

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 4 | Issue 6**

**2021**

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# Unearthing Maternity Rights at Work: The Issues and Prospects

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## **ABSTRACT**

*The commitment of the Welfare state enables to look up at the topic of maternity rights at work as a pious obligation of the State. The issue of feminization of Labour effectively places the issue within the groove of globalisation perspective. The efforts of International labour organization since its inception in 1919, followed by the human rights perspective brought in by Universal Declaration of Human rights, the recent ideals of ILO the Decent Country Work Programme in the wake of globalisation trends and the 2030 Sustainable Development Goals with its avowed objective of No one shall be left behind motto, highlights the issues of women work force and their unique vulnerabilities. Indian labour scenario stands apart as a reflection of this thought with its versatile composition of workforce i.e. 93% of the unorganized workforce as against the minuscule 7% of the organised work force. As a corollary to the globalised work age, in India unskilled women workers receive no health insurance coverage during pregnancy, childbirth or post-natal period. Collective bargaining remains an illusion. Despite progress in maternity benefits and a trend supporting paternity leave, the ILO report finds most women around the world are still not protected at work. The paper focuses on three major areas of concern, firstly the major premise of unorganized work space, secondly, the prominent issue of female participation and thirdly, the maternity rights at work in the unorganised sector in the backdrop of national and international mandates in place highlighting the need of the hour in the wider canopy of future of work and skill upgradation in emerging India.*

**Keywords:** Maternity, child rights, ILO, Social security, Paternity.

## **I. SETTING THE TONE**

*Renewing life is a form of work, a kind of production, as fundamental to the perpetuation of society as the production of things...societal reproduction includes not only the organization of production but the organization of social reproduction, and the perpetuation of gender as well as class relations...*

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### **Laslett and Brenner (1989)**

The growing awareness of the importance of full and effective participation by women in all aspects of the development process has led to a re-examination of their status and role in economic life in countries in many parts of the world<sup>2</sup>. Procreation is a valuable societal responsibility for the future survival of our society vested with women as a part of familial responsibilities. Women's re-appropriation of motherhood through the Third Wave feminism debates has led to the understanding of maternity and its concomitant subjectivities as a fundamental part of the female experience which has engendered a positive change in terms of their freedom in contemporary society<sup>3</sup>. Alongside, the issue of motherhood has also been one of the major points of debate in the context of denying women rights and equality and as well as a tool of discrimination against them<sup>4</sup>. The ILO is now promoting ratification of the latest Maternity Protection Convention No.183, 2000. The issue of motherhood and mothers rights at work ought to be viewed from different factors which testifies the larger dimensions of gender inequality at play viz., health-both psychological and physiological, individual, clinical, developmental ,rights centric approach, social, economics ,labour market strategies, population being from educationally disadvantaged and resource poor areas with higher levels of illiteracy, cultural and religious background and above all the all-encompassing feature patriarchy.

## **II. INTERNATIONAL MANDATES ON MATERNITY PROTECTION**

*The struggle for equality is intimately linked to the struggle for social justice in the world of work.*

**Guy Ryder, ILO Director-General International Women's Day, 2014**

The widely internationally acknowledged rights based approach under the title of maternity protection could be understood as issues relating to paid maternity leave before and after childbirth irrespective of marital status, medical care during confinement, and a guarantee of reinstatement in employment. Majority of the countries follow a standard 12 weeks of

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<sup>2</sup>Elizabeth Johnstone, Women in Economic Life: Rights and Opportunities, The Annals of the American Academy of Political and Social Science, Vol. 375, Women around the World (Jan., 1968), Sage Publications, Inc. in association with the American Academy of Political and Social Science, pp. 102-114 available at <http://about.jstor.org/terms>, Accessed: 29-12-2017

<sup>3</sup>Claudia Consolati, Motherhood and Interrogation in Valeria Parrella's Novel "Lo spazio bianco" Italica, Vol. 91, No. 3 (Fall 2014), American Association of Teachers of Italian,pp. 508-522 available at <http://about.jstor.org/terms>.Accessed: 29-12-2017

