

**OVERVIEW OF MATERNITY PROTECTION:  
INTERNATIONAL AND NATIONAL PERSPECTIVES**

**Ms. Bhumika Sharma**

Research Scholar,  
Department of Laws,  
Himachal Pradesh University,  
Shimla-5

**Dr. Rajinder Verma**

Associate Professor,  
Department of Laws,  
Himachal Pradesh University,  
Shimla-5

**Abstract**

Maternity protection has been recognized as a fundamental human right. It is crucial to promoting maternal and child health and preventing discrimination against them. Various legal instruments in the form of Conventions and Declarations under the aegis of International Labour Organisation have been enacted over the last century. Necessary amendments are also brought to them in tune with changed social and economic circumstances. At the national level, the countries across the globe are trying to incorporate the minimum protection for the working mothers as maternity protection.

Despite the legal protections introduced over many years, expectant and new mothers remain vulnerable at the workplace. Laws around the world need to be improved everywhere. Strengthening implementation of maternity protection rights is also a priority - calling for greater efforts in raising awareness among employers and workers of maternity protection rights. Employers must accept their responsibility under the relevant law and secure the rights of women.

The present research paper is an attempt to highlight the international and national perspectives on maternity protection. It gives a background of the rationale for “maternity protection provisions”. The call for the policy makers is to introduce paternity protection in the modern social system.

**Key Words** – Discrimination, Human Right, India, International, Maternity.

“Woman is meant to be herself, a distinctive being,  
with her own place to fill and her own work to accomplish.”<sup>1</sup>

## 1. Introduction

Women have hit a long trail to start from their ancient bondage for modern freedom. They have expanded their traditional sphere and become a partner at work. The current global labour force participation rate for women at just over 49 per cent is nearly 27 percentage points lower than the rate for men.<sup>2</sup> Women’s participation in the labor force has increased dramatically. Unfortunately, they continue to disproportionately face a range of multiple challenges relating to access to employment, choice of work, working conditions, employment security, wage parity, discrimination and balancing the competing burdens of work and family responsibilities.

Millions suffer from discrimination or other disadvantages for the simple fact of being a woman or a mother. Women continue to face significant obstacles in entering the labour market and progressing in their careers. Many millions of women dwell in the so-called informal economy of the developing world- agricultural workers, those who work at home, domestic employees, the self-employed, unpaid family workers, and workers in unregistered enterprises. The expansion of the informal economy provides jobs for many women as well as men, but at the price of being unprotected and poorly-paid. As a result many remain beyond the reach and coverage of ILO Conventions and national labour laws. While legal instruments for promoting gender equality and protecting women workers’ rights are steadily expanding in number and being improved at both national and international levels, there is still a gap between the rights set out in national and international standards and their implementation in real situations. The vestiges of the hundreds of years civilization has operated with different classes / categories in employment, still, remain. Laws are often not enforced adequately. Many workers around the world are only hazily aware or even unaware of their rights.<sup>3</sup> This is perhaps the greatest obstacle to their exercising those rights.<sup>4</sup>

Maternity is that vestibule through which all that lives enters upon its terrestrial existence.<sup>5</sup> No man can conceive the magnitude of motherhood.<sup>6</sup> All human beings must owe to their mother a debt of eternal gratitude for bearing if not for nursing and caring for them. Reproduction is the compass of her life.<sup>7</sup> Respectful Maternity Care Charter: The Universal Rights of Childbearing Women, 2011 based on the principle that “respectful maternity care is every woman’s right” shows an effort to promote respectful maternity care.<sup>8</sup> It has seven Articles dealing with different

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\* Research Scholar, Department of Laws, Himachal Pradesh University, Shimla-5.

\*\* Associate Professor, Department of Laws, Himachal Pradesh University, Shimla-5.

<sup>1</sup> Bernarr Macfadden, *Womanhood and Marriage 2* (Physical Culture Corporation, New York, 1918).

