately interlinked and need to be considered together, since women, especially poor women, perform multiple roles as workers, homemakers and child caregivers, and millions of women (estimated at 9 crores at that time) were working in the informal or unorganised sector. It was felt that child care services were not only important from the point of view of the health, welfare and development of the young child, but equally, an essential support services for these women. The Report suggested that a holistic review be undertaken of existing laws, schemes and programmes and these be integrated with necessary changes and amendments, into a single comprehensive Maternity and Child Care Code, which would supersede all existing legislation and provide for integrated development in the future.

It has also been well recognized through long years of experience and research, that apart from involving the rights of the very young child and the working woman, the issue of child care also involves older siblings directly. In particular, the older girl child directly participates in the parenting role at the cost of her own child hood and rights.

Thus, the ramifications of the lack of child care services are immense.

The United Nations Convention on the Rights of the Child (CRC) was unanimously adopted in 1989 by more than 100 countries in order to ensure to the maximum possible extent, the survival and development of the child. India too, as one of the signatories, has laid down strategies and activities to achieve these goals. The rights covered by the CRC are applicable to all children with no discrimination based on gender or on birth order or on biological status. They are classified into four main areas:

Right to survival: Covering the child's right to life and the needs that are most basic to existence; these include an adequate living standard, shelter, nutrition and access to medical services.

Right to development: Include those that children require in order to reach their fullest potential like the right education, play and leisure, cultural activities, access to information and freedom of thought, conscience and religion.

Right to protection: Requires that children be safeguarded against all forms of abuse. neglect and exploitation. It guarantees special care for refugee children, protection against abuses in the criminal justice system and involvement in armed conflict, child labour, drug abuse and sexual exploitation.

Right to participation: Empowers children to take an active role in their communities and nations. These encompass the freedom to express opinions, to have say in matters affecting their own lives, to join associations and to assemble peacefully. Similarly, India is also a signatory to the Convention for the Elimination of Discrimination Against Women (CEDAW).

The Constitution of India, through its Directive Principles, ensures certain rights of children for their protection and care. Article 24 and Article 39(e) prohibit the employment of children, while Article 39(f) states that attempts will be made to ensure that "the children are given opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity and that childhood and youth are protected against exploitation ad moral and material abandonment." With regard to education, Article 45 mentions that the State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Article 14 of the Constitution promises just and humane conditions at work and Article 42 relates to Maternity Benefits.

The National Policy on Children (1974) was formulated emphasizing the responsibility of the State to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental social development.

Day care services, as an essential support service received its first formal reference in policy in the New Education Policy of 1986.

More recently, the Ninth Five Year Plan highlights the significance of investment in services for the very young child as an investment in the country's human resource development. It also recognizes the urgent need for creches and day care services as a support service to working women and as a fundamental requirement to universalizing school enrollment and enhancing the spectrum of child development services.

Thus, there is enough to suggest that the State is publicly committed to the Child. However, in actual fact, the fate of the very young child in India continues to be dismal for many and complex reasons of which a lack of political will is paramount.

Though there may be grades of opinions on the usefulness of law and policy in changing this situation, we accept that laws and policies do play a role as statements of intent and essential tools for enforcement.

In this context, the interpretation of the Rights of the Child specifically for the very young child is the mandate that the code seeks to achieve. While the code itself may be seen to have various components, namely, the policy, laws and schemes and structures for implementation, this document seeks to define the 'policy', that is, the intent and goals of such a code.

Needless to say, every policy document exists in a specific social economic and political context which makes it specifically relevant to its times and validates the need for its existence.

### The Social, Political and Economic Context of the MCC Code

The last decade of the millennium has been one of volatile and fast paced economic change. The Structural Adjustment Programme thrust upon us by international agencies such as the World Bank and IMF have been ushered in and furthered by every government that has come into power in this period.

Where much is still hazy about the effects this has had upon the underprivileged of this country, a great many issues of concern have emerged as a result of the structural adjustment process. These issues have been acknowledged to some extent by all the agencies that support this process while those who have opposed it continue to build up an impressive and convincing argument for caution based on steadily growing experience and analysis.

In particular, easily demonstrable trends in economic policy and 'development' clearly impact the underprivileged working woman in the most drastic way.

Increasing displacement from land holdings is being seen as a result of the kind of development policies being followed by the State. Whether it be for the construction of large hydel projects or for the use of a private company, little or no compensation is made available land for land is hardly ever provided. The result is increasing migration and urbanization. Urban slum populations are steadily swelling.

Women who might have earlier participated in the economy of the household by tilling their own fields or tending to cattle are increasingly being forced to go out to work for cash. Apart from the loss of land this is also forced by the rising costs of living. Therefore, the female workforce in the unorganised sector is swelling and women are forced to work in situations of insecurity without being able to access support services, policies or laws to help and protect them and their children. In particular, the impact on the care of their very young children is quite serious. Their triple burden of house work, child rearing and wage work is typically assisted by older children, notably the older girl child. This is a major cause of non enrollment and drop out of the girl child of school going age. Of even greater concern is the fact that a large number of very young children are left in the care of other children who are themselves not even old enough to be going to school.

Simultaneously, employment patterns reveal a shift of women workers from the organised to the unorganised sector. The organised sector itself is seeing fundamental changes in employer - employee relationships that are eroding whatever benefits of social security it enjoyed over the unorganised sector. In short, as in other sectors like health and education, the State is relinquishing all responsibility towards the social security of workers of which an enormous number are women working in the unorganised sector. The effects on Maternity Entitlements, Wage Security and already huge gap between the need and provision for day care services are obvious.

Many other major trends compound the problem. The Health Services provided by Government have been systematically undermined in many ways. Whereas there has

always been a problem of implementation at ground level the current philosophy of the role of the State in health and education have brought in different problems.

On the one hand, fundamental health issues like universal provision of safe water and sanitation and food security continue to be neglected. On the other, curative services are rapidly being transferred to the private sector which flourishes without any regulation of cost or quality.

Government hospitals suffer from an increasing lack of funds. There are major gaps in staffing and equipment requirements. Even essential drugs are almost completely unavailable and are not even being manufactured by the government in sufficient quantities.

Meanwhile, the cost of drugs and investigations in the market are rising at a remarkable rate. The new Patents Act and provision of Exclusive Marketing Rights further ensures that this trend cannot be controlled at National level.

Health policies and programmes are focussing a major part of their resources on 'population stabilisation' while largely ignoring the primary health care services that are essential to the success of such a programme. While on the one hand, the policy for population stabilisation is meant to be non coercive, the two child norm penalising both women and children is steadily creeping into law and policy.

Similarly in the Education sector, though there might have been small gains in infrastructural requirements (too little too late) there is a clear policy shift whereby the State's commitment to education is being cut back in more ways than one. New (foreign funded) programmes are clearly committed to primary education rather than the elementary

education

promised by the constitution. Even more ominously, the intention to wash their hands off Early Childhood Development as an integral an accepted part of education is clearly evident in the proposed 83rd Constitutional Amendment restricting the scope of education to ages 6 - 14 in defiance of the constitution.

Along with the failure to provide ECCD services, the State has also steadfastly refused to regulate the private sector in pre school education. The mushrooming of private nursery schools has, on the whole, created far from satisfactory circumstances for the development of very young children Characterised by ill equipped and over crowded classrooms and often untrained teachers, these institutions promote practices like examinations, tests, homework, interviews, textbooks and heavy school bags for children who should be learning by playing.

All this done in the name of freedom of choice becomes yet another route for sacrificing the development and education of children to market forces.

An enormous amount of money has been taken on loan from International agencies for the sectors of health and education. Apart from creating the above mentioned changes in policy, the programmes thus created (e.g. RCH, DPEP) are doomed to provide avenues for wastage

and corruption in the absence of fundamental infrastructure. Needless to say, they also create an additional burden of debt on the exchequer for repayment in foreign currency.

Our environment is seeing a steady deterioration in quality. Air pollution, water pollution, degradation of forests, soil erosion, chemical contamination of food and water, inadequately evaluated genetically modified foods and nuclear hazards are what we will bequeath the children of the next millennium.

While poverty has always been an abuse and specially upon children, hardly any underprivileged group is left protected from the new problems related to a skewed market orientated development though they may not yet participate in its profits.

The stresses and strains of modern competitive life are compounded by the general insecurities due to the non-existence of social security. In addition, the values of the market economy favour individualism and dehumanization. All this is reflected in the growing violence and abuse upon women and children.

The implications of these trends in urbanization, labour, health, education and environment; both social and physical, upon the issue of the care of very young children are serious and severe. Large numbers of children are being left in the care of each other thus ensuring that all efforts to attack malnutrition, provide universal education and holistic development and combat poverty at its genesis are made ineffective.

In answer to the growing need for child care services, there has been practically no growth of State run crèches in the last five years. A total of 15000 crèches run by the Scheme for Working and Ailing Mothers and the National Crèche Fund (set up in 1994) are meant to service the entire country. Even these rarely cater to the under twos largely due to the inadequacies of the scheme itself. The ICDS, which could have provided a vehicle for better care of children has not extended its scope to day care. The result has been its poor outreach even though it is almost universally present in all blocks of the country; 23 million children under six compared to the total of 105 million of which 60 million are under the poverty line.

Therefore, the specific goals and contents of a MCC code exist within a scenario of growing social and economic insecurity. In particular, we underscore the urgent need to tackle the lack of basic prerequisites for a 'decent' life like food, shelter, safe water, sanitation, safe environment, universally accessible good quality education and health services. Where the very young child is concerned, this cannot be achieved in this given context without the provision of day care services in the short term and comprehensive social security for parenting in the long term.

The ideal minimum requirements to safeguard and promote the protection, survival, development and participation of the very young child may be defined thus:

### **COMPONENTS OF ECD**

#### 1.Parents

Antenatal Care including adequate nutrition
Safe delivery (not necessarily institutional)
and care of the newborn
Post natal care including good quality
information and services for family planning
Adequate Maternity Entitlement and Wage
Security
Paternity Leave
Day Care Services for Support
Information on ECD

### 2. Children from Birth to Two

Presence of a sensitive and aware adult carer home. in informal care arrangements or through day care services Environment Suitable for Holistic Development Exclusive Breast Feeding for 4-6 months Appropriate Weaning Adequate and appropriate (safe, fresh, culturally acceptable) Nutrition Good quality health services including immunisation Understanding and support by extended family and community for role of parenting Presence of a sensitive and aware adult carer either home. in informal care arrangements or through day care services Adequate and appropriate (safe, fresh, culturally acceptable) nutrition Non formal, age appropriate, child centred preschool education in own language Universal access to elementary school After school Day care services if required Understanding and support by extended family and community for role of parenting

## 3. Children from three to six years

#### CATEGORIES WITH SPECIAL NEEDS

1. Parents With Special Needs

Adoptive / Foster Parents

Single Parents Sex 'workers' HIV affected Women in Prison

Labouring in Unorganised Sector

Migrant / Displaced

Victims of man made / natural disasters

With Disability

Victims of War / Terrorism Minorities / Dalits / Adivasis

2. Children With Special Needs

Children of women working in the

unorganised sector Girl Children Child Labourers

Children of Migrant / displaced families

Children of Itinerant families

Street Children

Children of Single Parents Children With Disability

Children within minority groups, Dalit and

Adivasi children

Children of Sex 'Workers' Children in prostitution HTV Affected Children

Children awaiting adoption in institutions

Adopted children Children in Orphanages Children of women prisoners

Child victims of man made or natural

disasters

Child victims of war or terrorism

Child victims of abuse

Finally, we would like to reiterate that not only is a Maternity and Child Care Code envisaged to exist within comprehensive policies relating to women's rights, labour rights, right to health and education, it is also seen to exist within a comprehensive code laying out the rights of all children. However, this remains beyond the scope of this particular document and the experience and expertise of the groups of people that have developed it. We wish to record our commitment to all processes that lead to the

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## Maternity protection 2000

In June 2000 the International Labour Conference will discuss maternity protection at work and is expected to adopt a new international labour Convention and Recommendation on maternity protection. The first discussion of this was held in June 1999.

This fact sheet explains briefly the role of the ILO in maternity protection, the process of adopting and revising ILO standards on maternity protection and the main differences between the existing international standards and the draft Maternity Protection Convention.

### 1. What is maternity protection? How is it provided?

Some of the basic elements of maternity protection include the right to leave, the right to cash and medical benefits, and the right to job security and non-discrimination. Appropriate maternity protection is considered to be a necessary condition for equality.

Maternity protection figures prominently in social and labour legislation around the world. Provisions are typically found in national labour codes, social security regulations, health and safety rules and anti-discrimination legislation.

### 2. What are the ILO standards relating to maternity protection?

Maternity protection of women at work has been of core importance to the International Labour Organization since its establishment in 1919. The Maternity Protection Convention, 1919 (No. 3) was among the first international labour standards adopted. It laid out the basic principles of maternity protection, as described above - the right to leave, the right to cash and medical benefits and the right to job security, as well as the right to nursing breaks during working hours.

In 1952, Convention No. 3 was revised to take into consideration developments in national law and practice, especially in the realm of social security. The Maternity Protection Convention (Revised), 1952 (No. 103) retained the same principal elements of protection, but the means and manner of providing benefits were made more explicit. Medical benefits were to include prenatal, confinement and postnatal care by qualified midwives or medical practitioners, as well as hospitalization if necessary. As regards cash benefits, a minimum income replacement rate of two-thirds of the woman's previous insured earnings was specified for those benefits derived from social insurance, while women who failed to qualify for benefits were to be entitled to adequate benefits out of social assistance funds, subject to the means test required for social assistance. Nursing breaks were to be counted as working hours and remunerated accordingly where this matter was governed by laws and regulations.

In addition, an accompanying Recommendation, 1952 (No. 95) was adopted. This instrument recommends the extension of the leave period to a total of 14 weeks, the increase of cash benefits to equal 100 per cent of the woman's previous insured earnings, the extension of employment protection, the preservation of seniority rights and the woman's right to reinstatement. Much of the Recommendation focuses on the protection of the health of employed women during the maternity period. Medical benefits are clearly specified, guidance is provided on the establishment of facilities for nursing mothers and their children, and occupational safety and health questions are treated.

Several other international labour standards are relevant to issues of maternity protection. These include the Discrimination (Employment and Occupation) Convention,

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1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156) and Recommendation (No. 165) and the Part-Time Work Convention, 1994 (No. 175).

## 3. What are international labour standards and what is their effect?

International labour standards include Conventions and Recommendations. Conventions are international treaties that place binding obligations on the member States which ratify them to implement their provisions in national law and practice. Follow-up mechanisms, which include regular reporting requirements as well as a complaints procedure, ensure that Members actually do implement the provisions. A member State that does not ratify a Convention is under no obligation to bring its national law and practice into conformity with that Convention. However, if a Convention is not ratified, it can still influence national legislation. Indeed, member States do take ILO Conventions into account when considering legislative or policy changes.

A Recommendation is not ratifiable and its provisions are not legally binding. Recommendations contain recommended practices and possible guidance for future legislation. In many cases, they expand on the provisions of Conventions, providing detailed suggestions on how a Convention might best be implemented.

Adoption and revision of international labour standards is a legislative process, which involves intensive consultation of ILO member States, employers' organizations and workers' organizations over a three-year period as well as discussions at the International Labour Conference for two consecutive years. All consultations, discussions and decisions involve the tripartite constituency of the ILO, that is governments employers' organizations and workers' organizations, speaking with an equal voice. The standard-setting process is fully in the hands of the tripartite constituents.

An important feature of ILO Conventions and Recommendations is that they set a universal standard while taking account of the great differences in economic and social development among member States.

## 4. Why revise Convention No. 103? Where are we now in the revision process?

Since 1952, women's employment patterns have changed greatly around the world. Women's economic activity rates have risen dramatically and women now tend to work throughout their childbearing years. Women contribute a higher proportion of family income than ever before. The importance of maternity protection for employed women has grown in consequence.

Since the mid-1990s, the ILO has made a major effort to evaluate the relevance and effectiveness of international labour standards in order to ensure their suitability for today's world. This has involved the review of the entire body of ILO Conventions and their classification according to whether they are fully up-to-date (in which case their ratification should be promoted), whether they require revision, or whether they should be shelved, abrogated or withdrawn.

As of 15 March 2000, 38 out of 174 ILO member States have ratified the Maternity Protection Convention (Revised), 1952 (No. 103). The low level of ratification and the identification of a number of technical obstacles to further ratification were among the concerns that were taken into account in the Governing Body decision in March 1997 to revise the 1952 instruments in line with current needs, reflecting the advances made in many countries. The Governing Body therefore placed the question of maternity protection on the

agenda of the International Labour Conference. The first discussion of a proposed new Convention and Recommendation on maternity protection was held in 1999.

The second discussion will take place in June 2000. The Office has prepared the Conference reports which will serve as the basis for this discussion, based on the comments received from constituents on the texts agreed at the 87th session of the International Labour Conference in June 1999. The series of reports prepared by the ILO for discussion at the Conference are entitled Maternia, Protection at Work. They are available in English, French and Spanish through the internet at www.ilo.org. Follow the path leading through the International Labour Conference to the 87th and 88th sessions for the reports.

Convention by the refer. 5. What are the main differences between Convention No. 103 and the Draft Convention?

Some of the principal differences between Convention No. 103 and the Draft Convention are summarized below. In this brief fact sheet it is not possible to analyse every difference between the two instruments.

a) Scope

The scope of a Convention determines who is covered by its provisions. The scope provision of Convention No. 163 (Article 1) is highly detailed and contains long lists defining the workers who are covered as well as five paragraphs (Article 7.1) regarding those who might be excluded from coverage. For example, certain categories of non-industrial occupations and domestic work for wages in private households may be excluded.

In contrast, the scope provision of the Draft Convention states (Article 2.1) that: "This Convention applies to all employed women". It embodies the principle of broad coverage. The Draft Convention also allows the possibility of exclusions (Article 2.2). It does not list the exclusions permitted but specifies that these could only be taken with regard to limited categories of workers or enterprises, only due to special problems of a substantial nature and only after consulting representative organizations of employers and workers.

b) Leave

Both Convention No. 133 (Article 3.1 and 3.2) and the Draft Convention (Article 3.1) provide a basic entitlement to 12 weeks of maternity leave. Convention No. 103 and the Draft Convention deal differently with the issue of a period of compulsory leave:

## Compulsory leave

As shown above. Convention No. 103 states that at least six weeks of postnatal leave should be compulsory. The Draft Convention also provides for a compulsory leave period. but leaves it to the member State to determine the length and distribution of any compulsory leave period before or after chilebirth.

Convention No. 103 provides (Article 3.5 and 3.6) for the possibility of additional leave in case of medically certified illness arising from pregnancy or confinement. The Draft Convention extends the protection (Article 4) by covering not only maternity-related illness. but also complications and risk of complications, which were previously treated in Recommendation No. 95 (Paragraph 1 (2)).