<sup>4</sup> Gerda Neyer and Laura Bernardi, Feminist Perspectives on Motherhood and Reproduction, Fertility in the History of the 20th Century: Trends, Theories, Policies, Discourses, Historical Social Research , Vol. 36, No. 2 (136), p.164 available at <http://about.jstor.org/terms>. Accessed: 29-12-2017

authorized maternity leave and a minority of other countries follow 14 weeks, while in the other countries we could decipher a period that varies between 90 days and 22. There exists unanimity among countries in recognizing and guaranteeing cash benefits during maternity leave which gets paid out of social insurance funds or public funds, and not by the individual employer, the medical benefits and certain other benefits in cash or in kind (for example, milk allowances or layettes). The great majority of the measures also include an absolute prohibition of dismissal during the period of maternity leave, as well as special provisions to protect health during pregnancy which includes strategies like making them do lighter work instead of the harder ones, regulation on work timings etc. to suit the need of maternity requirements<sup>5</sup>.

The human rights approach to the issue is reflected through UDHR when it mandates that “motherhood and childhood are entitled to special care and assistance”<sup>6</sup> ICESCR stipulates that “special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period, working mothers should be accorded paid leave or leave with adequate social security benefits”<sup>7</sup>. The requirement in CEDAW for maternity leave with pay or comparable social benefits<sup>8</sup> manifests the preamble to the Convention that states '*the social significance of maternity and the role of both parents in the family and in the upbringing of children, and that the role of women in procreation should not be a basis for discrimination*' but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole”. Convention on the Rights of the Child focusses on the child rearing responsibilities<sup>9</sup>

The ILO, the trend setter for labour standards has encapsulated a human rights-based approach to the issues of maternity protection and workers with family responsibilities support, mainly drawn from the universalized version of human rights approach as decipherable from the Universal Declaration of Human Rights 1948. ILO since its time of inception in 1919, had been considerate towards two objectives i.e., one is that women should be protected from the harm and precariousness attached to the employment as such and that there should not be an impediment towards their employment and economic security and accordingly has made the provision for child welfare and maternity protection a primary concern. Over a period of time, ILO had been sensitive towards women's changing needs and problems in the world of work. The Decent work Agenda of ILO has kept close to its heart the component of right to dignity

<sup>5</sup> Supra Note 2.p.110

<sup>6</sup> Article 25(2) Universal Declaration of Human Rights,1948

<sup>7</sup> Article 10(2) International Convention of Economic social and Cultural Rights,1966

<sup>8</sup> Article 11(2) (b) of Convention on Elimination of All Kinds of Discrimination,1979

<sup>9</sup> Articles 5, 18 and 27 of United Nations Convention on the Rights of the Child,1989

of women at work place. The ILO Decent Work Agenda categorically discusses about the need for labour reforms that ought to happen to make the workplace a decent one. It comprises of four strategic pillars: principles and rights, employment, social protection, and social dialogue – with gender equality and nondiscrimination as crosscutting issues. The gender equality and non-discrimination concepts encapsulate the idea of decent maternity rights guarantees to the women work force. ILO aims to help achieve full and productive employment for all women and men in conditions of freedom, equity, security and human dignity. The prominent ILO Conventions relating to maternity protection are Maternity Protection Convention, 1919 (No. 3), Maternity Protection Convention, revised, 1952 (No. 103), and Recommendation, 1952 (No. 95), Maternity Protection Convention, revised, 2000 (No. 183) and Recommendation, 2000 (No. 191) and Workers with Family Responsibilities Convention, 1981 (No. 156). India has not ratified any of these conventions. There are seven key elements to maternity protection in general. These elements are: scope, leave, benefits, health protection, job protection and nondiscrimination, breastfeeding breaks and breastfeeding facilities.