<sup>2</sup> ILO, *World Employment Social Outlook - Trends for Women 2017 1* (ILO, Geneva, 2017).

<sup>3</sup> ILO, *ABC of women workers’ rights and gender equality 1* (ILO, Geneva, 2007) .

<sup>4</sup> *Ibid.*

<sup>5</sup> O.S. Fowler , *Creative and Sexual Science 745* (C.R.Parish & Co., Toronto, 1880).

<sup>6</sup> *Id* 746.

<sup>7</sup> Ruth Van Saun , *The Honey-Comb 19* (Privately Printed, Los Angels,1920) .

<sup>8</sup> This Charter was developed collaboratively by a multi-stakeholder group with expertise bridging research, educational, clinical, human rights, and advocacy perspectives. It has been launched by Health Policy Project

rights. The Charter solidifies the legitimate position of maternal health rights within the broader context of human rights. The social circumstances have led to assimilation of maternity rights of women attaining motherhood by adoption as well as surrogacy.<sup>9</sup> The fear of disrespect and abuse for maternity care seems to increase when women have responsibility of child-birth as well as her workplace.

The right to work–life balance is a key ingredient of job quality. The father’s share in the endowment of his child must not be minimised nor overlooked. To this effect, maternity and paternity care responsibilities should become a normal fact of life. Both women and men need support for their roles in the work and in the family. Shifts in relationships and perceptions of parenting roles may lead to more gender-balanced approaches to care-giving. Various international instruments (discussed later) mark the recognition that gender inequality is deeply intertwined with the gender division of productive and reproductive work.

Safe maternity and the promise of a healthy childhood for their infants remain beyond the reach of countless women and infants. Against this background, the paper aims to stress the need for maternal health and maternal protection as human rights. It is based on the premise that motherhood being a significant phase deserves proper care and protection. The paper is organized in various parts. It starts with rationale for maternity protection; followed by the UN’s instruments on maternal health; next it presents ILO Conventions relating to Maternity Protection. Next part deals with position in other countries generally with regard to maternity protection. Later, it discusses various legislations for working women in India including maternity protection. The paper expresses gratitude for unrequited role played by woman as a mother. It does not cover either general provisions for women under Indian Penal Code, 1860 nor the judicial approach. It is confined to an overview of United Nations and International Labour Organization’s role in upholding and promoting safe maternity, not extending to a comparative study of legislations around the globe.

## 2. Raison d’être behind Maternity Protection

To woman is given the most beautiful and most sacred privilege, the power to create, to bring forth and to unfold life the privilege of motherhood- physical and spiritual.<sup>10</sup> There can be no grander, nobler, or higher calling for a healthy, sound-minded woman than to become the ‘mother’.<sup>11</sup> Science, art and careers dwindle into insignificance in an attempt to compare them with motherhood. Maternal love is a hereditary impulse in animals, the propagation of which is absolutely dependent on the care of the young. Maternal instinct is the deepest and strongest

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and White Ribbon Alliance. Being a non –UN recognized document, it does not hold binding force for the stakeholders.

<sup>9</sup> Paragraph 10(5) , ILO Maternity Protection Recommendation, 2000 (No.191) to Convention No.183 provides that adoptive parents should have access to the system of protection offered by the Convention, especially regarding leave, benefits and employment protection. Parental leave in case of adoption exists in countries such as Russia, Finland, Canada , etc.

<sup>10</sup> Sussana Cocroft, *Motherhood* 11 (Physical Culture Extension Society, Chicago,1906).