#### c) Benefits



Both Convention No. 103 (Article 4.1) and the Draft Convention (Article 5.1) state that cash and medical benefits should be provided to women who are absent from work on leave. The cash benefits must be sufficient to maintain the woman and her child in proper conditions of health and at a suitable standard of living. The medical benefits include prenatal, childbirth and post-natai care, as well as hospitalization care, when necessary.

Convention No. 103 states (Article 4.4) that the cash and medical benefits must be provided through compulsory social insurance or public funds. Employers may not be individually liable to pay for such benefits for the women they employ (Article 4.8). The Draft Convention does not specify now the benefits are to be provided. It simply requires that they be provided.

The Draft Convention specifies the level of cash benefits under all circumstances.

whereas Convention No. 103 sets the level only for certain cases:

#### Benefit levels

As indicated above, under Convention No. 103, the level of cash benefits is set at no less than 2/3 of the woman's earnings taken into account for the purpose of computing benefits (Article 4.6). This rate only applies, however, to cases in which benefits are paid through compulsory social insurance and are based on the woman's previous earnings.

The Draft Convention has retained the 2/3 rate, but that rate would apply to any payment system which bases benefit rates on an individual woman's previous earnings (Article 5.3). The Draft Convention also provides (Article 5.4) that where other methods are used to calculate benefits, the benefits should provide on average a comparable level of protection.

d) Employment protection and non-discrimination

Protection against dismissal due to pregnancy or childbirth is considered to be one of the fundamental elements of maternity protection. Job security is provided to some extent through Convention No. 103, which prohibits dismissal during maternity leave (Article 6).

# **Employment protection**

As illustrated above, the Draft Convention provides a longer period of protection which includes the pregnancy, absence on leave and a period following the woman's return to work (Article 7). However, the protection is no longer absolute. Termination of employment would be permitted on grounds funrelated to pregnancy or childbirth and its consequences or nursing". These might include, for example, serious fault on the part of the employed woman, shut-down of the undertaking or expiry of the employment contract. The Draft Convention also places the burden of proving that the dismissal was unrelated to pregnancy or childbirth and its consequences or nursing on the employer.

In addition, the Draft Convention contains an article on the adoption of méasures to ensure that maternity does not constitute a source of discrimination in employment (Article

8). Convention No. 103 contains no comparable provision.

e) Breastfeeding mothers

The Draft Convention, like Convention No. 103, provides an entitlement to one or more daily breaks for a woman to nurse her child. The provision is intended to apply to mothers who breastfeed their children, including those who express milk at intervals during working hours for later use.

#### Nursing breaks

Convention No. 103 states that breaks will be counted as working time and remunerated accordingly where the matter is governed by national laws. Where the matter is governed by collective agreement the position depends on the relevant collective agreement (Article 5.2). In other cases, Convention No. 103 is silent. In contrast, the Draft Convention, as shown above, requires that nursing breaks be counted as working time and remunerated in consequence in all cases (Article 9.2).

The provisions of the Draft Convention and Recommendation, as described above, are subject to amendment by the International Labour Conference, before the new instruments are finally adopted.

4 April 2000

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# Maternity Entitlementsfor Women in the Unorganised Sector A Policy Dialogue; 28 Feb 2001, New Delhi Back ground Paper (FORCES)

#### The Continuum of Maternity Entitlement

In the course of the last few decades, the pressures on women have increased along a number of dimensions and due to numerous factors. These include the changing demographic picture, (Census of India, 1981,1991) increased visibility of women in the work force combined with increasing marginalisation, increase in the number of woman – dependant households, erosion of certain family structures and networks, female and child malnutrition, high female illiteracy (UNICEF, 1990) increasing violence against women, commercialization of marriage and several other factors, including direct attempts by the State to manipulate reproduction.

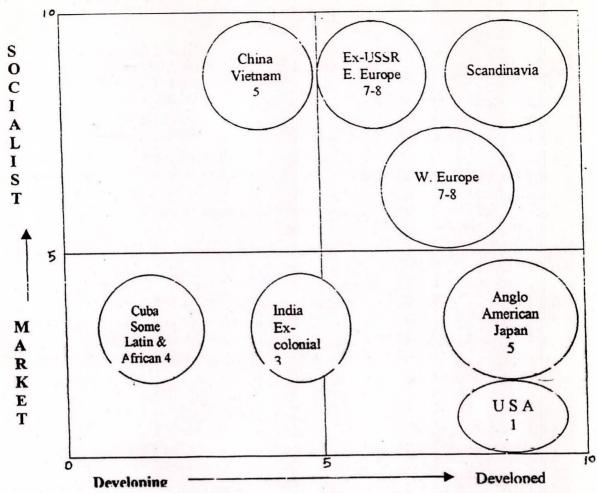
#### A COMPARATIVE VIEW

India's rating in respect of maternity laws and policies can be visualized from a comparative review (Swaminathan, 1992) of laws and policies relating to maternity and child care in 135 countries (Source – ILO) which shows sharp contrasts between socialist (present and former) and market-oriented countries, as well as between developed and developing countries.

In the developed world, the most generous provision, (including paternal leave) is found in the Scandinavian and some West-European countries like France, Germany and Italy with a long tradition of socialism, welfare state, powerful labour and women's movements, declining birth rates and universal nuclear families. Almost as good is offered by the ex-Socialist countries of Eastern Europe and (ex) USSR with much lower standards of living, while the Anglo – American market oriented countries have the least favorable provisions in the developed world.

In the developing world, again, the Socialist countries of China and Vietnam offer a strong contrast to the market oriented economies. Though the majority of women in this later group, which includes India, are in the informal sector, most of these countries (several of which are ex-colonial) have borrowed their legislation directly from the industrialized countries with very different conditions, and it is hence often inappropriate to their situation. Some modest adaptations are now being tried in some places.

# Maternity and Child care Support by Nature of Polity and Level of Development



Rating Scale of Maternity Support Laws and Policies from best to worst

KEY	
9	Sweden, Norway, Finland, Denmark;
8 - 7	Germany, France, Italy;
7 – 6	Ex-USSR, Hungary. Czechoslovakia, Poland, Rumania;
6 – 5	China, Vietnam;
5 – 4	Australia, Canada, U.K., New Zealand;
4	Costa Rica, Chile, Cuba, Nicaragua, Egypt, Niger, Sri Lanka and others;
4 - 3	India, Brazil, Mexico, Jamaica, most African, Arab and Asian Countries;
1	U. S. A.

#### Reference:

This Paper has been culled out from "The Continuum of Maternity and Child Care Support" – A Critique of relevant laws. Policies and programmes from the perspective of Women's triple roles; by Mina Swaminatham. This paper was presented at the Sixth Conference of the Indian Association for Women's Studies, Mysore, may 31 – June 2, 1993

# A Policy Dialogue on "Maternity Entitlement for Women in the Unorganized-Sector" 28<sup>th</sup> February 2001 at Vishwa Yuva Kendra. New - Delhi

Background Note prepared by FORCES

# WOMEN, WORK AND CHILDCARE

Within the family, the onus of childcare has traditionally lain upon women, and specifically the mother. This perspective has been thoroughly exploited, or remained unchallenged at best by most agencies dealing with the issue. It is convenient to all but the targeted mother, that she remains not only the root cause of all the ills that befall the young child, but also the key to all solutions. It is not surprising, therefore, that feminist groups have often reacted (publicly, if not privately) against this maternal image of the woman.

It is worthwhile to examine the situation of women in the current situation, the multiplicity of roles they must play and the support and participation they may expect from the other 'players' in our society.

Even today, women carry the triple burden of child bearing and rearing, housework and economic activity. It is the latter that must be acknowledged, as a basic right and a critical need of the day, to fully understand the major gap and investment required in childcare support.

One of the main problems in enumerating women as workers is the all pervasive patriarchal attitude that assumes that women do not work at all or that women do not work outside of the home. This bias also influences the census (see below).

We go by the premise that all underprivileged women are perforce working women. 93% of these (over 12 crores) would be working in the unorganized sector, which is also the main source of livelihood for Indians.

One of the main problems in 'quantifying' women's participation in the economy, and therefore planning for and supporting it, has been the inadequacy of the census process itself. In 1991, the Work Participation Rate (WPR) of women was 22.3% as compared to 51.6% for men. However, studies done with greater sensitivity to the types of work, women do, reveal a vastly different picture as indicated in the table below:

Village	Census FWPR	Census MWPR	Survey FWPR	Survey MWPR
Kalwa	0.7%	50.7% o	51.2%	57%
Jossowal	16.4%	58.2% c	58.2%	67.3%
Dulher	0%	59%	1 48 7%	60.8%
Balian	7.1%	54.60 0	47.5%	68.5%
	0.3%	54.7° 1	1 53.5%	65.3% o
Dharamgarh	0.370	1 34.7		

SCOPE Study, 1995

Obviously, this has significant repercussions on policy formulations to do with labour and social security, as well as allocations of resources to support services such as child care services

Though trends in (un) employment take many years to show clearly, some trends have gathered enough evidence from a variety of sources. Organized employment is growing at a 'snail's pace' compared to demographic growth. There is an increasing casualization of work with a rise in contractual work.

Year	Round	Self employment In Percentages	Regular employment In Percentages	Casual employment In Percentages
Persons				
1972-73	27	41.2	46.3	12.5
1977-78	32	42.4	41.8	15.8
1983	38	41.8	40.0	18.2
1987-88	43	42.8	40.3	16.9
1993-94	50	42.3	39.4	18.3
Males				
1972-73	27	39.2	50.7	10.1
1977-78	32	40.4	46.4	13.2
1983	38	40.9	43.7	15.4
1987-88	43	41.7	43.7	14.6
1989-90	45	42.3	41.3	16.4
1990-91	46	40.7	44.2	15.1
1993-94	50	41.7	42.1	16.2
Females	j			A PROTECTION OF THE PARTY OF TH
1972-73	27	48.4	27.9	23.7
1977-78	32	49.5	24.9	25.6
1983	38	45.8	25.8	28.4
1987-88	143	47.1	27.5	25.4
1989-90	45	48.6	29.2	22.2
1990-91	46	49.0	25.9	25.1
1993-94	150	45.4	28.6	26.0

Source: S.S. Suryanaryanan, Level and Pattern of Female Employment in Gender and Employment in India, 1999, Delhi and Urban Statistics of India, 1996. NSSO DATA

- 94 Percent of the Workingwomen in Delhi are in the unorganized sector. A
  report by the Delhi Commission for Women states that 90 per cent of the rural
  and 70 per cent of the urban women are unskilled labour and also perform their
  domestic duties. (Delhi Commission For Women)
- At an average most women spent 7 hours outside the house and 4 hours working inside the house thus making their workload of 11-12 hours per day. This leaves them little time to attend to their young children who require attention during the early years.
- There is no social security for these women who start working one month after their child is born.

(Indu Pathak and Pushpa Patnaik Women in the Informal Sector, NIUA, 1991).

Where women working in the organized sector are concerned, since the State has been the largest employer of women through the public sector, privatization has led to a decline in women employees from 8% in the eighties to below 2% in the nineties. More and more women being pushed to self-employment or the unorganized sector and are unable to prove their status as workers. This means that less and less women are able to avail of maternity and child care benefits or any kind of social security at all. They also find no protection from the law. Simultaneously, wage security is seriously endangered and already meager earnings are further compromised. Thus the trend is one of an increase in the relative and absolute poverty of women. Where one third of all households are already women headedvi, the repercussions upon the very young child of these trends in employment are grave. Women who must work for the survival of themselves and their families have to do so regardless of how and by whom their young children would be cared for. Images of a tiny six month old left alone covered in faeces and flies crying in a *jhuggi* or being carried around by a pot bellied three year old with a grubby bottle in the other hand are not at all unusual. Those that choose the devil's alternative of staying home eat less and their children eat less. Either way, there seems little hope for a situation in which one of three babies is born of low birth weight and one of two children are malnourished. For the poor, it is a catch 22.

From the point of view of the very young child, it must be said again that in most circumstances, the child is best looked after within the family and not in institutions. However, the family does not exist in a socio economic vacuum. If the function of caring for children is to be given the recognition due to it, society would have to provide the circumstances and systems by which a family is enabled to stay out of the 'market' for that period of time. In reality, the concept of paternity leave hardly exists though some State statutes have now provided 15 days paternity leave. Maternity leave and benefits can only be accessed by women working in the organized sector which is only about 7° of all workingwomen. The leave itself does not even provide for the 4 – 6 months of

recommended exclusive breast-feeding. Creches on worksites thus become one important way in which parents may continue to contribute to the care of their young children while earning their livelihood.

Recently there have been some encouraging moves to extend maternity entitlements to the unorganized sector; a recent Supreme Court Judgment pronounces that muster roll workers of the Municipal Corporation of Delhi are entitled to maternity entitlements and the Construction Workers Act of 1996 also potentially provides for similar rights for construction workers.

However, generally speaking, far from gaining universal recognition and support, the 'triple burden' of women's work rearers is further compounded by the sharp rise in prices of food and health care. Indisputably, this is also the result of the State's unwillingness to ensure control over even the basic minimum requirements for a 'human' life.

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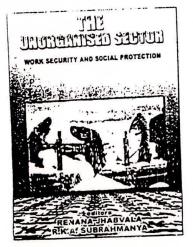
Project ACCESS

M.S. Swaminathan Research Foundation 3rd Cross Street, Taramani Institutional Area Chennai - 600 113

Telephone : 91 - 44 - 2351229, 2351698

Fax : 91 - 44 - 2351319 E-mail : access@mssrf.res.in

mina@mssrf.res.in



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# THE UNORGANISED SECTOR

Work Security and Social Protection

edited by RENANA JHABVALA, Self-Employed Women's Association (SEWA), Ahmedabad, and RKA SUBRAHMANYA, Social Security Association of India, Bangalore

This book addresses the important issue of reaching social security to workers in the unorganised sector which now comprises 92 per cent of India's workforce. This book is about practice, not theory. It examines the government's various schemes for social security, as also describes some non-governmental efforts

CONTENTS: Foreword by ELA R BHATT / Meeting Basic Needs: The Unorganised Sector and Social Security R K A SUBRAHMANYA and RENANA JHABVALA / Participatory Approaches: Emerging Trends in Social Security RENANA JHABVALA / Strategies for Protective Social Security R K A SUBRAHMANYA - Support for the Unorganised Sector Existing Social Security Measures R K A SUBRAHMANYA - Welfare Funds: An Indian Model for Workers in the Unorganised Sector R K A SUBRAHMANYA / Organising Insurance for Women Workers MIRAI CHATTERJEE and JAYSHREE VYAS / Health Insurance for the Poor: Innovations in Primary Health Care U N JAJOO / A Comprehensive Approach to Health Care SOCIETY FOR EDUCATION WELFARE AND ACTION (SEWA)—RURAL TEAM / Worker, Mother or Both?: Maternity and Child Care Services for Women in the Unorganised Sector MINA SWAMINATHAN Mobile Creches—A Case Study BRINDA SINGH / Indian Widows: In Search of Dignity and Identity MARTHA ALTER Mobile Creches—A Case Study BRINDA SINGH / Indian Widows: In Search of Dignity and Identity MARTHA ALTER CHEN / Social Security in the Age of Ageing R K A SUBRAHMANYA / Integrating Disaster Mitigation with Social Security MIHIR R BHATT / Conclusion: Endnote / Appendixes

9

# Worker, Mother or Both: Maternity and Child Care Services for Women in the Unorganised Sector

#### MINA SWAMINATIIAN

The recognition that women simultaneously perform multiple roles in society—as workers (economically productive role); as home-makers (consumer role); and as child-bearers and -rearers (reproductive role)—has been late and slow in coming. It is also undeniable that the reproductive period of women's lives is also the time they are likely to be most productive as workers, and most under pressure as home-makers. Hence, young women with young children are those who most need support, especially in their roles as mothers and home-makers, to enable them to fulfil their economic roles adequately, and also to enable them to participate in training and in civic and political life.

The concept that such support should be provided in the form of services, since society has some obligation to provide such support, is also a relatively new one, and still unpopular among those who regard child-rearing as a private responsibility to be carried out as best it can by each family. Unfortunately, in this context, the word 'family refers only to the woman, who is traditionally seen as being responsible for child-rearing. This concept has been deeply ingrained in women as well as men, so much so that it is still relatively rare for working women to expect, let alone demand, support services as their right. Widespread social acceptance of the need for support services is yet to emerge.

While a few efforts have been made to provide maternity and child care support, these have been largely unrelated to each other and have shown modest growth since Independence. Further, they have been confined almost entirely to the organised sector, though in India over 90 per cent of the female workforce is found in the unorganised sector. The Report of the Committee on Women in the Informal Sector (Shram Shakti, 1988) was the first to articulate the idea of the Continuum of Maternity and Child Care, as the two are closely linked, and together refer to the woman's reproductive role. The Report made a powerful plea for a comprehensive policy of support for women working in the unorganised sector.

Within the continuum, two broad divisions can be made. The first is the period before and after childbirth, till the child is about 2 years old, which could be described as maternity and infancy. During this period, close proximity of the mother and child and constant access are the major needs of the child, both for breastfeeding and psycho-social development. This period is probably best dealt with through *entitlements* to the mother, that is, various supportive arrangements directed at the woman which enable her to carry out her reproductive and productive roles. The second period, starting from when the child is about 2 years old, and with a flexible upper limit till the child is 4, 5 or 6 or can be enrolled in primary school, is probably best handled through services, which reach out directly to the child.

A brief survey of the position with regard to each of these aspects is given in two sections, the first dealing with entitlements for maternity and the second with child care services. In conclusion, some suggestions for policy and programmes are made.

### MATERNITY ENTITLEMENTS

What kind of entitlements are available to women for childbirth, breastfeeding and child care for the first two years of the child's life?

There are several laws which directly or indirectly affect lactating women and children below 2 years (Table 9.1). Of these, only two, the Employees' State Insurance Act (1948) and the Maternity Benefit Act (1961), directly address the question of maternity.

Both these Acts provide three months of paid maternity leave to women working in establishments employing 10 (sometimes 20) workers, that is, for the organised sector. They also provide protection against dismissal

and against arduous or hazardous work during pregnancy, and for nursing breaks during lactation.

Table 9.1 Laws Affecting Lactating Women, and Children of 0-2 Years

	1948
Employees' State Insurance Act	1948
Fretories Act*	1950
Mines Act*	1951
Plantations Act*	1961
Maternity Benefits Act	1966
Beedi and Cigar Workers' Act*	1970
Contract Labour Act*	1980
Inter-state Migrant Workers' Act*	1992
Infant Milk Substitutes Act	1774

<sup>\*</sup> Provide for crèches at the workplace.