The Convention No. 183 mandates 14 weeks of maternity benefit to women. Cash benefit envisages the idea that women who are absent from work on maternity leave can maintain themselves and their child in proper conditions of health alongside a suitable standard of living. This cash benefit should not be less than two-thirds of her previous earnings or a comparable amount. The convention mandates the ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work that is considered harmful to her health or that of her child and ensures the non- discrimination philosophy based on maternity status. The employer is prohibited to terminate the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work, except on grounds unrelated to pregnancy, childbirth and its consequences, or nursing. Those women who return to work after maternity status is mandated to be reinstated to their original work as given to them at the time before leaving for maternity leave or to an equivalent position paid at the same rate. The Convention mandates one or more daily breaks or a daily reduction of hours of work to breastfeed her child<sup>10</sup>. The Workers with Family Responsibilities Convention, 1981 (No. 156) and the Workers with Family Responsibilities Recommendation, 1981 (No. 165) addresses reconciliation of work and family responsibilities with policies and measures to support such workers. Both the Convention and Recommendation is meant to promote the idea of non- discrimination in opportunity and treatment in employment for men and women

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<sup>10</sup><http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/maternity-protection/lang--en/index.htm> Last accessed on 29/12/2017

workers with family responsibilities, as well as between workers with family responsibilities and those without such responsibilities. Countries that ratify Convention No. 156 are mandated to come up with a national policy aiming at enabling persons with family responsibilities to exercise their right to obtain or engage in employment in the backdrop of policy of non-discrimination, without conflict between their employment and family responsibilities. The Convention clearly announces that family responsibilities should never be considered as a cogent reason for termination from employment<sup>11</sup>.

Informal or Unorganized sector which play a vital role in terms of providing employment opportunities in the developing countries to a large segment of the workforce in India is often ignored during discussions of such kind. Whether these international mandates address the issues of woman workforce in unorganised sector in India is a question that opens up pandora's box.

### **III. NATIONAL MANDATE ON MATERNITY PROTECTION**

The Constitution of India envisages Justice -social, economic and political through its Preamble, the key to open the heart of the Constitution. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings is guaranteed in Chapter-III (Articles 14,16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. The ideologies emanating from the Preamble, Part III and Part IV (the trilogy) forms the foundational philosophy for the labour welfare concept generally and women workforce specifically in the Indian context.

Article 14 of the constitution of India identifies the basic rule of law, Equality before law. The concept of equality is truly stated by Dr. Jennings with the words, "Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. Article 15(3) focusses on Protective Discrimination, which justifies Maternity Benefit Act of 1961. The Second National Commission on labour, 2002 justifies the protective discriminatory legislations in favour of women by recommending that all such legislations are necessary for the welfare of women workers. Article 16 of Part III mandates equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and takes care of the non- discrimination policy enshrined under the

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<sup>11</sup> Adrienne Cruz, Good practices and challenges on the Maternity Protection Convention, 2000 (No. 183) and the Workers with Family Responsibilities Convention, 1981 (No. 156): A comparative study, Bureau for Gender Equality Working Paper 2/ 2012 International Labour Organization 2012 [http://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/publication/wcms\\_192554.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/publication/wcms_192554.pdf) Last accessed on 29/12/2017

Constitution of India that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

The Directive Principles of State policy reflects the ideology of transition from a Police state to Welfare State policy. It forms the foundation for the social security legislations in the country. Article 39, contains the principles of socialistic "welfare State". The State is mandated to protect health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength<sup>12</sup>. Article 39(d) ensures the philosophy of equal work for equal pay between male and female workforce. Article 41 which is fundamental in the governance of the country mandates the State that it shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 42 mandates the State to make provision for securing just and humane conditions of work and for maternity relief. Article 43 discusses on the lines of an aspirational goal for the workers while discussing about the living wages required for a citizen of the country. The State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas. The mandate of the State to take care of higher levels of nutrition and standard of living and improving public health<sup>13</sup> also reflects the social justice component of the Directive Principles of State Policy. These mandates are directives to the legislature and executive organs of the State which are committed to make interpret and enforce law. Nowhere, we could find any differentiation made as against woman work force. But in reality, there exists a huge gap between the wages paid, the treatment meted out by the employers and also in the case of benefits reaped by them. The stark contrast of organised and un-organsied workforce comes into play specifically in maternity protection and rights situations.

National legislation usually reflects women who are employed in the organised sector, where there exists a formal contract of employment and/or who have contributed to specific funding such as insurance or other such schemes. Women working in the private sector, or in the informal sector, or independent workers are totally made invisible here. Three types of

<sup>12</sup>Article 39(e), Constitution of India

<sup>13</sup> Article 47 , Constitution of India

approaches relating to maternity protection exist within our system; employer centric approach, employer employee contribution approach and Conditional Cash transfers.