<sup>11</sup> William S. Sadler , *The Mother and Her Child* 1 (A.C.Mc Clurg Co., Chicago,1916).

instinct in women. Every woman should feel valued, respected and appreciated by all those who aid her in her journey of bringing new life into the world.<sup>12</sup>

Women's reproductive role includes pregnancy, giving birth, caring for and nurturing their newborn, including through breastfeeding, for periods of several months to several years. During much of this time, women need additional support such as medical follow-up and care, adequate foods, assistance and counselling, support to reduce stress and rest to replenish energy. Maternity is a natural process, often threatened by afflicting circumstances such as poverty and gender-based discrimination, as well as by work situations. As an increasing number of women in the child-bearing years enter the job market, they have to carefully achieve a work-life balance and juggle between their productive and reproductive roles to take care of themselves, their children and their families. Women around the world continue to face considerable maternity-related threats to their health and economic security. They continue to face dismissal and discrimination in hiring on the basis of maternity. The reproductive function of working women remains a flagrant source of inequality and gender discrimination.

Maternity protection has been recognized as a fundamental human right and an indispensable element of comprehensive work-family policies. It is crucial to promoting maternal and child health and preventing discrimination against them. Providing adequate maternity protection is not only affordable and feasible even in the poorest countries, but it is also conducive to social and economic development. It is often considered duty of the governments to ensure that working women enjoy, over and beyond the reproductive rights - a period of rest before and after birth (maternity leave), income security and the guarantee of reintegrating into their job after the period of leave, protection from all forms of discrimination related to their reproductive role. Since the 1880s, the vast majority of States worldwide have taken measures to safeguard maternal health. Laws exist which supposedly guard against employment discrimination. Over the last two decades, there have been noticeable improvements in terms of longer rest periods at the time of childbirth, and movement away from employer liability systems of financing paid maternity leave.

### Needs of the new born Child

The mere giving of physical birth to a child is not motherhood in its holiest and best sense.<sup>13</sup> The social significance of maternity, motherhood and the role of parents in the family and in the upbringing of children should be acknowledged. Her maternal function is that of the creatrix, physically, emotionally, psychically, mentally and spiritually.<sup>14</sup> It is woman's privilege and pleasure to guard and to nurture the little one during its delicate young years, to direct it as it expands and grows into a radiant, useful life.<sup>15</sup> The welfare of the young is a matter of vital urgency. A new born child is in need of the care, attention and time of his mother.

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<sup>12</sup> Tamara Windau-Melmer, *A Guide for Advocating for Respectful Maternity Care 1* (Futures Group, Health Policy Project, Washington, DC, 2013).

<sup>13</sup> *Supra* note 10 at 25.

<sup>14</sup> A.S.Raleigh, *Woman and Super Woman 5* (Ermetic Publishing Co., San Francisco, 1916).

<sup>15</sup> *Supra* note 10.

### Concept of Maternity Protection

Maternity protection measures at work means defending women's right to work, to choose their job and to keep it. It also means that women are entitled to work in dignity, and to benefit from decent work conditions that bar out discrimination and discriminatory practices based on their sex and their reproductive role. It signifies fair salaries that meet their basic needs as well as those of their family including when they are temporarily not producing goods or services because they are procreating children and caring for them. It also means mothers and their babies are entitled to safety at work and surroundings at the workplace.

Discrimination against women on the grounds of maternity exists both in relation to termination of employment and access to employment. Thus, measures to safeguard the employment of pregnant workers and combat discrimination based on maternity are an integral part of maternity protection. Mandated maternity benefits can have a positive effect on female employment rates and may increase women's attachment to the labor force.

### 3. United Nations' Instruments relating to Maternal Health

Universal Declaration of Human Rights combined with related human rights treaties, lay down a comprehensive set of rights to which all persons, including women are entitled. In September 2010, the UN launched its Global Strategy for Women's and Children's Health, to identify and implement critical interventions to improve maternal health and save the lives of over millions of women and children by establishing a roadmap to improve maternal and child health.<sup>16</sup> A new UN Commission on Information and Accountability for Women's and Children's Health has also been established to create a framework to monitor global commitments for maternal, newborn and child health and to ensure that resources are used effectively, in order to save as many lives as possible. It has been entrusted to propose a framework for global reporting, oversight and accountability on women's and children's health.