No similar legislation exists for women in the unorganised sector. Though, maternity benefits are technically available to heedi workers under the Beedi and Cigar Workers' Act, records show that very few women workers are able to avail of them because of existing conditions and their lack of awareness of the benefits. In cases where there are strong unions, the benefits have been availed of.

Though between a third and a half of all agricultural labourers are women, the proposed Agricultural Workers' Bill makes no direct mention of maternity, and the Construction Workers' Act (1996) has not made any positive advance in this direction either.

Moreover, some of the legislation is restrictive rather than enabling in nature, like the Infant Milk Substitutes Act, which strictly regulates and restricts the promotion, distribution and donation of baby foods and milk substitutes and hence does little to help women, reducing instead of enlarging their options. The remaining Acts listed in Table 9.1 provide for crèches at the workplace. They will be discussed later.

In recent years, the central government as well as several state governments have launched schemes to support women during pregnancy, childbirth and lactation with cash, nutrition or services. These schemes are specifically targeted at women who cannot claim benefits through the law which only addresses the organised sector. But these schemes do not have the force of law and thus benefits accruing from them cannot be claimed as a right or be contested in court. The schemes can be altered or wound up by the government without legislation. These schemes are shown in Table 9.2. The Integrated Child Development Services and the

Tamil Nadu Integrated Nutrition Project provide nutrition to pregnant and lactating women as well as children. The Employment Guarantee Scheme in Maharashtra offers maternity benefits and crèches, while others provide cash benefits.

Table 9.2 Schemes Affecting Lactating Women, and Children of 0-2 Years

National Level	
Scheme of Assistance to Creches for Working/Ailing Mothers*	1974
Integrated Child Development Services	1974
Maternity Assistance Scheme	1995 .
State Level	
Employment Guarantee Scheme	Maharashtra 1974
Tamil Nada Integrated Nutrition Project	Tamil Nadu 1980
Material Protection Scheme	Gujarat 1986
Muthulakshmi Reddy Childbirth Scheme	Tamil Nada 1988
Scheme for Pregnaht Agricultural Labourers	Andhra Pradesh 1990

<sup>.</sup> This scheme is discussed in the section on child care services.

Three states (Gujarat since 1986, Tamil Nadu since 1988 and Andhra Pradesh [AP] since 1990) provide a modest cash benefit of Rs 500-800 for maternity to women below the poverty line. The Andhrd Pradesh scheme is restricted to women agricultural labourers. Provision was made in the central government's budget for similar benefits, but the extent of implementation is not clearly known. The weaknesses of these schemes are as follows:

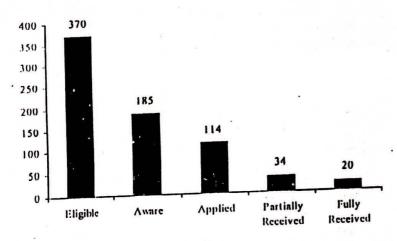
- 1. Eligibility is defined as 'below poverty line', thus keeping out those who may be just above it, or who are unable to establish their eligibility, and also giving scope for cumbersome red tape and corruption right at the grassroots. Besides, it fails to recognise that women workers above the poverty line also require support as mothers.
- 2. The woman's work is not referred to (except in the case of AP), so the objective of providing wage protection is not necessarily fulfilled.
- 3. Eligibility is restricted to two children, excluding the woman worker who may not be in a position to control the decision on the number of children she bears and placing a further burden on her. Further, this contravenes the right of the newborn to nutrition, as provided

21:

in the Convention on the Rights of the Child which has been ratified by India.

4. There are a number of other weaknesses in implementation. Figures are not available to show how many women are getting even these limited benefits. But a study which was conducted gives a very bleak picture of the utilisation of the scheme in Tamil Nadu (see Figure 9.1)

Figure 9.1 Utilisation of Cash Support Scheme in Tamil Nadu



Out of 370 'eligible' women, that is, those below the poverty line with two or less children, only half were aware of the scheme and only about one-third applied, perhaps because of a reluctance to face the difficulties in getting the money. Due to delays, red tape, need for repeated visits, bribes and other problems, only about one-tenth received even partial payment, and only 5-6 per cent had received full payment at the time of the study.

Proposals made by NGOs in Tamil Nadu suggest that, to enable women to stay off the labour market for at least a few months to care for the newborn child properly, it is necessary to provide wage protection at least at the level of minimum wages for a period of four to six months. At the current levels of minimum wages in Tamil Nadu (that is, Rs 20 per day), and allowing for 20 working days per month for four months, this would translate as Rs 1,600 (20  $\times$  20  $\times$  4), while the amount presently allocated is Rs 500. What women actually get after allowing for costs and bribery is, of course, much less.

The Integrated Child Development Services and the Tamil Nadu Integrated Nutrition Project provide enriched flour as a nutritional supplement to pregnant and lactating women, either in the form of a 'laddu' to be eaten on the spot, or a week's ration to be taken home. The supplement is only available to women below the poverty line. Studies show that only about half the 'eligible' women take the supplement and little is known about how the 'take-home' food is shared and used in the family. However, studies in Tamil Nadu show that the nutrition scheme is more widely known and availed of than the cash support scheme.

# CHILD CARE SERVICES

Programmes which aim at providing child care services to women working in the unorganised sector can be categorised as specific services, which try to meet the needs of specific groups of women, general services addressed to all poor women, and innovative programmes.

# Specific Services

#### Women Workers

There are several laws mandating crèches for the children of women workers (Table 9.3). The first three, which were passed in the first few years after Independence, are modelled on laws in the West and relate to the organised sector. They make it compulsory for employers to provide crèches for children below 6 years at the workplace of working women, and lay down eligibility in terms of the number of women employed. They also lay down guidelines and rules regarding the location and construction of the creches, furniture and equipment, amenities and facilities, milk and refreshments, etc. They make reference to 'trained' workers, without specifying the nature of training. But even in the organised sector, there are few such crèches, and their quality, is uneven.

As the last three Acts listed in Table 9.3 which relate to the unorganised sector, are modelled on laws passed for the organised sector, they are practically impossible to implement. Hence, there are hardly any such crèches. Unfortunately, the Construction Workers' Act (1996) does not make any significant improvements over earlier Acts, and repeats the same clauses which have proved not to be workable.

Table 9.3 Laws Relating to Creches

Act	Minimum Number of Workers	Minimum Number of Children	Provision
Factories Act, 1948	30		A suitable room or tooms for the use of children, with trained women in charge
Plantations Act,1951	50	20	-do-
Mines Act[1952 (Section 5B)	No minimum number specified		Room or rooms, amenities and supervision
Beedi and Cigar Workers' (Conditions of	50		Room or rooms and trained women in charge
Employment) Act,1966 Contract Labour (Regulation & Abolition) Act,1970	70		Two rooms to be provided for children, one play room and one sleeping room
Inter-state Migrant Workers' Act, 1980	do	-do-	-do-

Detailed critiques of these laws by organisations like Mobile Crèches working with construction labour indicate that these are not suitable models for the unorganised sector, since the conditions here are very different. For example, in this sector women may be self-employed in contractual work, or working for very small establishments, or in situations where there is no visible employer to whom the law can be addressed. This makes a mockery of the 'eligibility' clause without putting anything else in its place, such as incentives for small employers to group together to provide common services.

### Voluntary Sector

The main scheme for this sector is that of Crèches for Children of Working/ Ailing Mothers, implemented by the Central Social Welfare Board and the Department of Women and Child Development, recently supported by funding from the National Crèche Fund set up in 1994. Though originally intended as a support for women working in the unorganised sector, the scheme has been so locsely defined and is so poorly implemented and monitored, besides being inadequate in coverage, that it does not fulfil its objectives. Its major weaknesses are:

- 1. Even after 20 years, only about 13,700 creches (12,500 under the Creches for Children of Working/Ailing Mothers and 1,200 under the National Creche Fund) catering to about 350,000 children exist throughout the country. These are concentrated in certain states, and are to be found mostly in urban and semi-urban areas.
- 2. In most cases, the crèches cater to children between the ages of 2 and 6, and very few or no children below 2 are to be found, even though this is a most critical need for working mothers. The main reason is that the conception and financing of the scheme is not conducive to the care of the very young. To cater to the very young, more adult workers are required, as well as more and different amenities, equipment, food, training, etc. Hence, most agencies are unable or unwilling to provide for infants, while parents are naturally reluctant to send their children under these conditions. The crèches therefore function mostly like pre-schools, nursery schools, bahvadis, etc.
- 3. Most of the creches only function for three or four hours as in the case of balwadis/nursery schools and their timings are not usually adapted to those of working mothers except in Kerala and Tamil Nadu, where all creches are obliged to function for six hours, usually from 9.30 a.m. to 3.30 p.m. or longer. Even here however they are not necessarily adjusted to the mothers' work timings.
- 4. There is often no information about which categories of women working in which occupations use these facilities, since such records are not compulsory for receiving grants. There is hence little data available about whether the timings and locations of the creches suit the mothers.
- The funding, pattern of staffing, and lack of training of creche workers make it very difficult for these creches to offer good quality developmental care to the children. Besides, there are many other weaknesses in implementation.

Private Sector

Unaided crèches have sprung up in both the voluntary and private sectors.

- 1. In the voluntary sector, there are now a growing number of crèches, often run by religious denominations, which are not government aided and are mostly funded by donor agencies often with some contribution from the parents. There is very little information available about them, but they are small, scattered and of an experimental nature. A few, like the day-care centres run by the Church of South India, offer a high standard of services, but they are expensive.
- 2. In the private sector, creches catering to middle-class working women have mushroomed in the large cities, especially the metropolitan ones. There has been no systematic survey or quantitative assessment of them, nor are there any regulations or guidelines for such creches. Some available studies indicate that the quality is variable, mostly poor, with heavy overcrowding, and lack of individual attention or stimulating activities for the children. The organisers have no specialised training and little idea about maintaining standards. However, parents' needs and demands in terms of timing, location, safety and the basic requirements of food, toilet, rest, sleep, etc., are well met.

# General Services

In the sixties, increasing concern was voiced about the plight of young children and the possible adverse effects on them of poverty and deprivation. It was realised that the reach of the existing programmes was inadequate to meet the needs of millions of children.

# Integrated Child Development Services

This led to the launching of the Integrated Child Development Services (ICDS) Scheme, vast in its scope and conception, aiming at the total development of young children in the most vulnerable groups. This scheme has the most extensive and comprehensive network of child care services in any developing country and reaches about 15 per cent of all children in the age group 0 6 and two-fifths of those most in need. By the turn of the century, it is expected to cover the entire country.

The overall goals of the ICDS Scheme are:

- to provide a comprehensive range of basic services to children in an integrated manner,
- to create a mechanism at the village level for service delivery, and
- to give priority to low income groups, including the underprivileged tribes and Scheduled Castes.

Specific beneficiaries include: expectant and nursing mothers, other women aged 15-45 years, and children of 0-6 years. The package of six services provided are: supplementary nutrition, immunisation, health check-up, referral services, non-formal pre-school education (for 3-6-year-olds), nutrition and health education for women and a nutritional supplement for pregnant and lactating mothers. In selecting project areas, priority is given to those predominantly inhabited by tribes and Scheduled Castes, backward areas, drought-prone and nutritionally deficient areas, those poorly served by social services, and urban slums. The anganwadis generally run for three hours (four in some states and a full day of six hours in Kerala and Tamil Nadu), and the pre-school classes only cater to children of 3+. There is evidence that the services are used only by the poorest groups.

The scheme does not specifically recognise or eater to the work done by women, or their needs or responsibilities as mothers, nor are the timings or location of centres geared to the convenience of working women of any category, to seasonal changes in their work schedules, migration patterns, or other work-related factors affecting them. Women are expected to avail of the benefits at the times and places laid down in the scheme, and this is widely quoted as a reason for the low availing of supplements and other benefits by eligible women, as well as for the low utilisation by children.

The main success of the ICDS scheme has been in developing an infrastructure for child care services, and in areas like immunisation and enrolment of children from anganwadis in primary schools. However, it has had limited value as a support service for women in the unorganised sector, because of its fragmented approach which focuses on the delivery of specific services, and lack of attention to day care for children.

Day care was not originally a component of the ICDS Scheme and the need for this service was not recognised until the National Policy of Education, 1986. The Programme of Action which followed, however, stated that a fixed number of anganwadis (25 per cent) would be turned into anganwadi-cum-crèches by the year 2000. It spelled out the requirements

for running such anganwadi-cum-crèches. Till the end of 1996 only 659 anganwadi-cum-crèches had been approved for the entire country, although 25 per cent would imply about 100,000 anganwadi-cum-crèches.

Table 9.4 gives a summary of the nature and extent of general child care services run by the government or with government aid. Though there is no hard data available it can be assumed that the mothers of many (or the majority) of these children work in the unorganised sector. It must be noted that most of these services are partial and fall far short of holistic child care or day care, especially for children below the age of 3.

Table 9.4 Coverage under Various Early Childhood Education Schemes (1996-97)

Schemes	Number of Centres	Number of Beneficiaries (in Millions)
ICDS (pre-school education age group 3 - 6 years	400,000 (approx.) 5,614 projects	10.81*
Early childhood education (FCE) (age group 3-5 years)	4,615	0.153
Crèches and day-care centres (age group 0/5 years)  Ralwadis (age group 3/6 years)  Statutory crèches (0/6 years)	14,313 5,641 5,000 (approx.)	0.342 0.169 0.050 (npprox.) 18.5
Total		(approx.)

<sup>\*</sup> An additional 8.1 million children in the 0 -3 age group are covered under ICDS, receiving food supplements, immunisation and health-checks.

Source: Data on ICDS, ECE, creches and day-care centres and halwadis are from the Department of Women and Child Development in the Ministry of IIRD, Government of India.

#### Impovative Programmes

Some innovative small-scale programmes offer insights and scope for emulation.

#### Employer-funded

To promote small-scale industries, several state governments have set up industrial estates with special facilities for small businesses. In these

estates there are a large number of small employers who are not statutorily obliged to provide crèches, and hence there have been some voluntary cooperative ventures run with goodwill and imagination. In Chennai, a joint initiative involving a voluntary agency, the Indian Council for Child Welfare, the employers (Ambattur Industrial Estate Manufacturers' Association) and the state government (Small Industries Development Corporation) led to the establishment of two crèches for children of women workers which run a 12-hour day, in shifts, and cater to about 100 children. The creches are financed by the employers' association with small contributions from the parents, and are staffed and run by the voluntary agency in accommodation provided by the state government. There is great need, though not yet a strong demand, for more such crèches, since there are several thousand women employed in the Estate. This model could be replicated in similar situations, but depends on goodwill, since there is no legal requirement for employers to fund such crèches. Recognition and reward for those who adopt humane employment policies, discounts and incentives for joint activities, and some investment in advocacy and awareness creation would go a long way in helping more small employers to promote crèches.

#### Employee-organised

An association of women employees in government and public sector undertakings in Chennai runs a chain of eight to 10 creches, housed in the office buildings in which the mothers work (e.g., Income Tax, Secretariat, Port Trust, 'Reserve Bank, etc.). Accommodation, and funds for some initial equipment were provided by the concerned offices, and the crèches are managed by the Women's Association. The main funding is from the parents themselves, though substantial contributions have been made and occasionally continue to be made by the employers, depending on the interest and goodwill of the senior officer/heads of the concerned departments. These creches mostly cater to children below 3, as those is the 3+ age group tend to be placed in private nursery schools which also function as day-care centres. Parental needs for safety, cleanliness, food, timing and proximity are adequately met, though developmental care is often lacking. However, there has been little recruitment to these cadres in the last few years, and the average age of the women employees is steadily increasing. Most of them have completed their child-bearing, and with declining fertility among the middle class, the younger women may opt to have only one or no child. Because of these factors, and the increasing

difficulties of urban transport, the demand for such crèches seems to be on the decline.

#### Union-organised

Creches established by SEWA for the children of women tobacco workers are a good example of a service organised by a union for its members. Launched in 1989 and focusing (for the first few years) on the age group 0-3, it has now been extended to children up to 6 years of age. Further, the management has been taken over by a service cooperative consisting of the child care workers themselves under the overall umbrella of SEWA. This, the first attempt of its kind in the country, is in itself a very significant experiment. Further, the creches are funded by multiple sources, including modest contributions from the mothers, donations from philanthropists, contributions in kind from panchayats and local bodies, support from insurance and labour welfare funds and to some extent from the tobacco factory owners themselves. This last however, is considered a voluntary contribution for two reasons:

- 1. The women work both in the tobacco fields and the factories, according to the season. While creches are mandatory under the Factories Act, there is no such provision for agricultural workers.
- 2. Though employers are required to provide creches at the factory site, they are not obliged to provide funds to any other agency to carry out that task. Hence, such contributions have to be accepted as a gesture of goodwill and cannot be demanded as a matter of legal right.

#### Women Workers-organised

Now operating in four states (Gujarat, Karnataka, UP and Bihar), Mahila Samakhya, a government-sponsored autonomous women's organisation, was set up in 1987 with a view to empowering women and education for equality. It helps women find time and space to reflect on issues of their concern, organise and generate their own solutions, with support from the organisation.

In some areas in Gujarat, rural and tribal women have defined child care support as one of their basic needs and have by trial and error devised strategies to meet this need. Child care support has become a tool for the empowerment of these women. Currently financed by government through Mahila Samakhya, staffed by local women, and run on the pattern of the

Central Social Welfare Board crèches, child care centres have been established and have been able to garner some support from the men and other family members, as well as some local bodies. Though not of high quality, they are adequate to meet the women's needs. Their future vinbility, however, can be ensured only if linked in the long term with local panchayati rai or a larger umbrella organisation. Intensive efforts are required to get funds from various sources, as well as to train and supervise the workers.

#### Voluntary Agency-run

The oldest and best known example is Mobile Creches, a voluntary agency which has specialised for nearly three decades in running day-care centres for the children of migrant women construction labourers and other casual workers in the metropolitan cities of Mumbai, Delhi and Pune. Since the women are obliged to go to work soon after childbirth and to leave the children for long hours, Mobile Crèches has developed a programme sensitively tuned to the needs of each age group, from home-like creches for infants, to play centres equipped with stimulating low-cost materials and activities for pre-schoolers, to helping older children get into and through primary school. The workers are trained as interns 'on the job' through a well-planned programme of practical work. Funded from multiple sources with heavy contributions from donors, Mobile Creches also gathers some contributions from building contractors and builders. However, for reasons already mentioned (SEWA) these are considered as voluntary contributions. Because of the complexity of the task, the lack of readily available trained workers, the high costs and uncertainty of results due to the heavy turnover of labour, limited cooperation from the building industry, and other reasons, this model has not been widely replicated.

There are several other examples in various parts of the country which adjust their programmes in varying degrees to the requirements of women workers, their children and the local community.