The Maternity Benefit Act, 1961(MBA,1961),the most predominant legislative piece, aims to regulate employment of women employees in certain establishments during maternity period including period before and after child birth and provides for maternity and certain other benefits. All establishments which come under the label of factories, mines, plantations, Government establishments, shops and establishments under the relevant applicable legislations, or any other establishment as may be notified by the Central Government are brought under the ambit of the Act<sup>14</sup>. A mandatory service period of 80 days is fixed for a woman availing maternity benefits under the Act.<sup>15</sup>. The Maternity Benefit Amendment Act, 2017 has increased the duration of paid maternity leave available for women employees from the existing 12 weeks to 26 weeks. Leave prior to expected delivery date is extended to 8 weeks from earlier position of 6 weeks. Under the Maternity Benefit Amendment Act, this benefit could be availed by women for a period extending up to 8 weeks before the expected delivery date and remaining 18 weeks can be availed post childbirth. For women who are expecting after having 2 children, the duration of paid maternity leave shall be 12 weeks (i.e., 6 weeks pre and 6 weeks post expected date of delivery).A provision for maternity leave for adoptive and commissioning mothers is guaranteed under the Act which comes as an improvement from the earlier legislation. A new provision for adoptive mothers is also made under the Maternity Benefit Amendment Act which provides that every woman who adopts a child below three months shall be entitled to 12 weeks of maternity leave, from the date of adoption. Work from Home option, a novel provision is also envisaged wherein which may be exercised after the expiry of the 26 weeks' leave period. But no rules are laid down regarding what exactly do you mean by a work from home rule and to which all employments it could be extended. Earlier the Rules had provided for one year extended leave on certain exigencies. Depending upon the nature of work, women employees may be able to avail this benefit on terms that are mutually agreed with the employer. This again puts the women employee at the mercy of the employer in a patriarchal society, diluting the non- discrimination policy.

The employer is mandated to provide for crèche facility in every establishment employing 50 or more employees. Women employees are permitted statutorily to visit the crèche four times during the day. Two nursing breaks for the mother a day until the child attains the fifteen months is envisaged under the Act. The international obligation laid down against the employer

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<sup>14</sup> Sec.3 (a) of the Act

<sup>15</sup> Id.Sec.5(2)

is guaranteed through this statute. When a pregnant woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during, or on account of, such absence, or give notice of discharge or dismissal in such a day that the notice will expire during such absence or to vary to her disadvantage any of the conditions of her services<sup>16</sup>. The Maternity Benefit Amendment Act makes it mandatory for employers to educate women and make them know about the maternity benefits available to them at the time of their entry into the job. When a woman dies during this period, before delivering the child, the maternity benefit is payable only for the days up to and including the day of her death. When a woman, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind the child, the employer is under obligation to provide for maternity benefit for that entire period but if the child also dies during the said period, then, it is payable for the days up to and including the date of the death of the child. As per the structural design of this legislation employer is solely made accountable to provide for maternity protection to its woman employees.

For lower income employees, Employees State Insurance Act, 1948(ESIA,1948) also provides for maternity protection subject to a condition of 70 days of contribution to be made by the insured woman employee in last two consecutive contribution periods i.e. one year. The Act is in the direction to attain the goal of socio-economic justice envisaged in the Directive Principles of State Policy under Part IV of the Constitution, in particular Articles 41, 42 and 43. The ESI is due to employees earning Rs. 21,000 or less per month, with the employer contributing 4.75 percent and the employee contributing 1.75 percent. Those who qualify may receive maternity benefits under the ESI scheme instead of the Maternity Benefits Act. ESI maternity leave is increased to 24 weeks from 12 weeks by 2017. ESI maternity benefits will be made available to a commissioning mother who as biological mother wishes to have a child and prefers to get embryo implanted in any other woman and a woman who legally adopts a child of upto three months of age. The insured woman having two or more than two surviving children is entitled to receive maternity benefits during a period of twelve weeks of which not more than six weeks shall precede the expected date of confinement. The Act envisages periodical payment to an insured woman at the prescribed rate and for a prescribed period in case of confinement, miscarriage, sickness arising out of pregnancy or premature birth of a child. This legislation is testimony to the employer employee contribution approach of

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<sup>16</sup> Id. Sec 12

providing for maternity benefits.