**Table 1 - International Instruments under aegis of United Nations on Maternal Health<sup>17</sup> and Child Health**

| S.No. | Instrument   | Relevant Provision  |
|-------|--|---|
| 1.    | Universal Declaration of Human Rights (UDHR), 1948   | Article 25(2)   |
| 2.    | International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966                    | Article 10(2)   |
| 3.    | <i>Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979</i> | Preamble and Article 4, 5<br>Article 11(2), Article 12(2) |
| 4.    | <i>United Nations Convention on the Rights of the Child, 1989</i>                                | Article 18(2), (3)  |

<sup>16</sup> It was launched at the United Nation's Millennium Development Goal Summit.

<sup>17</sup> Maternal health is the health of women during pregnancy, childbirth, and the postpartum period. After pregnancy care include recovery from childbirth, concerns about new born care, nutrition, breastfeeding, and family planning.

|    |  |   |
|----|--|---|
| 5. | <i>Beijing Declaration and Platform for Action ,1995</i>   | Paragraph 106 (e) (i);<br>147(f) ; 165 (c) ; 206(i) |
| 6. | <i>International Labour Organization's Convention concerning Workers with Family Responsibilities, 1981 (No.156)</i> | Article 22  |
| 7. | Millennium Development Goals,2000  | Goals 3,4 and 5 <sup>18</sup>                       |

Table 1 enumerates some relevant instruments of United Nations dealing with maternal health. Improving maternal health and reducing child mortality are among the eight Millennium Development Goals of the United Nations.

#### 4. International Labour Organization's Role in Maternity Protection

Several global instruments establish the obligation of States to protect mothers and parents in their maternity and parenting roles and have provided minimum global standards for national laws. They acknowledge the multiple roles of women, especially their reproductive role. The International Labour Organization (ILO) is one of the specialized agencies of the United Nations, which works with its partners and in joint efforts with other multilateral organizations and civil society. The principle of equality of opportunity and treatment for men and women is at the heart of social justice, the constitutional mandate of the ILO.<sup>19</sup> ILO places priority on gender equality in all of its work and goals in order to strengthen the foundation for women's access to decent work as well as to health, to education, to political and legal empowerment.

It was during the first International Labour Conference (ILC) in 1919 that the maiden Convention on maternity protection (Convention No. 3) was adopted. It was the first Convention to address maternity protection specifically. This Convention was followed by two others- Convention No. 103 in 1952 and Convention No.183 in 2000, which progressively expanded the scope and entitlements of maternity protection at work. Convention No.183 took into consideration the developments in national law and practice, notably in social security. Convention No.183 is accompanied by the Maternity Protection Recommendation, 2000 (No.191). Recommendation No.191 provides for adaptations in the pregnant or breastfeeding woman's working conditions in order to reduce particular workplace risks related to the safety and health of the woman and her child, and notes that the woman should retain the right to return to her job or an equivalent one paid at the same rate when it is safe for her to do so. The core concerns of all have been to ensure that women's work does not pose risks to the health of the woman and her child and to ensure that women's reproductive roles do not compromise their economic and employment security.

<sup>18</sup> Goal 3 is to promote gender equality and empower women; Goal 4 is to reduce child mortality and Goal 5 is to improve maternal health.

<sup>19</sup> The ILO's main aims are promoting rights at work, encouraging decent employment opportunities, enhancing social protection and strengthening social dialogue between government, employers and workers contribute to the economic conditions and equitable growth that provide the broader context for the economic and physical well-being of all. The two core Conventions of ILO promoting gender equality are Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

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The Social Security (Minimum Standards) Convention, 1952 (No. 102) sets minimum requirements for the provision of health care during pregnancy and confinement, and cash maternity benefits replacing lost income.<sup>20</sup> It also sets minimum standards for access to preventive and curative health services in general. Other relevant Conventions include the Nursing Personnel Convention, 1977 (No. 149) addressing working conditions and rights of nursing personnel ; and the Medical Care and Sickness Benefits Convention, 1969 (No. 130) setting standards for access to preventive and curative medical care.