# CONCLUSION AND RECOMMENDATIONS

This brief survey of existing entitlements/facilities/services indicates what needs to be done: funding needs to be shared by government (the lion's while programmes should be flexible and need-sensitive, decentralised and participatory in management. Thus, programmes may be run by women's groups, employers, workers, cooperatives, trade unions, voluntary agencies, local governments, service clubs, educational institutions, etc. Since the child care worker is crucial to the success of a programme, adequate attention should be given to her selection, training, wages, working conditions and motivation.

In the light of these considerations, some basic policy recommendations are:

- 1. A Maternity and Child Care Policy, a comprehensive statement which deals with the totality of a woman's reproductive function, from pregnancy till the child is able to go to school. The document should state the woman's right to health care, wage protection and adequate working conditions for maternity, and at the same time the child's right to survival, protection, care and development. The policy statement, based on the Constitution and the Convention on the Rights of the Child has then to be transformed into an interrelated set of laws and schemes addressing the continuum of maternity and child care. Learning from the experiences of the past, some of the present laws and schemes would have to be superseded or amended, and new ones provided.
- 2. A statutory state-level Maternity Fund which could be drawn upon to provide every woman, regardless of income, number of children or other considerations, with income protection to enable her to withdraw temporarily, partially or wholly from the workforce, in the interests of child care. Such a Fund should be funded from multiple sources which could include: a cess on employers, regardless of the number or sex of workers employed; a percentage of all large contracts, especially in trades like building, quarrying and construction; a cess on the turnover of establishments; tax-exempt donations; and insurance contributions from workers of both sexes. The Fund could also be enriched by percentage contributions from sectoral labour welfare funds and insurance funds. The management of the Fund should have representatives of labour, employers and the state, and the procedures should be laid down by this autonomous body, delinked from the contributors.
- A state-level statutory Child Care Fund, along similar lines. For flexibility and need-responsiveness, child care services should be

- decentralised and run by a variety of organisations which may be funded by the Child Care Fund. This Fund too should have multiple sources of raising and developing its income, and autonomy in action. Both these Funds should be state rather than national level, for administrative convenience and adaptability. They may even be combined if feasible.
- 4. Recognition of the child care worker as fulfilling an important social role and as an emerging category of worker through a programme of appropriate and ongoing training and supervision, combined with adequate wages and reasonable working conditions.

Through such policies and the programmes which would arise from them, women will be empowered to effectively and satisfactorily fulfil their multiple roles, and children may have the chance for a healthy and happy life.

#### REFERENCES AND SELECT BIBLIOGRAPHY

- Arulraj, M.R. and Raja S. Samuel (1995), Balancing Multiple Roles. Research Report No. 1, M.S. Swaminathan Research Foundation, Chennai.
- Bhatt, Ela, Miral Chatterjee and Janet Price (1986), 'Towards Maternal Protection. Report on Maternity Benefit', SEWA. Unpublished report.
- Chatterjee, Maltreyee (1990), Breastfeeding and the Rights of Working Mothers.

  Proceedings of the seminar on Promotion of Breastfeeding, Bengal Rural
  Welfare Society.
- Datta, Vrinda (1995), Home away from Home: Family Day Care in Bombay, Suraksha Series No. 1, M.S. Swaminathan Research Foundation, Chennai.
- Khnlakdina, Margaret (1995), In Sight—On Site: Day Care for Construction Workers: Children: Mobile Creches, Delhi. Suraksha Series No. 2, M.S. Swaminathan Research Foundation, Chennai.
- Khullar, Mala (ed.) (1992), Whither Child Care Services? Centre for Women's Development Studies, New Delhi.
- Maternity and Child Care Support Services (1993), Proceedings of the NGO Consultation, Proceeding No. 8, M.S. Swaminathan Research Foundation Chennal.
- Mothers Milk—Every Child's Birthright! An Appeal to the Government of Tamil Nadu. Tamil Nadu Forum for Creche & Child Care Services (TN-FORCES).
- Narayanan, Rama (1997), At What Cost? Research Report No. 2, M.S. Swaminathan Research Foundation, Chennal.

- Pandit, Harshida (1995), Children of the Umon: Creches for Women Tebacco Workers' Children: Self Employed Women's Association, Ahmedahad. Suraksha Series No. 5, M.S. Swaminathan Research Foundation, Chennai.
- Shram Shakti (1988), Report of the National Commission on Self Employed Women and Women in the Informal Sector, Government of India, New Delhi.
- Singh, Devika (1979), 'Legislation in EKALAVYA', The Mobile Creehes
  Annual
- Sriram, Rajalakshmi (1995), Another Kind of Child Care: Alternatives for Rural Women, Mahila Samakhya Gujarat. Suraksha Series No. 7, M.S. Swaminathan Research Foundation, Chennai.
- Swaminathan, Mina (1985), Who Cares? A Study of Child Care Facilities for Low-income Women in India, Centre for Women's Development Studies, New Delhi.
- (1991), Child Care Services for Working Parents in India, II.O, (mimco)
   (1993), The Continuum of Maternity and Child Care Support. M.S. Swaminathan Research Foundation, Chennai.
- (1994), Women, Work and Breastfeeding. Occasional Paper No. 2, M.S. Swaminathan Research Foundation, Chennai.
- Swaminathan, Mina and Rama Narayanan (1995), 'Impediments to Breastfeeding: An Analytical Review'. Paper presented at the workshop on Empowerment of Women for Breastfeeding, National Institute for Public Co-operation and Child Development.

# R191 Maternity Protection Recommendation, 2000

Recommendation concerning the revision of the Maternity Protection Recommendation, 1952 Recommendation:R191 Place:Geneva Session of the Conference:88 Date of adoption:15:06:2000 Display the cocument in: French Spanish

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and

having met in its 88th Session on 30 May 2000, and Having decided upon the adoption of certain proposals with regard to maternity protection, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Maternity Protection Convention, 2000 (hereinafter referred to as "the Convention"),

"the Convention"),
adopts this fifteenth day of June of the year two thousand the following
Recommendation, which may be cited as the Maternity Protection Recommendation,
2000.

#### Maternity leave

- 1.(1)Members should endeavour to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks.
- (2)Provision should be made for an extension of the maternity leave in the event of multiple births. (3)To the extent possible, measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after childbirth.

#### Benefits

- 2. Where practicable, and after consultation with the representative organizations of employers and workers, the cash benefits to which a woman is entitled during leave referred to in Articles 4 and 5 of the Convention should be raised to the full amount of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.
- 3. To the extent possible, the medical benefits provided for in Article 6, paragraph 7, of the Convention should include:
- (a) care given in a doctor's office, at home or in a hospital or other medical establishment by a general practitioner or a specialist;
- (b) maternity care given by a qualified midwife or by another maternity service at home or in a hospital or other medical establishment
- <; (c) maintenance in a hospital or other medical establishment;
- (d) any necessary pharmaceutical and medical supplies, examinations and tests prescribed by a medical practitioner or other qualified person; and



(e) dental and surgical care.

### Financing of benefits

4. Any contribution due under compulsory social insurance providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits, whether paid by both the employer and the employees or by the employer, should be paid in respect of the total number of men and women employed, without distinction of sex.

Employment protection and non-discrimination

5.A woman should be entitled to return to her former position or an equivalent position paid at the same rate at the end of her leave referred to in Article 5 of the Convention. The period of leave referred to in Articles 4 and 5 of the Convention should be considered as a period of service for the determination of her rights.

### Health protection

- 6.(1)Members should take measures to ensure assessment of any workplace risks related to the safety and health of the pregnant or nursing woman and her child. The results of the assessment should be made available to the woman concerned.
- (2)In any of the situations referred to in Article 3 of the Convention or where a significant risk has been identified under subparagraph (1) above, measures should be taken to provide, on the basis of a medical certificate as appropriate, an alternative to such work in the form of:
- (a) elimination of risk;
- (b) an adaptation of her conditions of work;
- (c) a transfer to another post, without loss of pay, when such an adaptation is not feasible; or
- (d) paid leave, in accordance with national laws, regulations or practice, when such a transfer is not feasible.
- (3)Measures referred to in subcaragraph (2) should in particular be taken in respect of:
- (a) arduous work involving the manual lifting, carrying, pushing or pulling of loads;
- (b) work involving exposure to biological, chemical or physical agents which represent a reproductive health hazard;
- (c) work requiring special equilibrium;
- (d) work involving physical strain due to prolonged periods of sitting or standing, to extreme temperatures, or to vibration.
- (4)A pregnant or nursing woman should not be obliged to do night work if a medical certificate declares such work to be incompatible with her pregnancy or nursing.
- (5)The woman should retain the right to return to her job or an equivalent job as soon as it is safe for her to do so.
- (6)A woman should be allowed to leave her workplace, if necessary, after notifying her employer, for the purpose of undergoing medical examinations relating to her pregnancy.

Breastfeeding mothers

A 4- -.

- 7.On production of a medical certificate or other appropriate certification as determined by national law and practice, the frequency and length of nursing breaks should be adapted to particular needs.
- 8. Where practicable and with the agreement of the employer and the woman concerned, it should be possible to combine the time allotted for daily nursing breaks to allow a reduction of hours of work at the beginning or at the end of the working
- 9. Where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the workplace.

### Related types of leave

- 10.(1)In the case of the death of the mother before the expiry of postnatal leave, the employed father of the child should be entitled to take leave of a duration equal to the unexpired portion of the postnatal maternity leave.
- (2)In the case of sickness or hospitalization of the mother after childbirthi and before the expiry of postnatal leave, and where the mother cannot look after the child, the employed father of the child should be entitled to leave of a duration equal to the unexpired portion of the postnatal maternity leave, in accordance with national law and practice, to look after the child.
- (3) The employed mother or the employed father of the child should be entitled to parental leave during a period following the expiry of maternity leave.
- (4) The period during which parental leave might be granted, the length of the leave and other modalities, including the payment of parental benefits and the use and distribution of parental leave between the employed parents, should be determined by national laws or regulations or in any manner consistent with national practice.
- (5)Where national law and practice provide for adoption, adoptive parents should have access to the system of protection offered by the Convention, especially regarding leave, benefits and employment protection.

Cross references

Conventions: C103:Maternity Protection Convention (Revised), 1952
Supplemented: (C183) Complementary to the Maternity Protection Convention, 2000

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# C183 Maternity Protection Convention, 2000

Convention concerning the revision of the Materialy Protection Convention (Revised), 1952 (Note: This Convention pas not yet come into force:)
Convention:C183
Place:Geneva
Session of the Conference:88
Date of adoption:15:06:2000
See the ratifications for this Convention
Display the document in: French Spanish

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 88th Session on 30 May 2000, and

Noting the need to revise the Maternity Protection Convention (Revised), 1952, and the Maternity Protection Recommendation, 1952, in order to further promote equality of all women in the workforce and the health and safety of the mother and child, and in order to recognize the diversity in economic and social development of Members, as well as the diversity of enterprises, and the development of the protection of maternity in national law and practice, and

Noting the provisions of the Universal Declaration of Human Rights (1948), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979), the United Nations Convention on the Rights of the Child (1989), the Beijing Declaration and Platform for Action (1995), the International Labour Organization's Declaration on Equality of Opportunity and Treatment for Women Workers (1975), the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), as well as the international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, in particular the Convention concerning Workers with Family Responsibilities, 1981, and

Taking into account the circumstances of women workers and the need to provide protection for pregnancy, which are the shared responsibility of government and society, and

Having decided upon the adoption of certain proposals with regard to the revision of the Maternity Protection Convention (Revised), 1952, and Recommendation. 1952, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this fifteenth day of June of the year two thousand the following Convention, which may be cited as the Maternity Protection Convention, 2000.

SCOPE

Article 1

For the purposes of this Convention, the term woman applies to any female person without discrimination whatsoever and the term child applies to any child without discrimination whatsoever.

Article 2

- 1. This Convention applies to all employed women, including those in atypical forms of dependent work.
- 2. However, each Member which ratifies this Convention may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature.
- 3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, list the categories of workers thus excluded and the reasons for their exclusion. In its subsequent reports, the Member shall describe the measures taken with a view to progressively extending the provisions of the Convention to these categories.

#### HEALTH PROTECTION

#### Article 3

Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.

#### MATERNITY LEAVE

#### Article 4

- 1. On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.
- 2. The length of the period of leave referred to above shall be specified by each Member in a declaration accompanying its ratification of this Convention.
- 3. Each Member may subsequently deposit with the Director-General of the International Labour Office a further declaration extending the period of maternity leave.
- 4. With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national leve! by the government and the representative organizations of employers and workers.
- 5. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave.

#### LEAVE IN CASE OF ILLNESS OR COMPLICATIONS

#### Article 5

On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The nature and the maximum duration of such leave may be specified in accordance with national law and practice.

#### Article 6

- 1. Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Articles 4 or 5.
- 2. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.
- 3. Where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.
- 4. Where, under national law or practice, other methods are used to determine the cash benefits paid with respect to leave referred to in Article 4, the amount of such benefits shall be comparable to the amount resulting on average from the application of the preceding paragraph.
- 5. Each Member shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies.
- 6. Where a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or in any other manner consistent with national practice, she shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.
- 7. Medical benefits shall be provided for the woman and her child in accordance with national laws and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.
- 8. In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where:
- (a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or
- (b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers.

#### Article 7

- 1. A Member whose economy and social security system are insufficiently developed shall be deemed to be in compliance with Article 6, paragraphs 3 and 4, if cash benefits are provided at a rate no lower than a rate payable for sickness or temporary disability in accordance with national laws and regulations.
- 2. A Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of this Convention under article 22 of the Constitution of the International Labour Organization, explain the reasons therefor and indicate the rate at which cash benefits are provided. In its subsequent reports the Member shall describe the measures taken with a view to progressively raising the rate of benefits.

# **EMPLOYMENT PROTECTION AND NON-DISCRIMINATION**

#### Article 8

- 1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations 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.
- 2. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

#### Article 9

- 1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including notwithstanding Article 2, paragraph 1 access to employment.
- 2. Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where required by national laws or regulations in respect of work that is:
- (a) prohibited or restricted for pregnant or nursing women under national laws or regulations; or
- (b) where there is a recognized or significant risk to the health of the woman and child.

#### BREASTFEEDING MOTHERS

#### Article 10

- 1. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.
- 2. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

#### PERIODIC REVIEW

#### Article 11

Each Member shall examine periodically, in consultation with the representative organizations of employers and workers, the appropriateness of extending the period of leave referred to in Article 4 or of increasing the amount or the rate of the cash benefits referred to in Article 6.

#### **IMPLEMENTATION**

#### Article 12

This Convention shall be implemented by means of laws or regulations, except in so far as effect is given to it by other means such as collective agreements, arbitration

awards, court decisions, or in any other manner consistent with national practice.

#### **PROVISIONS**

Article 13

This Convention revises the Maternity Protection Convention (Revised), 1952.

#### Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

#### Article 15

- 1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
- 2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General. 3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

#### Article 16

- 1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
- 2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

#### Article 17

- 1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
- 2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

#### Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

#### Article 19

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of

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this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### Article 20

- 1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
- (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
- 2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

#### Article 21

The English and French versions of the text of this Convention are equally authoritative.

#### Cross references

Conventions: C156:Workers with Family Responsabilities Convention. 1981
Recommendations:R95:Maternity Protection Recommendation, 1952
Supplemented: (R191)Complemented by the Maternity Protection Recommendation. 2000
Revised: C103:This Convention revises the Maternity Protection Convention, 1952
Constitution: 22:article 22 of the Constitution of the International Labour Organisation

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# Legal Intervention for Maternity and Child Care : Existing Strategies and Future Directions

#### Amita Dhanda

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This paper stems from the need to address the role law should play in the campaign for Maternity and childcare. The question of the role of law arises for two reasons: one, because there are subsisting legislation's which touch upon these needs and two because legislative guaranteeing of a positive right is believed to enhance the chances of its realisation.

Whilst this paper inevitably delineates the maternity and child care rights protected by existing legislation's. It focuses a lot more on the procedures, which are incorporated within legislation's for the actualisation of these rights. The focus on the procedures is prompted by the fact that it is these procedures which would show whether and how the guaranteeing of rights within statutes alters the ground level situation.

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Upon examining, central and state statutes relating to maternity relief and child care; the following models of legislation emerge.

C. Entitlement - Penalty Model

In this model of legislation the statute specifies (a) the beneficiary of the right (b) the statutory benefit (c) the penalty on non-observance.

The benefit can either be provided in non-negotiable or in exhortative terms. Whilst the provisions of the Maternity Benefit Act have been formulated in non-negotiable terms, requirements with regard to drinking water conservancy and medical facilities in the Factories, Plantations Labour and Mines Act are exhortative in nature

The Maternity Benefit Act applies to every establishment which is a factory, mine, plantation or circus and every shop or establishment in which 10 or more persons are or were employed on any day in the preceding 12 months. It guarantees to any woman who has worked in such kind of establishment for 80 days in the preceding 12 months the right to claim the benefit.

An employer who infringes the provisions of the statute can be punished with imprisonment for a period not less than three months and with fine not less than Rs. 2000. An Inspector under this statute can both initiate action for contravention and direct that payments be made. Any amount found due is recoverable as arrears of land revenue.

On the other hand Section 48(1) of Factories Act requires that factories in which 30 or more women were working at any point in the last 12 months provide a suitable room or rooms for the use of children up to six years of age. The relevant state Factory Rules lay down various specifications for these crèches, be it in relation to their physical condition, hygiene, personnel or food and recreation.

The consequence of non-observance is contained in a general penalty clause, which provides that contravention of the Act or Rules could be punishable with imprisonment up to two years and fine which may extend to rupees one lakh. In case of continuing contravention the fine may extend up to rupees 1 lakh per day.

Another mechanism for ensuring observance of statutory requirements is registration or licensing. Without such registration the particular activity cannot be carried on. Infringement of the conditions subject to which the license has been granted could lead to its revocation. A recent example of a statute utilising such a procedure is the Building and other Construction Workers Act 1996. The Act applies to every establishment, which employs or has employed ten or more building workers in any building or other construction work. Section 7 requires such an establishment to seek registration and section 10 prohibits an establishment which has either failed to obtain registration or whose registration has been cancelled from employing building workers. Yet again section 3 of the Beedi and Cigar Workers (Conditions of Employment) Act 1966 prohibits any place to be used as an industrial premise unless it holds a valid license under the Act

#### (B) Statutes Establishing Welfare Funds

The second mechanism of providing for maternity and childcare is through the various statutes setting up Welfare Funds. Amongst the objectives for which the fund can be utilised maternity relief and education of children generally find mention.

Illustratively Section 4 of the Beedi Workers Welfare Fund Act 1976 allows for the Fund to be applied for the improvement of

- (i) public health and sanitation;
- (ii) the prevention of disease and the provisions and improvement of medical facilities;
- (iii) the provision and improvement of educational facilities;
- (iv) the provision of family welfare including family planning education and services.