A six-month maternity leave as per the Central Civil Service (Leave) Rules 1972 is envisaged for women employed in government jobs. They are allowed to take childcare leave of up to two years in phases at any point till their child turns 18 years old. The Seventh Pay Commission recently recommended that only the first 365 days of leave should be granted with full pay, while the remaining 365 can be availed at 80 per cent of the salary.

Under the conditional cash transfer system of providing maternity protection we have the Janani Suraksha Yojna (JSY) for the unorganized sector woman work force under the Unorganised Workers Social Security Act, 2008 which is already made available to BPL families in India. It is a safe motherhood intervention under the National Rural Health Mission. The objective of this scheme is to reduce the maternal and neonatal mortality by promoting institutional delivery among poor pregnant women.

The union Ministry of Women and Child Development has framed a new scheme titled Pradhan Mantri Matritva Sahyog Yojana (PMMSY) for pregnant and lactating women. The basic objective of the scheme is to support women for intake of nutrition ,enhance early infant nutrition and survival through protection and promotion of early breastfeeding within one hour and exclusive breastfeeding for the first six months in order to improve child health and development<sup>17</sup>. This scheme is also positioned on eligibility criteria's in a phased manner at various stages of pregnancy and lactation. The beneficiaries have to be pregnant women of 19 years of age and above and the benefit is restricted to the first two live births only. The beneficiaries are directly paid Rs 4,000 in three instalments between the second trimesters till the child attains the age of six months on fulfilling specific conditions related to maternal and child health. The implementation of the scheme is through Integrated Child Development Scheme, the focal point of implementation being the Anganwadi Centre and the key personnel are Anganwadi Worker and Anganwadi Helper <sup>18</sup>. The rural scenario wherein the girl children being married off and begetting children at the age of 16-18 is left out from its framework.

There are many other piece meal legislations having provisions relating to crèche facility in general and maternity benefit in specific to be catered to its woman employees like Mines Act, 1952, Factories Act, 1948,Plantations Labour Act, 1951 etc.. Mines Creche Rules 1966 coming under Mines Act,1952 obligates the owner, agent or manager of every mine, wherein women are employed or were employed on any day of the preceding 12 months, to provide a crèche at

<sup>17</sup> LAKSHMI LINGAM, VAIDEHI YELAMANCHILI, REPRODUCTIVE RIGHTS AND EXCLUSIONARY WRONGS: MATERNITY BENEFITS, VOL. 46, ISSUE NO. 43, 22 OCT, 2011

<sup>18</sup> Ibid.

the colliery to look after the children of such workers. Each crèche is mandated to have a trained nurse and the prescribed set of equipment. The management is obliged for the supply of food to the children attending crèche. The Plantation Labour Act, 1951, stipulates a number clause (plantations having fifty or more women workers or where the number of children of women workers (including women workers employed by any contractor) is twenty or more) as eligibility condition for providing suitable rooms for the use by children of women workers. Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 also comes up with a number clause of fifty woman workers at the construction site for creating accountability on the employer to provide for creches. Section 14 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 provide for crèche facility for the use of children under the age of six years in every industrial premise wherein more than thirty female workers are employed. Creches to be located within 50 meters of establishments are extended to the contract workers by the Contract Labour (Regulation and Abolition) Central Rules, 1971 with a number clause of twenty or more women are ordinarily employed as contract labour. The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Central Rules, 1980 provide crèche facility with a number clause of twenty inter-state migrant woman workers<sup>19</sup>. National Food Security Act 2013 discusses on maternity protection in terms of cash benefit accruing to pregnant women and lactating mothers which is not less than Rs. 6,000/-.