Although additional Conventions have been adopted over time, the primary concerns of the ILO with respect to maternity protection remain the same: to enable women to successfully combine their reproductive and productive roles, and prevent unequal treatment in employment due to their reproductive role. These standards progressively expanded the scope and entitlements related to maternity protection at work in line with the evolving status and recognition of women’s rights In the world of work.

The primary ILO unit dealing with maternity, paternity and work is the Conditions of Work and Employment Programme (TRAVAIL). The Programme develops comparative analysis and technical cooperation tools aimed at assisting and encouraging ILO constituents to improve conditions of work and employment by taking an integrated approach to working time and work organization; wages and incomes; work and family balance; and maternity protection. It has been organizing a series of dialogues with the social partners on work and family, including maternity.

**Table 2 - Primary ILO Conventions on Maternity Protection**

| S.No. | Conventions     | Beneficiary Women  |
|-------|-----------------|--|
| 1.    | No. 3 of 1919   | Women working in any public or private industrial or commercial undertaking  |
| 2.    | No.103 of 1952  | Women employed in non-industrial and agricultural occupations, including women wage earners working at home                        |
| 3.    | No. 183 of 2000 | All employed women, no matter what occupation or type of undertaking, including women employed in atypical forms of dependent work |

The scope of three ILO Conventions on Maternity Protection has developed with time. In the beginning, the application of the provisions of the Convention was limited and by 2000 , it has widened.

<sup>20</sup> Part VIII (Articles 46-52) of the Convention deals with maternity benefit.

**Table 3 - Main Maternity Benefits under ILO Conventions**

| S.No. | Maternity Protection Benefit  | No.103 of 1952 | No. 183 of 2000 | Recommendation No. 191 of 2000 |
|-------|---|----------------|-----------------|--------------------------------|
| 1.    | Maternity leave   | Article 2      | Article 4       | Para 1                         |
| 2.    | Cash benefits   | Article 4      | Article 6       | Para 2                         |
| 3.    | Access to medical care /medical benefits                            | Article 4      | Article 5       | Para 3                         |
| 4.    | Health protection<br>(Working hours, time for medical examinations, | -              | Article 3       | Para 6                         |
| 5.    | Employment protection and non-discrimination                        | Article 6      | Article 8 and 9 | Para 5                         |
| 6.    | Breastfeeding   | Article 5      | Article 10      | Paras 7,8 and 9                |
| 7.    | Periodic Review   | -              | Article 11      | -                              |
| 8.    | Guaranteed right to return to work or equivalent position           | -              | Article 8(2)    | -                              |
| 9.    | Parental leave after expiry of maternity leave                      | -              | -               | Para 10                        |
| 10.   | Maternity leave in case of adoptive parents                         | -              | -               | Para 10                        |

Table 3 shows that with time, new maternity protection benefits have been recognized and added under ILO Conventions and Recommendations.

## **5. Legislative Framework for Maternity Protection in India**

Maternity and motherhood is a journey. Woman needs special care from the time of conception till infant is breastfed. Various provisions under the laws ensure that such care and protection is ensured.

### **5.1 Constitutional Provisions**

Article 15 (3) , The Constitution of India empowers the State to make any special provision for women and children. The State shall make provision for securing just and humane conditions of work and for maternity relief.<sup>21</sup>

<sup>21</sup> Constitution of India, 1950 ; Article 42.



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By virtue of this provision, the Parliament of India has been enacting various statutes and the Central Government implementing those along with making Rules under the Statutes for the benefit of women.