The Welfare Fund statutes both set up the Funds and provide the structures for their administration. In some statutes the power of defraying expenses, sanctioning loans or paying grant-in aids is retained by the concerned government with itself. For e.g. the Beedi Workers Welfare Act 76. In other statutes the disbursement of payments, loan and subsidy is done by a special Board constituted for the purpose. For e.g. the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act 96.

In both kind of statutes however the proceeds of the Fund may be utilised to meet the salaries, allowances and other remuneration of the members officers and other employees of either the Board or of the various Advisory Committees constituted by the government to assist it in the >performance of its functions. The Welfare Fund statutes thus do not just provide benefits to vulnerable populations. They also accord an opportunity to governments to distribute the largesse of office.

# **Statutes Mandating Schemes**

A third variety of statutes are those which enjoin the state to launch schemes to fulfil a range of objectives. Amongst these objectives maternal health and childcare also find mention. For example section 3 of the Tamil Nadu Workers (Regulation of Employment and Condition of Work) Act 1982 requires the government to formulate a scheme which makes better provision for the terms and conditions of employment of workers. The statute in particular requires the scheme to provide for hours of work, maternity benefit, leave with wages etc.

In most statutes funding source for the scheme is not mentioned. Some statutes however propose the setting up of a fund to finance the schemes of the statute. For example the Kerala Coir Relief Fund Act sets up a Welfare Fund and requires a scheme to be formulated to fulfil the various objectives listed in the statute. Interestingly, whilst the statute speaks of the fund being utilised to provide for maternity relief, the scheme makes no mention of this objective, even as it allows for advances to be obtained from the Fund for medical expenses, higher education of children and daughter's marriage.

# Difficulties arising from the statutory models

The purpose of delineating the above models is to bring to the fore the strategies available within the law to provide for positive rights such as maternity and child care. For fuller understanding the problems arising from each of the statutory models need to be dealt with.

# Need to Establish Beneficiary Status

The above-discussed statutory models are situated in the workplace. To obtain of maternity relief and child care under them, a person has to establish the status of worker. This status of worker depends upon how a worker is defined under the relevant statute. And also on what evidence is available with the worker to show that she fulfils the statutory requirement i.e. entry of the workers name in the employers record. For example the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of work) Act 1982 defines a "manual worker" to mean "a person who is engaged either directly or through any agency, in any scheduled employment whether for wages or not, to do manual work in any scheduled employment, and includes any person not employed by any employer or a contractor, but working with the permission of, or under agreement with the employer or contractor and a person who is given raw materials by an employer or a contractor for making or altering any work, and registered as such manual worker under this Act, but does not include any member of the family of an

employer."

For unorganised workers one method used in statutes is registering the workers with a specified statutory authority for example Section 11 of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 entitles every building worker registered as a beneficiary under the Act to the benefits provided by the Board from its Fund.

The other mode of establishing identity is through identity cards issued by the employer. Thus a number of statutes require employers to either issue identity cards or to endorse identity cards given by the registering authority. Thus for example Rule 41 of the Beedi Workers Welfare Fund Rules 1978 requires the employer to issue identity cards whilst the Kerala Construction Workers Welfare Fund Act, 1989 provides for employer endorsement. To require the worker to obtain a status certificate from a state functionary is another method utilised for establishing identity. >For example the Kerala Coi: Workers Welfare Scheme formulated under the Kerala Coir Workers Welfare Act 1987 defines an employee to mean any person employed by any other person or a self employed person in the coir industry having an annual income of less than Rs. 3.600 as certified by the Village Officer, Executive Officer of Panchayat, Municipal Commissioner or Corporation Commissioner of the Area.

This need to establish beneficiary status is common to all statutory models. The burden of proving such status always resides with the person seeking the benefit. The statutory procedures have been constructed to ensure that no person should wrongfully obtain a benefit. The effect of the procedures on a rightful claimant is not a concern. Nearly every statute protects statutory functionaries for acts done in good faith.

This would include making payments to a wrongful claimant as well as refusing statutory benefits to a person entitled to obtain them. Surely the latter action needs to be distinguished from the former.

# **Efficient Inspectorate and Prosecution**

The functional efficacy of the entitlements - penalty model depends upon an efficient inspectorate and diligent prosecution. If there are inadequacies on this score then the guaranteed benefits in fact reaching the beneficiary cannot be ensured under this model. For example the >Plantations Labour Act 1951 prohibits a court from taking cognizance of an offence except with the previous sanction in writing of the Chief Inspector. Herein the statutes, which allow prosecutions to be initiated by trade unions registered associations etc., may be more beneficiary >friendly. For example the Maternity Benefit Act allows a complaint to be filed by the aggrieved woman, an office bearer of a registered trade union of which such woman is a member, a voluntarily organisation registered under the Societies Registration Act or an Inspector. The Building Workers Act 1996 allows all the above but does not give to the beneficiary a right to file a complaint. The question however is that do these non-governmental prosecutors possess the infrastructure to carry out successful prosecutions. Absent such infrastructure the inclusion of the non-governmental prosecutors lessens the performance pressure on the governmental

functionaries without ensuring that the beneficiaries in fact obtain the entitlement

### Statutory Schemes

In this model the statute only identifies the needs. The actual entitlements and the procedure for obtaining them are provided in the scheme. There is greater flexibility in this model than obtains in the entitlement model. This is because a scheme can be altered on the basis of experience without needing to go back to the legislature. At the same time once a statute recognises a need and requires a scheme to be made for its realisation, then the formulation of the scheme becomes a statutory obligation.

For example the recently enacted Persons with Disabilities Act 1995 has relied on the mechanism of statutory schemes to ensure the realisation of positive rights for persons with disabilities. It was noted, that in several states the entitlements guaranteed by the statute were already being provided for through non statutory schemes. The necessary question was that in the face of these non-statutory schemes what gain if any did the statutory recognition provide to persons with disability. Statutory recognition of the entitlements has taken the matter of their grant outside the realm of discretion. Consequently those States which did not have any schemes prior to the statute have been obliged to introduce them after its enactment. Also those States which were planning to withdraw some of the non-statutory schemes were prevented from proceeding further after the statute was enacted. Thus a major gain of statutory schemes over non-statutory ones is that they introduce a modicum of non-negotiability over the entitlement for which the scheme is made. Thus whilst the content of a scheme may alter the scheme itself cannot be withdrawn.

In so far as the content of schemes can vary from State to State, the statutory schemes model allows for greater specificity and local appropriateness. Such like particularity is difficult to obtain in the entitlement penalty model which is constructed in uniform and general terms. An issue of some significance if it is recognised that planning for maternal health and child care may need to differ from region to region. The flexibility and particularity advantage of a scheme can be really obtained if the beneficiaries of the scheme have a voice in its formulation and enforcement. A role which is not provided in existing statutes. Of course even if such a role is built into the statute, people's groups would require to maintain pressure on governmental functionaries to ensure that the requirement of people's participation is in fact followed.

# Child Care Facilities outside the Workplace

The statutory models discussed above have situated maternity relief and childcare in the work place. And as has already been pointed out the benefit can only be claimed if the claimant fulfils the statutory definition of worker. Thus a woman who has not worked for the requisite number of days in an establishment cannot obtain relief. Relief is again not obtainable if the place of work is not covered by the statute. On the application of the Secretary to the Government of India, Department of Women and Child, the Central Government set up the National Crèche Fund under sections 4 and 5 of the Charitable Endowments Act, 1890 to meet some of these needs.

The fund is to pay grants-in-aid to registered voluntary organisations, mahila mandals and state governments, to implement creche programmes in rural areas and slums, for the welfare and development of children of specified vulnerable groups below five years of age. The proceeds of the fund are to be also utilised to convert some of the Anganwadis into Anganwadis-cum-crèches and to organise training programmes and refresher courses for crèche workers through specialised training institutions.

Eligibility for financial assistance under the scheme is limited to voluntary organisations or mahila mandals which were registered as society or trust for at least two years and have a known

record of service in the field of child welfare.

The financial assistance has been fixed at Rs. 18,480/- per crèche per annum for voluntary organisations, state government's ad mahila mandals running General Crèche Centres and at Rs. 8,100/- per crèche per annum for running Anganwadi-cum-Creche Centres. For the initial cost of establishing a crèche a one time non-recurring grant of Rs. 4,000/- is to be paid. For the running of a General Crèche Centre, the government will at maximum provide up to ninety percent of the expenditure. The remaining sum will have to be borne by the organisation or mahila mandal itself. The Anganwadi cum Crèche Centres are to be managed by the agencies which operate the integrated child development scheme.

Paragraph 19 clarifies that programmes eligible for assistance under the various labour laws will not ordinarily qualify for any financial assistance under the NCF Scheme.

Upon making enquiries from the NCF it was found that the Fund has a scheme for Ailing and Working Mothers. In accordance with the terms of its incorporation the NCF does not operate the scheme itself. It only funds voluntary organisations willing to run the scheme. Organisations wishing to operate the scheme have to apply to the NCF on a prescribed form. Upon NCF finding the applicant suitable, the necessary funds for the scheme are sanctioned. It may be of interest to note that the Sewa Social Security Scheme desires centralized control of Funding and seeks the creation of local level tripartite Boards.

There is nothing in the aforesaid procedure to show that the applicants have any role in the formulation of the Scheme or that their experiences are to be accorded any consideration in its modification.

## Other Laws affecting Health and Child Care

Other statutory instruments which significantly affect the provision of health services are the statutes introducing professionalisation of services. Each of these statutes introduce registration and bar the provision of health services by all those persons who do not come within >its purview. Scholars evaluating health coverage have found professionalisation to reduce access to health services. Thus Arun Ghosh makes a case for reviving the cadre of less qualified (and yet trained) medicos (the LMP's of yesteryear) trained nurses and para-medical staff who may help to improve medical attention and medical care (including ante-natal and post natal services) in the rural areas.

Child Care

Other than the Child Care provisions discussed above there are certain other statutory instruments which assume relevance in the realm of child care.

Two central enactment's, which deal with the issue of institutionalisation of children, are the Juvenile Justice Act, 1986 and the Orphanages and other Charitable Homes (Supervision & Control) Act 1960. The first statute is primarily concerned with the precedures for sending neglected and delinquent juveniles to institutions. The Orphanages Act provides for a system of recognition for institutions run by private agencies. The certificate of recognition specifies the minimum standards with regard to boarding, lodging, clothing, sanitation health and hygiene which the recognised home is to fulfil. Infringement of the standards could lead to derecognition.

The two statutes show that the law provides procedure of entry and also speaks of the conditions under which these statutory institutions are required to subsist. However the question of exit is tackled in no other way except by the inmate crossing the statutory age of childhood.

These statutes along with the maternity leave, laws do underscore the extent to which child care is linked up with biological parenting.

Adoption and Foster care as mechanisms of giving children homes outside public institutions have not really been explored. The maternity benefit laws allow for six weeks leave to a woman undergoing a tubectomy operation but a family that adopts an infant is not seen to need any support.

The utilisation of statutes as vehicles of education or for "idea marketing" most dramatically comes to the fore with the Infant Milk Substitutes Feeding Bottles and Infant Foods (Regulation of Production Supply and Distribution) Act and more particularly with the Rules which specify the content of educational material meant for pregnant mothers.

Whether the presumption of the statute that a hard-sell advertising campaign can be countered with information is borne out needs to be investigated.

Panchayati Raj Acts An underlying objective for undertaking this survey of legislation's relating to maternal health and child care is to find out how a people's participative legislation can be constructed. To this end the Panchayati Raj Acts both before and after the 72nd Constitutional Amendment were surveyed.

In the pre-1992 statutes the Gram Panchayats were allocated mandatory and discretionary functions. Except for the U.P.Panchayat Raj Act 1947 wherein maternity and child welfare has been listed as a mandatory duty, in all other legislation's which were surveved (See list) the item was termed a discretionary duty. The only difference amongst the statutes was in relation to the performer of the duty. Thus the West Bengal Panchayat Act 1973 gave the Gram Panchayat a role with regard to maternity and child welfare centres only if the state government assigned the same to it. The Bihar Panchayati Raj Act 1947 allowed the Gram Panchayat the choice to take up programmes in primary education and maternity and child welfare if a majority of the executive

committee so decided. The Andhra Pradesh Gram Panchayat Act 1964 on the other hand gave the choice of promoting and developing pre-primary education and establishment and maintenance of maternity and child welfare centres to the Panchayat.

The Punjab Panchayat Samitees and Zila Parishads Act 1961 obliterated the distinction between mandatory and discretionary duties and required Panchayat Samitees to make arrangements for carrying out the requirements of the area under its jurisdiction for maternity and child health. The above statutes did speak of local participation but the local level institutions were in the main to function under the supervision of state governments. The people of the village had no participation rights except to vote for election of the Gram Panchayats.

The post 1992 legislation's have ushered a change in this direction. The Punjab Panchayati Raj Act 1994 and the Haryana Panchayati Raj Act 1994 were studied to that end. Certain provisions of the Punjab Act were especially revealing from a people participative standpoint. Both the Punjab and Haryana Act require the Gram Sabha to meet twice a year. Failure of the Sarpanch to convene a meeting results in the loss of office. The Punjab Act mandates the Gram Sabha to:

a) approve the annual budget and plan of development programme and review annual statement of accounts and annual progress report;

b) to render assistance in the implementation of development schemes pertaining to the village;

c) to identify beneficiaries for the implementation of development schemes pertaining to the village: Provided that in case the Gram Sabha fails to identify the beneficiaries within a reasonable time, the Gram Panchayat shall identify the beneficiaries; d) to mobilise voluntary labour and contributions in kind or cash or both for the community

d) to mobilise voluntary labour and contributions in kind or cash or both for the community welfare programme.

e) to promote programme of adult education and family welfare within the village;

f) to promote unity and harmony among all sections of society in the village;

g) to seek clarifications from the Sarpanch and Panches of the Gram Panchayat about any particular particular activity, scheme, income and expenditure; and

h) to perform such other functions as may be prescribed.

Sabha: the provides that other nand The Harvana on the (i) shall consider the budget prepared by the Gram Panchayat and the future development programmes and the plans for the sabha area at its Sawani meeting. The Gram Sabha at its Hari of the development progress review general the (ii) will consider the actual income and expenditure of the Panchayat concerning last financial

(iii) will consider and scrutinize the existing schemes and all kinds of activities of Panchayats; (iv) shall maintain a complete register for all development works undertaken by Gram Panchayat or by any other Government department specifying the costs, date of completion of work, name of assets etc.

(v) will scrutinize the completed works and all kinds of activities of the Gram Panchayat; (vi) can ask questions to the Sarpanch and Panches of the Gram Panchayat to clarify the particular activity, income expenditure, scheme and other matters and Sarpanch and Panch of the Gram Panchayat shall be responsible to its.

- (vii) shall locate the places of schemes and other works;
- (viii) shall consider audit reports and their compliances;
- (ix) shall consider the progress report of every kind of Gram Panchayat works; and
- (x) shall exercise and perform such other powers and functions as may be prescribed.

The crucial difference between the two statutes being that the Punjab Act confers the power of identifying beneficiaries for the implementation of development schemes on the Gram Sabha.

It has been contended that these powers mean little if the meetings of the Sabha do not take place. Even as the necessity of implementation cannot be denied, it needs to be appreciated that if the letter of a legislation does not allow for people's participation then such participation cannot be obtained even when people are active enough to seek it. For example in Patel Baldevbhai Ambalal v. State of Gujarat (1958 All India High Court Cases 2547) the villagers protested against the inclusion of their village in a new district. They wanted the state government should to hear them before taking a decision. The Gujarat High Court held that the hearing could not be demanded because the Bombay Land Revenue Code did not confer any such rights of hearing finding. The scenario as sketched above dies show.

1)The statutory ordering of maternal health and child care is at present workplace linked. Even in the workplace statutes the benefit provided has not moved beyond, paid leave for child bearing (maternity benefit) and securing of a place within the workplace where children can play be nursed and cared. There are differences no doubt amongst different statutory schemes as to when a women worker is entitled to maternity benefit and when a factory owner is required to establish a crèche.

It is significant to note that the setting up of crèches at all times has been linked to the number of women workers in a factory, plantation or mine. Over the years the number of women workers which necessitate the fulfilment of the crèche requirement has continued to climb down. It has not however despite the Shram Shakti Report been unlinked from the number of women workers. Only the Inter-state Migrant (Punjab) Rules required all existing facilities to provide for crèches if they had 20 workers and all new establishments to make such a provision as soon as they had 20 women workers. The renewed mention of 6 new women workers in the latter part of the Rule causes one to wonder whether the deletion of the word women in the former part of the rule is only a printing error. Be that as it may this is the only rule which (even if particularly) makes the provision for crèches a gender-neutral exercise.

2) The provision of benefits occurs on a philosophy of largesse and a psychology of suspicion. The statutory procedures are geared to weed out wrongful claimants. There is no urgency to ensure that rightful claimants get their just due. Furthermore the statutory system of defining terms has an automatic consequence of leaving out those who are not included within a definition. Infect such a consequence is often expressly desired from statutory interventions. For example the Maharashtra Manual Workers Act expressly speaks of devising procedures so that those who are not covered by the statute do not obtain benefits from it.

If each of the above mentioned models has inadequacies and is problematic then am I saying that law has no role to play in the campaign. Since an impression to this effect seemed to arise when the draft paper was presented at the National level consultation earlier in the year, I think certain clarifications are in order.

This paper is not advocating eschewal of law in the campaign. Rather it is detailing out what are the items available on the legal menu card. This is to underscore that law is not an item of unvariegated uniformity. Use of law would mean utilisation of one of these statutory models either separately or together depending upon what kind of legal support is required for which part of the maternity and child care charter of demands. I found Mina Swaminathan response at the consultation helpful when she took the line that different demands in the charter need to be realised through different statutory models. Thus illustratively the regulation of pre-school education could be through a variant of the entitlement penalty model, whilst maternity benefit for women not covered by the existing labour laws could be through a fund and arrangements for crèches could be through schemes.

The presentation of the menu card was aimed to facilitate choice, it was also motivated by the desire to spur law reform. Law reform would be required at two levels. One level would require the ideology of existing statutory regimes to be interrogated and the other would need changes to be introduced in the substantive provisions. A people-participative law reform exercise should demand a dismantling of the statutory suspicion of claimants and insist upon a statutory recognition of the dignity of claimants. The grant of state support should not be at the cost of dignity but in furtherance of it. Statutory duties should be placed on state officials to seek out claimants, inform them of their statutory entitlements and provide for the same. Failure to fulfil any of these duties should invite penalty. There should be a shift in statutory leanings and the emphasis should be more on ensuring that a rightful claimant gets her just due, than on that a wrongful claimant does not obtain the same. In a democratic polity, state officials are representative/guardians of the people. It is about time that respect for the 'real masters, is built into governmental functioning.