#### **IV. FOOD FOR THOUGHT**

Future of work, the new buzzword for development and the skill updation for pregnant or lactating mothers had always taken a back seat while discussing the developmental statistics and indicators. The future and prospects of maternity rights in India remains within the ambit of Decent Country Work Programme initiated by ILO. The issue of maternity benefits is linked to reproductive rights and needs to be tackled from a much more holistic approach than simply maternity leave<sup>20</sup>. The phenomenon of Liberalisation has ensured that when employment becomes sub-contractual or piecemeal, more the woman join the unorganized sector. This is true of India, a developing nation. Maternity protection in India is only viewed as an aspect of social security protection considering it from a rainy day aspect alone. The major legislations of the countryie. MBA, 1961 and ESIA, 1948 focusses on organised sector with employer

<sup>19</sup> Rule 44 of the Rules.

<sup>20</sup> Janine Moolman, Empowering Women for Gender Equity, No. 35, The Labour Market (1997), Taylor & Francis, Ltd. on behalf of Agenda Feminist Media pp. 73-75 available at <http://about.jstor.org/terms> Accessed: 29-12-2017

employee approach and is tied to or identified with a designated place of work. The unorganized work force like the domestic help, sweepers, scavengers, agricultural woman workforce and the migrant woman workers who doesn't fit into the eligibility criteria's of continuous service of 80 days under the Maternity protection Act, 1961 or the 70 days continuous contribution under the ESIA, 1948 is excluded from the legal framework. The exclusionary number clauses in each labour legislation, the workplace specific conditions, the identifiable employer employee relationship as the mandatory stipulation, the need for continuous service for so and so days, the need for mandatory contributory provisions are the major impediments in providing for maternity protection to the whole lot of unorganized women work force.

The existing Unorganised Workers Social Security Act, 2008 and the related Janani Suraksha Yojna scheme and the National Social assistance Programme of IGMSY again comes up with issues of institutionalized delivery and age ceiling of beyond 19 years of age and also phased manner of providing for cash benefits respectively. In a developing economy like India where we have more than half of the women working in the informal economy the concept of institutionalized delivery is too far a distant dream given the context as to how the primary health care systems function within our economy. The girl child workers below the age of 19 who are married off at a very young age and continue to work after their delivery at the age of 13 and 14 is highly rampant in the rural villages to whom the IGMSY is only an illusion. The rural villages with lesser levels of education are known for higher fertility rates among women. Higher fertility rates implies child marriages, more births with lesser intervals or gap between each delivery, lesser levels of nutritional intake, more maternal mortalities and child mortality rates. Maternal mortality and child mortality are prime indicators of the United Nations Development Programme. But interestingly or rather shockingly such seriousness is not given by the Government while framing policies or schemes on maternity protection. The ShramShakti Report (IIa Bhatt Commision1988) has brought out comprehensively the nature and the plight of self- employment taken up by women in the unorganized sector.

The feminist discourses on reproduction and motherhood focused on the right to abortion and the public recognition of motherhood as the main issues. Since the last two decades of the 20th century, the potentials of assisted reproductive technologies (ART) have opened up new venues of feminist discourse. The higher rates of infertility and the need for legislation to regulate the practices for the same are in the air. There appears no compassion shown towards woman work force who are into such situations or special approach taking into account the expenses and physical and psychological problems undergone by the woman. The issue is brushed aside

since it is the domain of the rich and poor are invisible coming to their desires with regard to motherhood. A woman worker giving birth to twins or triplets or a child with deformity is never addressed neither through the legislations nor the national social assistance schemes. The additional responsibility and the concomitant mental trauma of the woman is never reflected in any of the discourses on maternity protection except the rules on Maternity Benefit Rules which talks about extension of leave by one year in case of medical exigencies. The same is not applicable for a woman from unorganized sector. Adoption could generally be never one's first choice. The adoption process requires a whole lot of mental preparation and the 2017 Amendment when it talks about 12 weeks of maternity leave for adopting mothers remains silent on the work cum family friendly policies that could be adopted by the parents concerned. A woman is viewed as a liability from the time she becomes pregnant. Mere adoption of one size fits all purposes attitude destroys the need for maternity protection in such situations. The rationale of differentiating between adopting mothers who adopt baby less than three months and those with more than three months is not well thought of and appears to be absurd. Changes in social attitudes devoid of attitudinal barriers and state support for single mothers who are working and ready to adopt children are also to be addressed at this juncture<sup>21</sup>.