**5.2 General Laws for Protection of Rights of Working Women in India**

The present paper uses the term – working women in a wider sense, covering woman employed in all sectors. Workplace has been used to cover all employments as labour or worker or employee. A number of women specific legislations and legislations having women welfare provisions under labour laws are in existence in India. The rights of women working in unorganised sectors are protected by relevant legislations enacted recently.<sup>22</sup>

**Table 4 - Legislative Framework for Working Women in India (Direct)**

| S.No. | Legislation  | Objective   |
|-------|--|---|
| 1.    | Maternity Benefits Act ,1961   | 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.   |
| 2.    | Equal Remuneration Act ,1976   | To provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto |
| 3.    | <u>The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013</u> | To provide protection against sexual harassment <sup>23</sup> of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto                         |

Under these three legislations, women workers are entitled to maternity benefits; equal pay for equal work and preventive as well as penal provisions for sexual harassment at the workplace.

**Table 5 – Women Welfare Provisions under Various Laws in India**

| S.No. | Statute                              | Relevant Provisions for Women |
|-------|--------------------------------------|-------------------------------|
| 1.    | Factories Act, 1948                  | Sections 27, 34, 48, 66,79    |
| 2.    | Employees’ State Insurance Act, 1948 | Section 46(b)                 |
| 3.    | Plantation Labour Act, 1951          | Sections 12,25,32             |
| 4.    | Mines Act, 1952                      | Section 46                    |

<sup>22</sup> **Unorganized Workers’ Social Security Act , 2008 and Domestic Workers Welfare and Social Security Act, 2010 have been enacted for the workers not protected by labour laws for industries and factories.**

<sup>23</sup> Section 2(n) defines "sexual harassment" to include any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely physical contact and advances; or a demand or request for sexual favours; or making sexually coloured remarks; or showing pornography; or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

|    |  |   |
|----|--|---|
| 5. | Beedi and Cigar Workers (Conditions of Employment) Act, 1966   | Sections 25,27                            |
| 6. | Employees' State Insurance Act, 1948   | Sections 46(b) ,50                        |
| 7. | Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996            | Section 35                                |
| 8. | Contract Labour (Regulation and Abolition) Central Rules, 1971 <sup>24</sup>                                       | Rule 25(2)(vi); Rule 41(3) ; Rule 44 (3); |
| 9. | Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 <sup>25</sup> | Rule 41(9); Rule 42(3) ; Rule 44 ;        |

Table 5 highlights the relevant women welfare provisions under various laws and Rules. The most common provisions are safe working conditions; regulation of working hours; separate washrooms; crèches ; etc.

### 5.3 Laws and Schemes for Protection of Maternity and conferment of Maternity Benefits

The women labour constitutes an important segment of the labour force in India and their participation in the labour force is increasing over the years.

- India has not yet ratified any of the three ILO Conventions on Maternity Protection. Still India enacted Maternity Benefit Act as early as 1961. It covers only the organised formal sector of work - any woman working in agricultural, commercial or industrial establishments or shops with 10 persons or more is entitled to benefits under the Act. It can be extended to other establishments by the State Governments subject to prior approval of the Central Government. Amendment to Maternity Benefit Act, 1961 in 2016 has in a sense, refashioned and expanded the rights of women.<sup>26</sup>

Though , the amended legislation has attempted to combat various issues. The original Maternity Benefits Act, 1961 applied to the organised sector alone. This evident lacuna was pointed out in a Parliamentary Standing Committee Report in 2007.<sup>27</sup> It recommended that the existing law be made universally applicable until the government could bring a separate law to cover women in the unorganised sector. The amended law did not take this recommendation on board.

<sup>24</sup> The Rules have been made by virtue of power of the Government under Section 35, Contract Labour (Regulation and Abolition) Act, 1970.

<sup>25</sup> The Rules have been made by virtue of power of the Government under Section 35 , Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

<sup>26</sup> The amended law came into force on 27<sup>th</sup> March, 2017. It introduced the provision of maternity leaves for both adopting and commissioning Mothers (12 weeks of Maternity Leave from the date of handing over of the child) ; requirement of crèches ; etc.

<sup>27</sup> The Standing Committee on Labour (2007-08) submitted its 25<sup>th</sup> Report on 'The Unorganised Sector Workers' Social Security Bill, 2007 on December 3, 2007 under the Chairmanship of Sh.Suravaram Sudhakar Reddy.