Alongwith a system of accountability the other major method of achieving this is to require by law the mandatory participation of people in policies affecting them. In a number of statutes (for example the Environment Protection Act, the Drugs and Cosmetics Act) there is a procedure publishing draft notifications, schemes and inviting objections/suggestions from the people. The final notification/scheme etc., is then to be promulgated after duly considering the objections, suggestions of the people. This requirement is being fulfilled today in form but not in spirit. The notification/scheme is published in the official gazette with requirement of submitting suggestions, responses within a period of 30 to 60 days. The Gazette is not a document which is easily available to law persons let alone lay ones. Consequently, once the statutory period of awaiting objections/suggestions is over, the notification which was at first published as a draft one comes to be notified as the final notification. The authorities are under no obligation to inform whether they have received any suggestions/objections and if yes what have they done with those responses. If the responses received from the public are not incorporated within the final notification, then what are the reasons for not doing so.

It ahs also been found that wherever stakeholders are aware and organised the requirement of pre-publication provides a significant opening for negotiation. Illustratively both the pharmaceutical companies and woman groups have effectively employed this procedure in the context of the Drugs and Cosmetics Act. Consequently, if after a campaign on child care rights, the requirement of pre-publication is incorporated as an integral component of the Maternity and Child Care Law the usefulness seems self-evident. To further enhance the effectiveness of the procedure, it seems appropriate to statutorily provide that the participation of the people should be obtained by using the mass media. A publication in the gazette alone should not be accepted as adequate. The statute should further provide that whenever the authorities do not accept the suggestions/objections of the concerned constituency they should be under an obligation to supply reasons for the same.

On the substantive level, the law reform agenda would need to rectify some of the evident anomalies in the existing statutes. The following are some change which are being suggested:

The requirement for crèches should depend upon the number of workers and not upon the number of women workers in an organisation. For example the statutes making provision of crèches should state that crèches shall be provided if the establishment has 30 workers and not as is the case at present that crèches shall be provided if there are 30 women workers.

All statutes which grant benefits to workers in the unorganised sector require the worker to prove her status which considering their illiterate or neoliterate status and makes out a prima facie case of the same, the burden of proving that the person is not a worker should be on the employers or the concerned authorities. Absence of identity card, or name on the muster rolls should not be conclusive of the matter.

At present no child care leave is granted even when an infant is taken in adoption. It is therefore suggested that a person should be eligible for maternity leave upon adoption of a child less than six months old.

Dais midwives have no legal status even as they are major health care providers this demoralises them and creates a human resource crunch. It is therefore suggested that para professionals be recognised as essential providers of maternal and child health care.

A number of statutory funds have been established for the welfare of different constituencies e.g. manual workers, construction workers etc. These workers have no role in the management of these funds and very often are not even contributories to it. It is therefore suggested that beneficiaries of Funds should be involved in their management. They should also as a general rule be contributors. The rule of percentage from earnings should be made applicable as being most promotive of parity between contributors. Other than the above, one issue which generated a lot of discussion at the consultation was the extent to which the campaign would be furthered if health and education were recognised as fundamental rights in the Indian Constitution. In my draft paper, I had counselled against the strategy primarily on legalistic logic.

The logic went as follows: Article 21 of the Indian constitution guarantees the right to life and liberty. The Article provides that no person shall be deprived of life and personal liberty. The

Article provides that no person shall be deprive of life and personal liberty except according to the procedure established by Law. Soon after the constitution was brought into force, the Indian Supreme Court interpreted this Article to say that whenever the State wants to take away from a person his life and liberty, a legislation has to be enacted to do so. This life and liberty was also interpreted in a limited manner to only mean freedom of movement and freedom from confinement. Over the years however, the court has started to expand the scope of the right to education and right to health have been incorporated within Article 21. This incorporation started to reduce the importance of the distinction the founders of the Constitution had introduced between directive principle and fundamental rights. The founders had made the fundamental rights, which primarily contain civil and political rights, to be judicially enforceable and directive principle, which encompassed social economic rights, to be non justiciable. The campaign for recognition of health and education as fundamental rights, I felt would only cause and intellectual resurgence of the thinking which stresses on the non-justiciability of the socioeconomic rights enforceable by expansively interpreted Article 21 would get negated.

This position, I was forced to reconsider on a close scrutiny of the 83<sup>rd</sup> Constitution Amendment Bill and upon examining the governmental response to the demand of making education fundamental right.

The 83<sup>rd</sup> Constitution Amendment Bill has made ever effort to keep governmental responsibility at a minimum. Whilst Article 45 of the Constitution requires the State to provide free and compulsory education upto the age of 14 years, the Bill grants the right to the 5-14 years age group. Thus the educational needs of the 0-5 years has been taken out of the rights conspectus. Whilst constitutional jurisprudence has been expanding the authorities amenable to the fundamental rights regime, the Bill has circumscribed the rights.

These efforts at controlling the expanse of the rights to education alongwith the implementation anxieties expressed by government officials caused one to appreciate that the implementation agency i.e., the government and its officials the distinction between directive principles and fundamental rights has been of vital significance. In the face of such a perception the declaration by the Supreme Court of various socio-economic entitlements enshrined in the directive principles and fundamental rights remains only of symbolic significance to the government authorities. At the same time when the campaign for making education and health fundamental rights is launched it would be necessary to ensure that the rights are recognised in their full panoply. Absent such full recognition a judicially converted directive principle is preferable to a legislatively truncated fundamental right.

In conclusion I only wish to reiterate that this paper is an effort at promoting informed legal advocacy and to that end it deliberates upon both the potential and the limitation of law. We would need to drawn upon both in planning our firmere strategies in the campaign for maternal health and child care.

# ILO and MATERNITY PROTECTION 2000

- > Convention No. 183
  - and
- > Recommendation No. 191

- Ms. Jyoti Tuladhar

# LLO STANDARDS ON MATERIATY PROTECTION

- ☐ Maternity Protection Convention, 1919 (No.3)
- ☐ Maternity Protection Convention (revised), 1952 (No.103)
- ☐ Maternity Protection Convention, 2000 (No. 183)
- ☐ Maternity Protection Recommendation, 1952 (No.95)
- ✓ Maternity Protection Recommendation, 2000(No. 191)

# WHAT IS MATERNITY PROTECTION?

- Leave
- Cash benefits
- Health protection
- ☐ Employment security
- Non-discrimination

## SCOPE

#### All employed women

- Full-time and part-time workers, including homeworkers
- Women employed in atypical forms of dependent work.
- Limited exclusions are permitted

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## LEAVE

- 14 weeks
- 6 weeks' compulsory postnatal leave, unless otherwise agreed at the national level
- Additional leave in case of illness, complications or risk of complications.

## CASH & MEDICAL BENEFITS

- No less than 2/3 of a woman's (insured) earnings or comparable coverage
- Qualifying conditions must be met by a large majority of employed women.
- Prenatal, childbirth and postnatal medical care.
- Hopitalization care, when necessary.

## FINANCING OF BENEFITS

- Social insurance or public funds or in a manner determined by national law and practice.
- Employer liability is only permissible, if
  - a) employer agrees
  - or b) in force nationally before 15 June 2000,
  - or b) there is tripartite agreement thereafter

## EMPLOYMENT SECURITY

- Protection from dismissal
- Burden of proof is on the employer
- Right to return to the same job or an equivalent one at equal pay

## EMPLOYMENT SECURITY

No dismissal during:

- Pregnancy
- Maternity leave
- Leave for maternity-related illness or complications
- A period following the woman's return to work

Except for reasons unrelated to maternity, i.e. pregnancy, childbirth, nursing etc.

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## NON-DISCRIMINATION

- Members must take measures to ensure that maternity is not a source of discrimination in employment.
- No pregnancy testing, except when legally prescribed to protect health

## HEALTH PROTECTION

A woman is not obliged to perform work prejudicial to her health or that of her child.

## BREASTFEEDING

- Periodic breaks or a reduction of hours of work in order to breastfeed
- Nursing breaks (or hours) are to be counted as working time and remunerated

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## Maternia Protection Recommendation, 2000 (110.

## Detailed Guidance Concerning:

- Leave and Benefits -
- Health Protection
- Breastfeeding Mothers
- Related Types of Leave

## HEALTH PROTECTION

- Workplace risk assessment
- Measures to eliminate risks, or adapt a woman's working conditions, or provide a transfer to safe work, or paid leave if necessary
- Right to return to her job or an equivalent one when it is safe to do so.

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## PARENTAL LEAVE

- Leave and benefits for either parent after maternity leave to be determined at national level
- ☐ Leave, benefits and employment protection for adoptive parents.

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## STRONGER PROTECTION

- Wider scope
- Longer maternity leave
- Non-discrimination measures
- Health protection and breastfeeding
- Cash benefits
- Guaranteed right to return to job
- Periodic review

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## GREATER FLEXIBILITY

- Methods of financing
- Computation of benefits
- Provisions for developing countries
- Protection against dismissal

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#### Maternity Entitlement for Women in the unorganised Sector

- Ms. R. Geetha

Maternity Entitlement is a basic right of all women workers, yet rarely realised in the unorganised sector.

The unorganised sector employs 91% of labour force and majority of the women labour in the country, and with globalisation contracting out and proportion of unorganised labour have increased.

We need to recall that Maternity Benefit Act enacted in 1956 not only made it possible for women workers to realise the entitlement but at the same time led to reduction of women workers from regular payroll in the textiles sector over a period of time.

The unorganised sector includes agriculture construction, handlooms, self employed women vendors, domestic workers home based sector etc. In agriculture and construction there is no constant employer-employee relationship. Where workers have regular employment under the same employer, more often it is bonded labour, without work records and paid less than minimum wages etc. In the other sectors such as home based the system of contract and subcontract has made the situation of women workers vulnerable.

Invisibility, vulnerability and total lack of work records have created the situation wherein a mere conferment of entitlement through a law making the employer liable to pay the maternity benefit to workers, will not work. It will become a legislation similar to equal renuneration Act, unimplemented and unimplementable since the mechanism for implementation is only a process of complaint, inspection, prosecution and leading to victimisation.

The alternative to this kind of legal format is the Tripartite Boards which would take care of employment, wages, social security including maternity benefit, welfare measures.

Since Government maternity hospitals function with lack of medicines and rampant corruption, mother and child do not get the care that is due to them. And the difficulty in the last month of pregnancy and the need for breast feeding the child for at least six months lead to PENURY of the women workers. Indebtedness to the employer/contractor in case of regular employment and in cases of changing employer, pawning of vessels etc to pawn brokers are the normal practices to meet the expenses. The support system is normally the woman's and sometimes her husband's family.

In Tamil Nadu Muthulakshmi Reddy Scheme implemented by State Government provides Rs. 500 for woman workers and the entire system of certificates and ensuing corruption, the womenworker gets the money after a year after delivery and normally 200 to 300 rupees.

The movement of construction workers had led to the enactment of Tamil Nadu Manual Workers Act in 1982 and formation of Tamil Nadu construction Worker's Welfare Board, in 1995 first in the cities of Chennai, Madurai and Coimbatore and covering the entire state from 1997. The registration of workers has reached 3 lakhs and women number 90,000 ie 30% of the total number of registered workers.

Though the Tamil Nadu Manual Workers Act provides for registration of employers and workers, recruitment and disbursement of Wages, Social Security and Welfare through the Board, the Welfare Board in the scheme is meant to register workers and provide ESI, Pension, Creches and accident relief, as per the original scheme. Also the Act was amended to include collection of cess of not more than 1% over estimated cost, before plan sanction. Actually the cess collected was 0.1% in the initial 3 years and increased to 0.3%. Levy is not collected from Central Government constructions. Even though Central Act stipulates not more than two percent cess and 1% notified, State Government is unwilling to increase the cess.

Due to the agitation of construction workers, maternity benefit was included and was initially Rs. 1000 and later increased to Rs. 2000 and has a two child norm. The scheme has been implemented from 1.3.99 and so far only 20 women have benefitted.

There are three problems with the existing scheme: A woman can apply only after completing one year after registration. That itself had prevented many women from applying for benefit. Also the two child norm is a method to deny the entitlement to the woman workers. Thirdly the quantum is not fixed on a rational basis i.e. minimum wage, multiplied by 120 days. Also there is a delay since the cash benefits are given from Chennai office and there is lack of staff.

Fundamentally such a Welfare Scheme since it is based on voluntary and not compulsory registration, by its nature does not cover the entire labour since there's not only lack of awareness but bonded labour.

Nirman Mazdoor Panchayat Sangam is raising its voice to remove the one year stipulation, two child norm and to increase the quantum as well as to change the scheme based on compulsory registration, and also for decentralisation. William III

Now in Tamil Nadu, Welfare Boards have been formed separately for Agricultural Workers, Weavers, Palmyra workers, Artists, Hair diessers, Washermen, Auto and Taxi drivers, Tailoring workers and one Board for 48 categories of Manual Workers. The scheme for maternity benefit envisaged the same in these schemes as in the case of construction workers Initially. Tamil Nadu Manual Workers Welfare Board was formed with a scheme including maternity benefit of Rs. 1000 with a two child norm Maternity benefit has been now raised to Rs. 2000 through CM's announcement, yet to be notified.

There is a question of fund and there is a need to collect cess from the employers which is possible for many occupations and also a small percent as sales tax. Also the State Government must make budget allotment for the unorganised labour.

In Kerala too there is a Construction Workers Welfare Board formed in 1991 which provides for meternity benefit of Rs. 3000 to women labourers who are registered with the Board and cess of 1% is collected from various constructions. There are similar Boards for other unorganised labour segments and maternity benefit is a component of the Welfare activities.

At the national level two Central laws for construction workers enacted in 1996 are now leading to formation of Welfare Boards and collection of cess by State Governments all over the country. It had taken a long struggle by National Campaign Committee for Central Legislation on Construction Labour headed by Justice V.R. Krishna lyer from 1985 to get the laws enacted. The law provides for Construction workers welfare Board while maternity benefit is not mentioned as one of the benefits.

So NCC-CL and Nirman Mazdoor Panchayat Sangam in every State is struggling to get maternity benefit included in the Rules and for proper implementation through the Welfare Board.

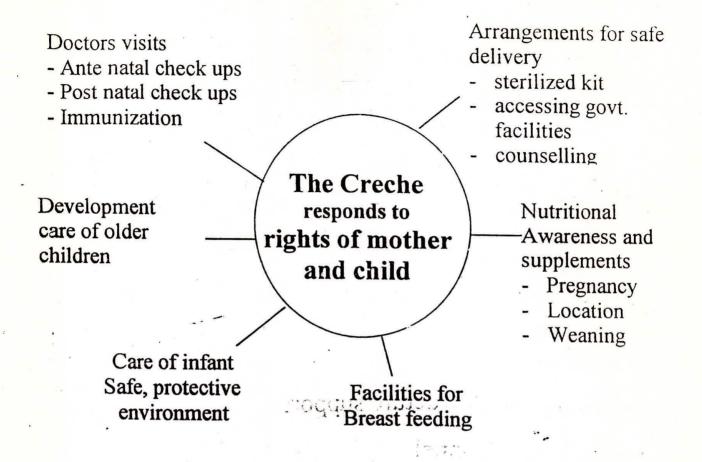
NCC-CL and NMPS have been agitating for amendments in the Central Act on the basis of model Bill and Scheme drafted by NCC-CL which will ensure compulsory registration, regulation of employment and wages through the Board, Provision of ESI, Pension etc and also proportionate representation of women on the Board.

Beedi workers are covered by Beedi Workers Welfare Fund Act which provides for only Rs. 200 as maternity benefit with a two child norm, the time taken is normally one year after delivery. The fund is not managed by the tripartite Welfare Board. Though the Rules provide for a maternity centre in an area with over 500 women beedi workers, this is not a reality due to lack of funds, interest etc. Hence provision of ESI for unorganised women labour is a very important step forward

Thus tripartite Boards must be formed for each sector in every state and ESI implemented for the maternity entitlement to reach the women unorganised workers in the country.

#### Mobile Creches Interventions: A Challenge

- Ms. Mridula Bajaj



Provision of creches at work sites is stipulated under The Builders and Construction Workers Act 1996.

The Gap - Rights of the worker - Protection of wages

- Protection of work

Implications for amendment

#### The Mobile Creches experiences at Construction Sites.

- Evading the law due to number stipulation
- Evading the law due to workers categories women
- Evading the law due to location stipulation- off site labour camp

#### Creche? Custodial care vs. development care

- Lack of space
- Lack of infrastructure support
- Lack of personnel
- Lack of training
- · Lack of resources
- Lack of commitment

Implications for strengthening implementation mechanisms

#### Role of key players of the Construction Industry

#### Making Maternity Entitlement a reality

#### Architects:

 Incorporating creche into basic design and plan for project quality

#### **Builders and Developers:**

• Commitment translated into clear policy guidelines

#### Government:

 Understanding labour welfare laws, plugging loopholes and ensuring implementation

#### **Contractors:**

 Accountability and responsibility for safety, welfare and quality

#### **Project Managers:**

Providing administrative and infrastructural support

#### Site Personnel:

• Providing co-operation

#### Community:

- Awareness of Rights/ Entitlements,
- Pressure demand of Rights
- Realization of importance of Health Support and Early Child care

9/2

## Major Obstacles in implementation within the existing legal and policy framework

- Lack of Sensitization and Awareness Concept of Social Responsibility
- Lack of commitment Allocation of resources
- Lack of mechanisms Allocation of personnel and systems
- · Lack of knowledge and experience
- Lack of trained personnel
- Lack of easily replicable models of partnerships

#### Towards Universalization of Maternity Entitlements

- ◆ Provision of creches/daycare centres for all working women (through expansion & modification of ICDS)
- ◆ Encourage community based/alternative models of childcare
- **♦** Capacity building, Training and Adequate Remuneration of Childcare Workers
- ◆ Setting up of Welfare Boards
- ◆ Maternity and Childcare Cess on all Employers (shops and Establishments, industry, agriculture) irrespective of number of employees

9 5

#### THE STORY OF RAMVATI

- No provision for Ante-natal checkups
- Lack of facilities for delivery
- Neglect of older siblings lack of crèche facility
- No maternity leave
- No Facilities/ Provisions for Breast feeding and infant care
- No Provisions for post-natal check ups/ support
- No Provisions support for immunization

- Ms. Mina Swaminathan

## Problems and Queries

#### Eligibility

- What if child dies ?
   Is mother entitled ?
- What if mother dies?
   Is surviving parent entitled?
- What about adoptive mothers?
   fathers? upto what age of child?