The feminization of migration emerges precisely in the context of globalization. The issue of maternity protection for migrant woman workers who do the job of manual scavenging and domestic help remains completely ignored in the national legal framework. The major reasons for such huge number of females migrating apparently explain the pressures in the social or family environment, political crisis and economic crisis. Basically, they are the subsistence and sustenance concerns. The cultural factors like domestic violence, sexual abuse, sexism and other practices that set limits to their personal development also adds on to the plight<sup>22</sup>. The plight of being unidentified or rather invisible at the host state for lack of valid documents which enables them to reap the benefits is an area inadvertently not taken cognizance of neither by the trade unions nor by the employers.

The Welfare State obligation reflects the role of Government to contribute towards the fund on

<sup>21</sup> For more discussions on surrogacy and maternity benefits refer to cases that has upheld right of surrogate mothers to maternity benefits .Egs: Madras High Court judgment in *Kalaiselvi v Chennai Port Trust* (2013) , Kerala High Court's judgment in *P Geetha v the Kerala Livestock Department* (2015), Delhi High Court's judgment in *Rama Pandey v Union of India* (2015), Bombay High Court's judgment in *Dr Hema Vijay Menon v State of Maharashtra* (2015), Chhattisgarh High Court's in *Sadhna Agrawal v State of Chhattisgarh* (2017).See Alok Prasanna Kumar, Surrogacy and the Laws on the Maternity Benefits ,Economic and Political Weekly,Vol.52 Issue No.3 21 January ,2017

<sup>22</sup> Javiera Cienfiegos Illan, Migrant Mothers and Divided Homes: Perceptions of Immigrant Peruvian Women about Motherhood, Journal of Comparative Family Studies, Vol. 41, No. 2, Introduction: Transnational Families in the South (SPRING 2010),published by Dr. George Kurian, pp. 205-224, available at <http://about.jstor.org/terms> Accessed: 29-12-2017

behalf of the women workers in the informal sector who are low-income earners during maternity situation. If we are to go by employer -employee contributory approach similar to the lines of ESIA, 1948 specifically applicable to the organised woman workforce, Government along with employers should contribute to the fund to make it possible for the woman workers to claim maternity benefits. The model of employee exemption from contribution can also be considered feasible. If collective bargaining works well benefits, leave and pay should be a matter of negotiation. The 2017 Maternity Benefit Amendment Act falls short of outlining the infrastructure accountabilities incurred by the employer while discharging the obligation of setting up crèche for the children of the woman workers. The children of the unorganized woman workers languish in hot sun while their parents are at work. The concern of the hour is the absence or rather inadequate support structure for a national social security system, the absence of provision for complete post-natal and childcare and promotive measures for breast-feeding facilities. Adequate maternity benefits should also include the provision of job guarantee and retraining when women return from leave which rarely happens. A friendly or rather sensitive work place culture embedded with work reintroduction policies for a woman is the lacunae within the system. A breast feeding counselling as recommended by the World Health Organization<sup>23</sup> is a way forward that can be pursued positively to create a maternal friendly work place and goes in tune with the idea of user friendly maternity rights work space. The need for uniform applicability of social security laws especially the maternity rights across the country to the unorganized women work force can be realized with the convergence of these international standards with the local realities.

Access to essential maternal health and income security around childbirth should be provided as part of basic social security guarantees that make up national social protection floors. A review of national legislation with a view to promoting extension of benefits of national labour laws to all rural woman workers is the need of the hour. National legislation should incorporate the specificities of the informal, piece-meal rural work and spell out the rights and responsibilities of all woman workers concerned specifically in the maternity condition; promote gender-responsive employment policies; and strengthen rural labour inspection<sup>24</sup>. International best practices gives a beacon light to follow interventions within the workspace. A subsidised nursery on site, in the lines of Better work Lesotho<sup>25</sup> specifically targeting the

<sup>23</sup> Guideline : counselling of women to improve breast feeding practices. Geneva: World Health organization;2018.Licence:CC BY-NC-SA 3.0 IGO

<sup>24</sup> Sue Longley, Global Agriculture Coordinator, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF). Extract of presentation at ILO International Women's Day panel on "Empower Rural Women – End Hunger and Poverty", 8 March 2012, Geneva.