- Factories Act, 1948<sup>28</sup>; Plantation Labour Act, 1951<sup>29</sup>; Beedi and Cigar Workers (Conditions of Employment) Act, 1966<sup>30</sup>; Employees' State Insurance Act, 1948<sup>31</sup>; etc have provisions to safeguard maternity rights of female workers.
- Two other legislations that safeguard pregnancy are Medical Termination of Pregnancy Act, 1971<sup>32</sup> and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994<sup>33</sup>.
- Central Civil Services (Leave) Rules, 1972- Rules 43, 43A and 43B deal with maternity leave, paternity leave and child adoption leave respectively.<sup>34</sup>
- Maternity Benefit Programme (MBP)<sup>35</sup> started in January 2017 is a scheme for pregnant and lactating mothers called Maternity Benefit Programme – a conditional cash transfer scheme. It is a Centrally Sponsored Scheme and the cost sharing between Centre and States is 60:40 for all the States and UTs (with legislature), 90:10 for NER and Himalayan States and 100% GoI share for UTs without legislatures. It is limited to the women (pregnant women and lactating mothers) not entitled to or in receipt of similar benefits under any law for the time being in force.<sup>36</sup>

## 6. Current Position

Countries that have ratified relevant ILO Conventions have the obligation to adapt and implement their national legislation to meet at least the ILO standards. Member States are expected to improve their legislation over the years so as to be in a position to ratify the ILO Conventions. There are, however, significant variations in the scope of coverage, the extent of

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<sup>28</sup> For details, see Section 79 ( It allows payment of wages during maternity leave upto 12 weeks).

<sup>29</sup> For details, see Section 32 (It confers the right to claim maternity allowance).

<sup>30</sup> For details, see Section 27 ( It deals with payment of wages during maternity leave).

<sup>31</sup> For details, see Section 50 (It deals with maternity benefit).

<sup>32</sup> It provides for the termination of certain pregnancies by registered medical practitioners.

<sup>33</sup> One of the objectives of this Act is to ensure prevention of the misuse of f pre-natal diagnostic techniques for the purpose of pre-natal sex determination leading to female foeticide.

<sup>34</sup> There is also provision for Child Care Leave in case of minor children below 18 years. This provision was introduced from 2008.

<sup>35</sup> The Scheme has been formulated by the Central Government by virtue of its power under Section 4(b) of National Food Security Act, 2013. Section 4 provides every pregnant woman and lactating mother shall be entitled to (a) meal, free of charge, during pregnancy and six months after the child birth, through the local anganwadi, so as to meet the nutritional standards specified in Schedule II; and (b) maternity benefit of not less than rupees six thousand, in such installments as may be prescribed by the Central Government.

<sup>36</sup> Since the women in regular employment with the Central Government or State Governments or Public Sector Undertakings or those who are in receipt of similar benefits under any law for the time being in force are entitled to benefits under Maternity Benefits Act, 1961.

protection, the complexity of the schemes in force, and the respective responsibilities of the State and of individual employers for the provision of cash benefits.

Virtually every country around the world has adopted some type of maternity protection legislation and laws and measures to support workers with family responsibilities.<sup>37</sup> Over 80 per cent of countries set out explicit prohibitions against discrimination during pregnancy, leave, and/or an additional prescribed period.<sup>38</sup> More than two-thirds of countries have statutory measures on dangerous or unhealthy work which affects pregnant or nursing women, the majority providing protective measures, such as alternatives to hazardous work.<sup>39</sup> An increasing number of countries are also implementing measures to support both mothers' and fathers' care responsibilities -such as paternity, parental and adoption leave and services to enable nursing and childcare.