#### Identification

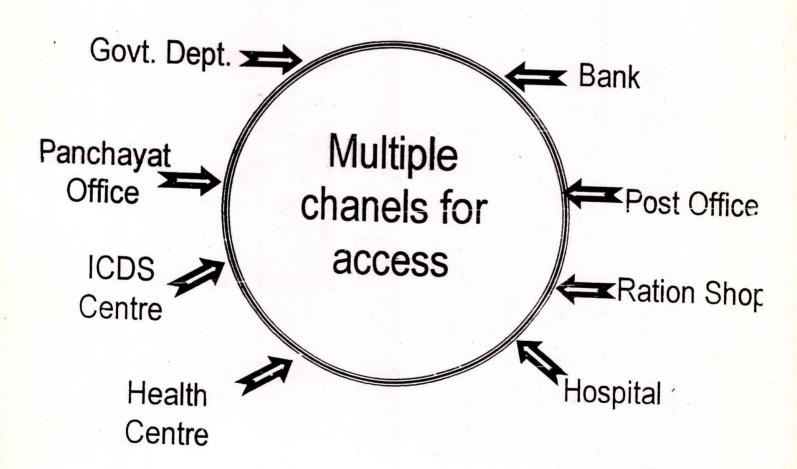
- Who will certify in the case of (a)institutional and(b)home deliveries?
- Who will define poverty? how frequently?
- Who will certify poverty?
- Will any one of multiple authorities be acceptable?
- Who can apply, register, litigate,
   seek redress, file complaint ?

#### Implementation

- Wrongful claims
- Corruption, misuse

## Access

Multiple access -through several agencies



## Legislation - How ?

## Three models of legislation

- 1. Entitlement penalty model
- 2. Statutory fund model
- 3. Statutory scheme model ✓

#### Reasons

- 1. Ease and simplicity of operation
- 2. Rudimentary schemes already exist
- 3. "Fall-back" or safety net approach
- 4. Non-conflicting
- 5. Non-discriminatory

## Legislation - for whom ?

#### For all women

Article 42 - The State shall make provision for securing just & humane conditions of work and for maternity relief.

#### No discrimination by

- > Age
- Marital status
- Work status
- Number of children
- > Income status
- Biological link or
- > Any other

Exceptions: Only for below poverty line?

## Legislation - why ?

For the child

Because the child's survival, growth and development requires

exclusive breastfeeding and attention for the first four-six months of life

For the women

Because the mother requires

- physical rest and relief from other tasks
- > nutrition and health care
- opportunity to breastfeed and care for child
- freedom from mental tension and anxiety about finances and resources

For both

so the mother-child pair requires close and continuous proximity to each other during this crucial period

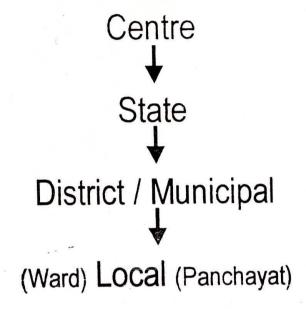


# Legislation - what ? Objectives

- To provide women financial support for childbirth, childcare and breastfeeding in the first few months of the child's life, as well as rest and recuperation for the woman, and thus promote health of mother and child
- ➤ To recognise the woman's reproductive role and compensate her for her unavoidable absence from the work force for a certain period.
- To do the above, the law must provide every woman with an entitlement to (four or six) months financial support, calculated according to certain fixed principles.

## Funding

#### All four levels



# Sources Employers Individuals State

# Participation

Mechanisms for participation, feedback, monitoring

### For Whom

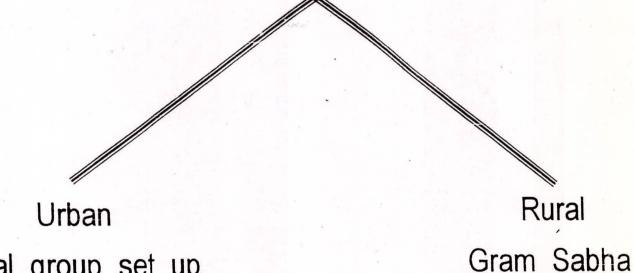
- Women working in institutions
- For all others, selfemployed non-employed, unpaid workers

## Represented by

Unions, or elected representatives

Women's organisations, clubs, associations, panchayats, municipal, councillors

# Grievance Forums



Local group set up by Municipality

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### Maternity And Child Care Entitlement in Law - A Bird's Eye View (Mr. Bikas Das)

From the bare reading of the Constitutional Provisions & laws concerning maternity relief and benefit, it seems that the following legislations are having bearing on Women Worker in the informal sector in some form or other. These provisions can effectively fit into the advocacy process for deriving entitlement of women workers engaged in informal sector. The present position of law does not seem to be equally responsive towards the security of women working in the informal sector.

The Indian Constitution in Article 42 (in the Chapter of Directive Principle Of State Policy) lays down the following provisions:

ART: 42 :PROVISION FOR JUST AND HUMANE CONDITIONS OF WORK AND MATERNITY RELIEF- "The State shall make provision for securing just and humane conditions of work and for maternity relief."

The provision indicates that it is the State's obligation to create social atmosphere befitting human dignity for citizens to leave in . The judiciary in India uphold in it's magnanimity the constitutional mandate by observing that principles contained in article-42 may benevolently be extended to the living conditions in jails. (D.F. M.Pattnaik vrs. State of Andhra A.I.R. 1974 SC. 2092). Thus nothing can prevent the state from extending the benefit to the informal sector if state makes its policy in furtherance to the provisions contained in Article-42. Such a discrimination in favour of women can not be held as such and this differential treatment towards a weaker sections of the society is a positive discrimination within the meaning of Article-15(3) of the Indian Constitution. In fact the whole sentence in article-42 gives an impression that in order to ensure just and humane condition of work, it is necessary to have special provision of maternity benefit.

# PROVISIONS OF MATERNITY BENEFIT IN DIFFERENT LEGISLATIONS:

(1) The Maternity Benefit Act is one such legislation which declares the policy of the State in-furtherance of the provisions contained in Article-42. However, it can be found in a balanced interpretation that there was a shift in the intention of the legislature while enacting the Maternity Benefit Act which replaces the constitutional terminology maternity relief. Thus there is a need

to have a clear understanding of both the terms. In Board of Directors Vrs. Mahammad Khan it was explained that benefit means an advantage and includes monetary as well non-monetary advantages or services. The Right in the form of money or services enjoyed under Social Security Schemes or Insurance Scheme can be considered as benefit. Benefit is something that promotes well-being. It is an advantage, useful aid or help. It also means financial help in times of sickness, old age, unemployment and other cases of un-deserved want. The above meaning of the term benefit has got its expression in the Indian Constitution in Article-41 where public assistance in cases of unemployment, old age, sickness, disability and other cases of undeserved want has been promised as benefits. The meaning of the term Relief, on the other hand, includes steps for lightening or mitigating or even removing any burden, discomfort, evil, pressure or stress especially deliverance from a siege. Maternity Relief in Article 42 can be understood from this sense.

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The Maternity Benefit Act only regulates the employment of women in certain establishment for certain period before and after child birth and provides for maternity benefit and certain other benefits. An establishment has been defined in the act as (I) A Factory (Ii) A Mine (Iii) A Plantation (Iv) An Establishment wherein persons are employed for the exhibition of Equestrian, Acrobatics And other Performances (V) An Establishment to which the Provisions of this Act have been declared to be applicable. However the recent decision of the Supreme Court of India in Municipal Corporation Vrs. Female Workers (Muster Roll) is basically a verdict in favour of casual workers or women who have been included under muster roll of any establishment like Municipalities. Thus, the Hon'ble Apex Court only vindicated the entitlements of workers in the muster roll of an establishment to get the benefit of the act. The important aspect of the decision of the Apex and expansive view while Court is that the Bench took an egalitarian interpreting article-42. The emphasis was not only on the term Maternity Relief but more on the phrase human condition of work. The Bench also resorted to Universal Declaration of Human Rights and Convention on Elimination of All Forms of Discrimination Against Women. We may add here that for ante-natal and post-natal rights of women and children the & 26 lay down arrangement of social security measures by the State Parties. Thus the Judgement of the Apex Court is a land mark verdict which can be extended to various spheres of the informal sector where more than a required number of women work and where the Maternity Benefits are apparently needed. The accessibility to various facilities and services has to tackle the dimensions of space and distance as well as the availability of the appropriate number of staff for this also in Article- 18 of CRC there is mandatory provisions for the State Parties.

In the Proviso to Section 2(b) of the Maternity Benefit Act, 1961 It was mentioned that State Government may, with the approval of the Central Government, after giving not less than 2-months notice of its intention of so

doing, by Notification in the Official Gazette, declare that all or any of the provisions of the Act shall apply also to any other Establishment or Class of Establishments, Industrial, Commercial, Agricultural or otherwise. Accordingly in Assam Sweepers & Scavengers employed by Local Bodies have been Covered since 1970. Thus the Maternity Benefit Act is extendible to various establishment only through a technique of Gazette Notification by the appropriate Governments. Recently, the CLAP had the experience of verifying that NGOs are not covered under the Act as a type of Establishment while considering an application for Maternity Benefit of one of its female employee. However, the CLAP in its right wisdom allowed such facility to its employee. In all such cases providing benefits under the Act shall be a Humane consideration of the employer.

- (2) In exercise of the powers conferred by Section 28 of the Maternity Benefit Act, 1961 the Central Government made the Maternity Benefit (Mines and Circus) Rules 1963. The Rule possesses provisions relating to payment of Maternity and other benefit in Rule 5 and in Rule 6 it provides for break for Nursing Child.
- (3) The Sales Promotion Employees (Conditions of Service) Act in Section 6 (4) provides that Maternity Benefit Act shall apply to sales promotion employees being women as they apply to or in relation to, women employed whether directly or through any agency for wages in any establishment within the meaning of that Act.
- (4) Similarly the Employees State Insurance Act, 1948 made special provision of Maternity Benefit in Section 50 of the said Act with the following provision. (Section 50: Maternity Benefit The qualification of an Insured Women to claim Maternity benefit, the conditions subject to which such Benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.
- (5) Apart from the above provisions in the Constitution as well as laws, service code of different Govts. & Institutions do provide maternity benefit. By way of judicial decision some other laws have been brought in to the purview of Maternity Benefit Act like Plantation Labour Act (Ram Bahadur Thakur Pvt. Ltd. Vrs. Chief Inspector of Plantation, it is held that a women worker who worked for 157 full and 4-half days in 12 months is qualified to get Maternity Benefit) and Beedi and Cigar Workers (Condition of Employment) Act. { Mangalore Ganesh Beedi Works Vrs. Union of India AIR 1974 SC. 1832}. It can be deduced from the judicial pronouncement that the judicial trend goes in favour of women where such women are working in an establishment. An establishment has been defined in various laws including the Maternity Benefit Act which has already been mentioned elsewhere. An establishment is not the same thing as "Employer" "Employee" but different from them. (R.L. Sahani Vrs. Union of India). An establishment is an organisation which employs persons between whom and the establishment

the relationship of employer and employee exists. Vrs. Transport Pvt. Ltd. vrs. Regional Provident fund Commission)

# THE FOLLOWING LEGISLATIONS CONTAIN PROVISIONS FOR CRECHE SERVICES:

### PLANTATION LABOUR ACT (SECTION - 12.)

In every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or employed on any day of the preceding twelve months, or where the number of children of women workers (including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women workers.

- (1A) Notwithstanding any thing contained in sub-section
- (1) If, in respect of any plantation wherein less than fifty women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months or where the number of children or such women workers is less than twenty, the State Government, having regard to the number of children of such women workers deems it necessary that suitable rooms for the use of such children should be provided and maintained by the employer, it may, by order, direct the employer to provide and maintain such rooms and thereupon the employer shall be bound to comply with such direction.
  - (2) The rooms referred to in sub-section (1) or sub section (1A) shall
    - (a) provide adequate accommodation;
    - (b) be adequately lighted and ventilated;
    - (c) be maintained in clean and sanitary conditions;
    - (d) be under the charge of a women trained in the care of children and infants.
  - (3) The State Government may make rules prescribing the location and the standards of the rooms referred to in sub-section (1) or sub-section (1A) in respect of their construction and accommodation and the equipment and amenities to be provided therein.

#### FACTORIES ACT:

(Section 48. Creches):

(1) In every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for

the use of children under the age of six years of such women. Such rooms shall be provided adequate accommodation shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

### MATERNITY BENEFIT ACT, 1961, (SECTION-11): NURSING BREAK

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the intervals for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

BULIDING AND OTHER CONSTRUCTION WORKERS (REGULATION ETC.) ACT, 1996

Section 35, Creches-

- (1) In every place wherein, more than fifty female building workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under age of six years of such female workers.
- (2) such rooms shall:
  - (a) provide adequate accommodation,
  - (b) be adequately lighted and ventilated,
  - (c) be maintained in clean and sanitary condition,
  - (d) be under the charge of women trained in the care of children and infants.

The review of laws to ascertain Maternity Entitlement and Child Care reveals that Maternity Relief and Benefit for the purpose of various Act denotes the following privileges:

- 1. Leave.
- 2. Financial Assistance.
- 3. Health facility and Safety
- Nursing break for child care
- Creche facility.

The existing laws provide for the above mentioned one or other types of benefits. Such laws, however are confined mostly to organised sector or to an establishment.

Although there was a significant departure in the Judicial trend with the land mark judgement in the Municipal Corporation Vrs. Female Workers (Muster Roll) wherein the Hon'ble Apex Court vindicated the Human Rights of Women,

still due to limited scope in different laws it is a difficult task for the courts to protect the rights of those women who are engaged in the informal sector in Judicial proceedings. There are a handful of Judicial pronouncements available on Maternity Entitlement. Some of the case studies are mentioned below.

### **CONTRACT LABOUR ACT - 1970**

In exercise of the powers conferred by Clause (vi) (d) of Sub-Rule (2) of Rule 25 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 the Chief Labour Commissioner (Central), New Delhi specified the standard of Construction and maintenance of the Creches. It inter alia says a Creche should be located within 50 meters of every establishment where 20 or more Women are ordinarily employed as Contract Labour.

## Some cases which have contributed to the interpretation of the issue:

- Rambahadur Thakur (Pvt.) Ltd. Vrs. Chief Inspector of Plantation. 1989 (59 FLR 133) (1989 II-LLN 20)
- 2. F.M Kolia Vrs Manager, Tiles and Pottery Works Ltd. (1981 FLR 109)
- Mangalore Ganesh Beedi Works Vrs. Union of India .
   (AIR 1974 SC 1832)
- 4. Nargesh Mirza Vrs. Union of India.
- 5. Rajendranagar Municipality Vrs. B.V. Parraju, 1995 Lab IC 2102 (Andhra)
  - Municipal Council, Washim V. Manguli Zenduji Dhamane, 1978 Lab IC 881 (Bom).
  - Administrator of the City of Nagpur Municipal Corpn. V Presiding, Officer, Labour Court, Nagpur, 1976 Lab IC 107 (Bom)
  - 8. Municipal Committee, Bhiwani V. Padam Singn, 1973 Lab IC 1512 (P&H).
  - 9. Hindustan Antibiotics Ltd. V. Workmen, AIR 1967 SC 948.
  - J.K. Cotton Spinning & Weaving Mills Co. Ltd. V. Badri Mali, AIR 1964 SC 737: (1964) 3 SCR 724.
  - 11. Sirur Municipality V. its Workmen AIR 1961 Bombay 75: (1960) 2 Lab LJ 657.
  - 12. Corporation of the City of Nagpur V. Its Employees, AIR 1960 SC 675: (1960) 1 Lab LJ 523.

- 13. Crown Aluminium Works V. Their Workmen Air 1958 SC 30: 1958 SCR 651.
- 14. Boroda Borough Municipality V. Its Workmen. AIR 1957 SC 110: (1957) 1 Lab LJ 8
- 15. Yusuf Abdul Aziz V. State of Bombay, AIR 1954 SC 321.
- 16. Budge Budge Municipality V. P.R. Mukherjee, (1953) 1 Lab LJ 195 (SC).

The above citations are only illustrative and not exhaustive. There may be many such provisions and judicial pronouncement available in different Statute Books. But the situation of Women Workers in Informal Sector remain unchanged. This requires a whole lot of organised demand in order to explore the Facilities guaranteed by Laws. The reality is that Law by itself cannot bring benefit to the Women Workers. There is a need for its translation in to action through concerted Advocacy at different level. Hence the Key Actors in the labour movement must reorient their strategies with the changing situation of women.



# THE MATERNITY BENEFIT ACT, 1961

(53 OF 1961)

(As modified up to the 1st April, 1987)

[Subordinate legislation being published separately.]

GOVERNMENT OF INDIA

Ministry of Law and Justice

### THE MATERNITY BENEFIT ACT, 1961

#### ARRANGEMENT OF SECTIONS

#### SECTIONS

- 1. Short title, extent and commencement.
- 2. Application of Act.
- 3. Definitions.
- 4. Employment of, or work by, women prohibited during certain periods.
- 5. Right to payment of maternity benefit.
- 5A. Continuance of payment of maternity benefi. in certain cases.
- 5B. Payment of maternity benefit in certain cases.
  - 6. Notice of claim for maternity benefit and parment thereof.
  - 7. Payment of maternity benefit in case of death of a woman.
  - 8. Payment of medical bonus.
  - 9. Leave for miscarriage.
- 10. Leave for illness arising out of pregnancy, delivery, premature birth of child, or miscarriage.
- 11. Nursing breaks.
- 12. Dismissal during absence of pregnancy.
- 13. No deduction of wages in certain cases.
- 14. Appointment of Inspectors.
- 15. Powers and duties of Inspectors.
- 16. Inspectors to be public servants.
- 17. P. ver of inspector to direct payments to be made.
- 18. Foriciture of maternity benefit.
- 19. Abstract of Act and rules thereunder to be exhibited.
- 20. Registers, etc.
- 21. Penalty for contravention of Act by employer
- 22. Penalty for obstructing Inspector.
- 23. Cognizance of offences.
- 24. Protection of action taken in good faith.
- 25. Power of Central Government to give directions.
- 26. Power to exempt establishments.
- 27. Effect of laws and agreements inconsistent with this Act.
- 28. Power to make rules.
- 29. Amendment of Act 69 of 1951.
- 30. Repeal.

### THE MATERNITY BENEFIT ACT, 1961

53 OF 19611

[1211 December, 1961.]

An Act to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:

1: (1) This Act may be called the Maternity Benefit Act, 1961.

Short title, extent and commencement.

- (2). It extends to the whole of India \*\*\*\*.
- (3) It shall come into force on such date as may be notified in this behalf in the Official Gazette,—
- [(a) in relation to mines and to any other establishment wherein persons are employed for the available of are employed for the exhibition of equestion,

  land, ances, by the Central Government; and]

  (b), in relation to other establishments in a State, by the State Government, and ment of the state of the first instance, to every establishment being a factory, are employed for the exhibition of equestrian, acrobatic and other perform-

  - 2. (1) It applies, in the first instance, to every establishment being a factory, Application of mine or plantation [including any such establishment belonging to Government Act. and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances]:

Provided that the State Government may, with the approval of the Central Government, after giving not less than two months' notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

- (2). [Save us otherwise provided in [sections 5A and 5B], nothing contained in this Act shall apply to any factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948, apply for the time being.
  - 3. In this Act, unless the context otherwise requires,-

Definitions

- (a) "appropriate Government" means, in relation to an establishment being a mine, [or an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, the Central Government and in relation to any other establishment, the State Government;
  - (b) "child" includes a still-born child;
  - (c) "delivery" means the birth of a child;
  - (d) "employer" means—

The words "except the State of Jammu and Kashmir" omitted by Act 51 of 1970, section 2 and Schedule (with effect from 1-9-1971).