<sup>25</sup>Lesotho is one of the eight countries in which the Better Work programme – a partnership between the

women work force in the apparel firms of South Africa, to bring in decent work conditions for pregnant mothers at workplace would help reduce the financial burden for working mothers of newborns

Paternity leave is often suggested as a panacea to deal with maternity matters. The recommendations from different stakeholders reflects the ideology that we should not just focus on maternity benefits, but on parental benefits as well, ie., either parent or guardian should be allowed to take the leave. In order to redress the social division of labour in the home and at work like benefits such as paternity leave, child care leave, to be granted to fathers. Increased initiatives that promote awareness of womanhood and maternity reaching out to the boys and young men can challenge rigid gender-related attitudes and behaviors, including ideologies about fathers as caregivers for their children which is a way forward in new direction of changing societal environmental barriers. Focusing efforts on employers and trade unions, as well as in workplaces, creating more flexible work time policies and promoting fatherhood campaigns and simultaneously reviewing national public health policies, including for maternal and child health, to identify ways to engage fathers to-be could again act as add on to the changing environmental barriers<sup>26</sup>.

## **V. CONCLUSION**

Labour is not a commodity to be exploited. Maternity protection is a Human right as affirmed and acknowledged by the Conventions from International Labour Organization and also the Conventions springing up from the United Nations Organization. The Decent Work Agenda is looked upon as a beacon light in the way forward. The gender equality debates add on to the significance of the issue. Starting from the journey of Millennium Development Goals 2015 until we reach the 2030 Sustainable Development Goals 2030, a transit purpose could be served by the ILO India when it released the third five-year 'decent work country programme' (DWCP) for the years 2018-2022, has focused on creating sustainable, inclusive and decent employment for women and youth, especially those who are vulnerable to socio-economic and environmental exclusion and are working in the informal economy.

International Labour Organization (ILO) and the International Finance Corporation (IFC) – works. Better Work Lesotho contributes to the ILO's Decent Work Country Programme for Lesotho Phase II, 2012-2017.

<sup>26</sup> "Engaging Men and Boys in Caregiving: Reflections from Research, Practice and Policy Advocacy", paper by Barker, G., Expert Panel on capacity-building for mainstreaming a gender perspective into national policies and programmes to support the equal sharing of responsibilities between women and men, including care-giving in the context of HIV/AIDS, 53rd Session of the UN Commission on the Status of Women, New York, March 2009 accessed

from [http://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/publication/wcms\\_192554.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/publication/wcms_192554.pdf)  
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Motherhood, with its link to the earth, its instinct to nurture, and its sensitivity to the cyclic nature of things, provides humankind with tools to re-channel the energy otherwise yielded to a need to dominate<sup>27</sup>. What form should maternity benefits take to give women the security and the right to work they deserve and, to protect their health and long-term job and career opportunities is a billion dollar question. A more constructive and creative and participatory approach is needed if women are to develop their potential, give of their best in economic life, and at the same time fulfill their other roles in society harmoniously. The onus lies not only in the realm of labour and Government, but also on business and society as a whole to ensure that women's right to work and fully participate in the labour market and economy is guaranteed. Universal Declaration of Human Rights exhorts that all human beings are born free and equal in dignity and rights. I identify "lack of recognition of woman worker as a human being with human dignity before the law" as an important but undocumented barrier to accessing justice, benefits and services and conclude that multi-faceted reforms are needed—rather than a singular focus on inclusion within legislative framework —if the human rights of pregnant /mother workers are to be realized.

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<sup>27</sup> Lyn Holness, Motherhood and spirituality: faith reflections from the inside, *Agenda: Empowering Women for Gender Equity*, No. 61, Religion & Spirituality (2004), Taylor & Francis, Ltd. on behalf of Agenda Feminist Media pp. 66-71 available at <http://about.jstor.org/terms> Accessed: 29-12-2017