The United States<sup>40</sup>, along with Papua New Guinea, Swaziland, Liberia and Lesotho are some of the only countries in the world that provide no type of financial support for mothers.<sup>41</sup> Over the last 15 years, there have been noticeable improvements in maternity protection legislation around the world, with a shift towards longer rest periods at the time of childbirth, and movement away from employer liability systems of financing maternity leaves.<sup>42</sup>

Gender stereotypes of women and expectations by society that they will shoulder larger care responsibilities, lack of role models, a work culture that expects long working hours, the undervaluation of traditionally "feminine" skills and inadequate work-family measures limit the possibilities for women to overcome segregation and participate on an equal footing in political, social and economic life and decision-making and reach top-level positions.<sup>43</sup> Existing maternity welfare programs are not responsive to the needs of working women. Clearly, better access to adequate child care services and adequate retirement benefits for spouses is required.

## 7. Conclusion

Woman's natural function is to bear and nurture a child, irrespective of her economic status. Maternity needs to be made a priority - in practice, as well as on paper. Maternity protection offers numerous benefits. Maternity, motherhood, parenting and the role of women in procreation must not be a basis for discrimination nor restrict the full participation of women in

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<sup>37</sup> Laura Addati, Naomi Cassirer and Katherine Gilchrist, *Maternity and paternity at work: Law and practice across the World* 10 (ILO : Geneva, 2016) .

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> It does not have a national law but States have their own policies.

<sup>41</sup> "Maternity Leaves Around The World: Worst And Best Countries For Paid Maternity Leave" available at [http://www.huffingtonpost.ca/2012/05/22/maternity-leaves-around-the-world\\_n\\_1536120.html](http://www.huffingtonpost.ca/2012/05/22/maternity-leaves-around-the-world_n_1536120.html).

<sup>42</sup> ILO, *Maternity at work: A Review of national legislation / International Labour Office, Conditions of Work and Employment Programme* (ILO : Geneva, 2010). It is based on the new ILO Database of Conditions of Work and Employment Laws on Maternity Protection, which covers 167 countries.

<sup>43</sup> ILO, *Women at Work Trends 2016* xviii (ILO, Geneva, 2016) .

society. Work by women should not threaten the health of pregnant and nursing women or their newborns. Maternity and women's reproductive roles should also not jeopardize their economic security. Recognizing the special needs of the women and new born, United Nations has often included provisions for maternal and child health under its instruments. International Labour Organisation, a specialised agency of United Nations too has been working in the direction of protecting working women during different phases. ILO has three Core Conventions for protection of maternity alongwith accompanying Recommendations. ILO Conventions have a very broad influence, with virtually all countries having adopted maternity protection legislation. Progress has been made toward the goal of eliminating sex based discrimination in the workplace. Maternity protection legislation for working women differs from one country to the other.

The Constitution of India under Part IV enjoins The State to make provisions for maternity care. In accordance with this Directive, different statutes impose a duty upon the employers to ensure that women at work enjoy basic rights. Indian Legal Framework comprises of numerous laws to safeguard the state of maternity of the working women. In 1961, an exclusive legislation to confer women with maternity benefits was enacted. The Maternity Benefits Act, 1961 was recently amended in 2016. For the working women not covered by the said legislation, a separate scheme - Maternity Benefit Programme has been started from January 2017.

Despite the legal protections introduced over many years, expectant and new mothers remain disturbingly vulnerable in the workplace. Laws around the world need to be improved everywhere. Strengthening implementation of maternity protection rights is also a priority - calling for greater efforts in raising awareness among employers and workers of maternity protection rights. Employers must accept their responsibility under the relevant law and secure the rights of women. Broader maternity protection benefits must be adopted to cover mothers in case of surrogacy (beyond biological mothers). April 11 should be recognized by United Nations as 'International Day for Maternal Health and Rights', as called by various organizations. The upbringing of children requires shared responsibility of parents- both women and men. It is thus fundamental to engage men as partners in maternal health. Shared parenting responsibilities ensure that both parents take care of the newborn. Thus, paternity leaves must be introduced compulsory throughout.