31st November, 1963: vide Notification No. S.O. 2920, dated 5th October, 1963, Gazette of India, Part II, Section 3(ii), page 3735:

'Substituted by Act 52 of 1973, section 2, for clause (a) (with effect from 1-3-1975).

<sup>5</sup>Substituted by section 3, ibid:, for certain words (with effect from 1-3-1975).

'Substituted by Act 21 of 1972, section 2, for "Nothing contained in this Act". 'Substituted by Act 53 of 1976, section 2, for "section 5A" (with effect from 1-5-1976).

\*Inserted by Act 52 of 1973, section 4 (with effect from 1-3-1975).

34 of 1948

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This Act has been extended to Pondicherry by Regulation 7 of 1963, section 3 and Schedule I and to Goa, Daman and Diu by Regulation 11 of 1963, section 3 and Schedule.

- (i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;
- (ii) in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;
- has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;
  - 1[(e) "establishment" means—
  - (i) a factory;
    - (ii) a mine;
  - a Mark (iii) a plantation;
    - (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; or
    - (v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable;]
    - the Factories Act, 1948; (f) "factory" means a factory as defined in clause (m) of section 2 of
      - (g) "Inspector" means an Inspector appointed under section 14;
  - (1) "maternity benefit" means the payment referred to in sub-section (1) of section 5; when a mine as defined in clause (j) of section 2 of the
    - (i) "mine" means a mine as defined in clause (j) of section 2 of the Mines Act, 1952;
- at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code;

  45 of 1860.
  - (k) "plantation" means a plantation as defined in clause (f) of section
    2 of the Plantations Labour Act, 1951;
    69 of 1951.
    - (1) "prescribed" means prescribed by rules made under this Act;
    - (m) "State Government", in relation to a Union territory, means the Administrator thereof;
    - (n) "wages" means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes—
  - (1) such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to:
  - (2) incentive bonus; and
  - (3) the money value of the concessional supply of foodgrains and concessional supply of foodgrains and

Substituted by Act 52 of 1973, section 4, for clause (e) (with effect from 1-3-1975).

but does not include—

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any bonus other than incentive bonus;

(ii) over-time earnings and any deduction or payment made on account of fines:

(iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and

(iv) any gratuity payable on the termination of service;

- (o) "woman" means a woman employed, whether directly or through: any agency, for wages in any establishment.
- 4. (1) No employer shall knowingly employ a woman in any establishment Employment or, during the six weeks immediately following the day of her delivery or her mis- or work by, women prohibitain periods.

(2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.

- (3) Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section (4) any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.
  - (4) The period referred to in sub-section (3) shall be-
  - (a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;
  - (b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.
- 5. (1) Subject to the provisions of this Act, every woman shall be entitled Right to payment to, and her employer shall be liable for, the payment of maternity; benefit at the of maternity rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.

Explanation.—For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or one rupee a day, whichever is higher.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishmen: of the employer from whom she claims maternity benefit, for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of one hundred and sixty days aforesaid shall not apply to a weman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation. For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid off during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day:

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided further that where a woman, having been delivered of a child. dies during her delivery or during the period of six weeks immediately following the date of her delivery, leaving behind in either case the child, the employer shall be liable for the maternity benefit for the entire period of six weeks immediately following the day of her delivery, but if the child also dies during the said period, then, for the days up to and including the day of the death of the child.

payment of in certain cases.

Continuance of [5A. Every woman entitled to the payment of maternity benefit under this maternity benefit Act, shall, notwithstanding the application of the Employees' State Insurance 34 of 1948. Act, 1948, to the factory or other establishment in which she is employed, continue : " Be to be so entitled until she becomes qualified to claim maternity benefit under section 50 of that Act.]

Payment of a [5B. Every woman in certain cases.

- (a) who is employed in a factory or other establishment to which the 34 of 1948 provisions of the Employees' State Insurance Act, 1948, apply;
- (b) whose wages (excluding, remuneration for overtime work) for a month exceed the amount specified in sub-clause (b) of clause (9) of section 2 of that Act; and
  - (c) who fulfils the conditions specified in sub-section (2) of section 5. shall be entitled to the payment of maternity benefit under this Act.]

Notice of claim for maternity benefit and payment thereof.

- 6. (1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit, and remove serve that the total of these
- (2) In the case of a woman who is pregnant, such notice, shall state the clate from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.
  - (3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.
  - (4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment until the expiry of six weeks after the day of her delivery.
- (5) The amount of maternity benefit for the period preceding the date of Microexpected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed that the woman is pregnant. and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.
- (6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise indiventitled to such benefit or amount and in any such case an Inspector may either satisfort his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in vien the order. The

inserted by Act 21 of 1972, section 3.

<sup>\*</sup>Inserted by Act 53 of 1976, section 3 (with effect from 1-5-1976).

- 7. If a woman entitled to maternity benefit or any other amount under this Payment of maternity benefit or amount, or where the employer is liable for maternity benefit under the second provise to sub-section (3) of a woman of section 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6 and in case there is no such nominee, to her legal representative.
  - 8. Every woman entitled to maternity benefit under this Act shall also be Payment of entitled to receive from her employer a medical bonus of twenty-five rupees, if nedical bonus no pre-natal commement and post-natal care is provided for by the employer free of charge.
  - 9. In case of miscarriage, a woman shall, on production of such proof as Leave for may be prescribed, be entitled to leave with wages at the rate of maternity benefit, miscarriage, for a period of six weeks immediately following the day of her miscarriage.
  - 10. A woman suffering from illness arising out of pregnancy, delivery, pre-Leave for illness mature birth of child or miscarriage shall, on production of such proof as may arising out of pregnancy, delibe prescribed, be entitled, in addition to the period of absence allowed to her very, premature under section 6, or, as the case may be, under section 9, to leave with wages at miscarriage. the rate of maternity benefit for a maximum period of one month.
  - 11. Every woman delivered of a child who returns to duty after such deli-Nursing breaks. very shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.
  - 12. (1) When a woman absents herself from work in accordance with the Dismissal during provisions of this Act, it shall be unlawful for her employer to discharge or disnancy. miss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.
  - (2) (a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall, not have the effect of depriving her of the maternity benefit or medical bonus:

Provided that where the dismissal is for any prescribed gross misconduct, the employer may by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.

- (b) Any woman deprived of maternity benefit or medical bonus or both, may, within sixty days from the date on which the order of such deprivation is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should that not be deprived to maternity benefit or medical bonus or both, shall be final.
- (c) Nothing contained in this sub-section shall affect the provisions contained
- 13. No deduction from the normal and usual daily wages of a woman entitled No deduction of to maternity benefit under the provisions of this Act shall be made by reason wages in certain only of—
- (a) the nature of work assigned to her by virtue c: the provisions contained in sub-section (3) of section 4; or
- (b) breaks for nursing the child allowed to her uncer the provisions of section 11.
  - 14. The appropriate Government may, by notification in the Official Gazette, Appointment of appoint such officers as it thinks fit to be Inspectors for the purposes of this Act Inspectors

and may define the local limits of the jurisdiction within which they shall exercise to instructions under this Act.

duties. of . Ins-

Powers and and 1 15. An Inspector may, subject to such restrictions or conditions as may be prescribed, exercise all or any of the following powers, namely:

in her (a) enter at all reasonable times with such assistants, if any, being of persons in the service of the Government or any local or cuter public authority, as he thinks fit, any premises or place where women are employed the inamest ad oslor work, is given to them in an establishment, for the purposes of examining premote harden it squany registers, records and notices required to be kept or exhibited by or sacroff under this Act and require their production for inspection;

(b) examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment:

History Provided that no person shall be compelled under this section to answer any question or give, any evidence tending to incriminate himself;

require the employer to give information regarding the names and addresses of women employed, payments made to them, and applications or notices received from them under this Act; and

to segrew h (d) taket copies of any registers and records or notices or any portions a thereof, an abbout with the larger limited and are the part of the con-

be public servants.

Inspectors to 1100 116. Every Inspector, appointed under this Act shall be deemed to be a 45 of 1860 public servant within the meaning of section, 21 of the Indian Penal Code.

Power of inspector to direct payments to be made.

17. (1) Any woman claiming that maternity benefit or any tother amount to which she is entitled under this Act and any person claiming that payment due under section 7 has been improperly withheld may make a complaint to the a Inspector. The first of the first of the control of the first of the control of

(2) The Inspector may, of his own motion or on receipt of a complaint referred to in sub-section (1), make an inquiry or cause affinquiry to be made and if satisfied that payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders in accordance of f

(3) Any person aggrieved by the decision of the Inspector under sub-section (2) may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority.

toubag (4). The decision of the prescribed authority where an appeal has been preferred to it under sub-section (3), or, of the Inspector where no such appeal has been preferred, shall be final.

(5) Any amount payable under this section shall be recoverable as an arrear of land revenue. The risk and the state of t

Porfeiture of maternity benefit.

18. If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorised absence, she shall forfeit her claim to the maternity benefit for such period. Company of the second

Abstract of Act

19. An abstract of the provisions of this Act and the rules made thereunder and rules there under to be that in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

Registers, etc. 303 20220. Every temployer, shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.

Penalty for conditions 21. If any employer contravenes the provisions of this Act or the rules travention of made thereunder, ho shall be punishable with imprisonment which may extend is to three months, or with fine which may extend to five hundred rupces, or with

"Long of the to the this seine the life proposes of this Act to very many Account by Act St of 1920 and a

both; and where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

- 22. Whoever fails to produce on demand by the Inspector any register or Penalty for document in his custody kept in pursuance of this Act or the rules made there-obstructing under or conceals or prevents any person from appearing before or being examined by an Inspector shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.
- 23. (1) No prosecution for an offence punishable under this Act or any Cognizance of rule made thereunder shall be instituted after the expiry of one year from the offences. date on which the offence is alleged to have been committed and no such prosecution shall be instituted except by, or with the previous sanction of, the Inspector:

Provided that in computing the speriod of one year aforesaid, the time, if any, taken for the purpose of obtaining such previous sanction shall be excluded.

- (2) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any such offence.
- 24. No suit prosecution or other legal proceeding shall lie against any Protection of person for anything which is in good faith done or intended to be done in puraction taken suance of this Act or of any rule or order made thereunder.
- 25. The Central Government may give such directions as it miy deem Power of Central necessary to a State Government regarding the carrying into execution of the Government to provisions of this Act and the State Government shall comply with such directions.
- 26. If the appropriate Government is satisfied that having regard to an estab-Power to exempt lishment or a class of establishments providing for the grant of benefits which establishments are not less favourable than those, provided in this Act, it is necessary so to do, it may by notification in the Official Gazette, exempt, subject to such conditions and restrictions, if any, as may be specified in the notification, the establishment or class of establishments from the operation of all or any of the provisions of this Act, or of any rule made thereunder by the same allowed the provisions of the Act, or of any rule made thereunder by the same allowed the provisions of the same allowed the sam
  - 27: (1) The provisions of this Act shall have effect notwithstanding anything effect of laws inconsistent herewith contained in any other law or in the terms of any award, and agreements agreement or contract of service, whether made before or after the coming into this Act. force of this Act:

Provided that where under any such award, agreement, contract of service or otherwise a woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.

- (2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favourable to her than those to which she would be entitled under this Act.
- 28. (1) The appropriate Government may, subject to the condition of pre-power to make vious publication and by notification in the Official Gazette, make rules for rules, carrying out the purposes of this Act.

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for
  - rolls; he preparation and maintenance of registers, records and muster-
  - (b) the exercise of powers (including the inspection of establishments) and the performance of duties by Inspectors for the purposes of this Act;
  - (c) the method of payment of materniy benefit and other benefits under this Act in so far as provision has not been made therefor in this Act.
    - (d) the form of notices under section 6;
  - (e) the nature of proof required under the provisions of this Act;
  - the duration of nursing breaks referred to in section 11;
  - (g) acts which may constitute gross misconduct for purposes of section
  - (h) the authority to which an appeal under clause (b) of sub-section (2) of section 12 shall lie; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof:
  - the Inspector under section 17; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;
  - pectors under sub-section (1) of section 17 and the procedure to be followed by them, when making inquiries or causing inquiries to be made under sub-section (2) of that section:
    - archi.(k) any other matter which is to be, or may be, prescribed.
- (3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made; before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session for in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid. both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Amendment of Act

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Inchesions

- 29. In section 32 of the Plantations Labour Act, 1951,—
- (a) in sub-section (1), the letter and brackets "(a)" before the words "in the case of sickness", the word "and" after the words "sickness allowance" and clause (b) shall be omitted:
  - (b) in sub-section (2), the words "or maternity" shall be omitted,
- 30. On the application of this Act-
  - (i) to mines, the Mines Maternity Benefit Act, 1941; and

19 of 1941.

(ii) to factories situate in the Union territory of Delhi, the Bombay Bom. Act VII Maternity Benefit Act, 1929, as in force in that territory,

shall stand repealed.

Substituted by Act 52 of 1973, section 5, for certain words (with effect from 1-3-1975). MGIPCBE-S6-13 Mof L&1/86-29-6-87-2,000.

### Maternity Entitlements for Women in the Unorganized Sector A Policy Dialogue; 28 Feb 2001, New Delhi

#### PRESS RELEASE

Year after year has gone by and now the "The Women's Empowerment Year" is also slipping out day by day. With 8th March – Women's Right Day around the corner, it is time to ask what the present Government has done to empower women of our country?

All those who have been working with women and children are well aware of the harsh and unprotected circumstances in which women go through pregnancy, birth, lactation, and care of infants while earning a living and carrying out household responsibilities. The issue of maternity entitlement is therefore a critical one for women's empowerment, children's development and subsequently for the growth of the Nation. The importance of maternity entitlement has well been accepted in the Ninth Five Year Plan document but sadly not at all reflected in the actions of our present day central government.

The Government though agreeing with the text of the proposed International Labour Organization's Convention (C. No. 183) and Recommendations (R. No. 191) on Maternity Protection, has denied its ratification, on the pretext of its inability to implement the provisions of the proposed Convention and Recommendation. These Convention and Recommendation sought to improve the maternity entitlement provisions and enlarge its coverage to the unreached needy population. Denial of any such improvement in the Maternity Entitlement provisions on the pretext of limited resources is not justified at all and requires a reconsideration of the stand taken by the Government.

It is a well known fact that maternity leave and benefit can only be accessed by women working in the organized sector which is only about 7% of all working women. The leave entitlement under the Act do not even provide for the 4-6 months of recommended exclusive breastfeeding. It is well understood that enabling mothers to breast-feed contributes to the health and well being of both mother and the child. Creches on work sites are one important way in which mothers can breast-feed and parents can continue to contribute to the care of their young children while earning their livelihood. But few establishments make provisions for creches and women and young children are put to great difficulty. Therefore a thorough examination of the gaps in laws, policies and programmes vis a vis Maternity Entitlements and Creches is required by the Government and Policy makers so that approximately 120 million women who work in the unorganized sector can be covered. Studies conducted by eminent scholars in the field like Mina Swaminathan clearly show that that India's rating in respect of Maternity laws and Policies is far below than the ratings of other Socialist and market oriented countries.

Looking at the available services, there are approximately 15000 government funded creches (under the Working and Ailing mothers scheme and the National Creche Fund) in the country catering to 3 lakh children where as the need is to reach 60 million children under 6 years of age. The Government is well aware of gaps in the outreach of such schemes and recognize it in their own Annual Reports but shy away from taking any concrete steps to bridge the gaps. The gap speaks for itself and well reflected in high rates of Maternal and Child Mortality and morbidity.

The Maternity Benefits Act, 1961 and the Employees' State Insurance Act, 1948 are not only inadequate but are impossible to apply to the unorganized sector for lack of

implementation mechanism. However the recent Supreme Court Judgment [SLP© No. 12797/1998; Municipal Corporation of Delhi versus Workers (Muster roll) and others], on 8th March 2000, has upheld the right to Maternity Entitlements for women on daily wages in a landmark judgment. Supreme Court ruled that: "We have scanned the different provisions of the Act and do not find anything contained in the Act which entitles only regular women employees to the benefit of the Act"

Then Judges further stated that: "To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of a child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realize the physical difficulties, which a working woman would face in performing her duties at work while carrying a baby in the womb or while rearing up the child after birth".

In this context, FORCES network is organizing a Policy Dialogue on "Maternity Entitlements for Women in the Unorganized Sector" on 28th February 2001 at Vishwa Yuva Kendra. Senior representatives from Dept. of Women and Child Development (Shri B. K. Chaturvedi-Secretary WCD), National Commission for Women, National Labour Commission (Renana Jhabwala, who have also been working with SEWA), National Human Rights Commission (Justice Sujata Manohar, and, Shri Virendra Dayal, Labour Ministry (Sri S. K. Das - DG Labour Welfare), National Population Council (Ms. Krishna Singh - Member Secretary), ILO (Ms. Jyoty Tuladhar who is expert on Gender issues), UNICEF(Sri Shiv Kumar-Expert on Maternal and Child's Health) and UNDP( Kalyani Menon sen) are expected to participate. Addressing the will be activists working in the field of Child and Women's Rights like Ms. Mina Swaminathan who have been working on the issue since last 30 years; and veteran leaders from Labour Rights organizations such asMs. R. Geetha from Nirman Mazdoor Panchayat Sangh, Ms. Amarjeet Kaur from AITUC, Ranjana Nirula from CITU, Ms. Mridula Bajaz from Mobile Creches, Ms. Brinda Karat from AIDWA andMs. Devika Singh and Dr. Vandana Prasad from FORCES. Legal experts likeDr. Amita Dhanda from National Academy of Legal Studies and Research(NALSAR- Hydrabad), will be facilitating.

FORCES Network realizes the importance of Maternity Entitlement in dealing with the condition mothers and children and since its inception in 1989, FORCES has been pushing for the adoption of a holistic Maternity and Child Care Code. The proposed workshop will be one step ahead in the achievement of this goal as it would enable the forum to assess the ground level situation more comprehensively and provide opportunity to interact with people and exchange its perspective on Maternity Entitlements with others who are concerned about this issue. Within the workshop the issue will be seen from perspective of women as workers, and mothers and from that of the needs and rights of children. To this end the workshop will attempt to bring together people from Trade Unions in Organized and Unorganized sectors, Women's Organizations, NGOs, and Government and International Agencies.