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## **Breast Feeding, the Working and the Law**

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### **Introduction**

Great concern is currently being expressed, about the trend towards decline in breast-feeding and its implications for the health and development of children. The efforts consequently being made to promote breast feeding through social policy and proposed new legislation, such as the infant Milk Substitutes, Feeding Bottles and Infant Feeding Bill (1992) tend to, focus attention almost exclusively on the welfare of the child. However, keeping in mind women's dual roles as productive workers and citizens on the one hand and mothers on the other, it is necessary to raise certain issues related to working mothers and the law in order to take a more comprehensive and balanced view of the needs of both women and children. This becomes even more important since some of the existing and proposed laws seem to be contradicting instead of complementing each other in seeking to attain common goals. It is also inadequate to consider laws alone. A holistic perspective must take account not only of laws (and rules under them) but also of Government policies as, expressed in schemes as well as prevailing work-place norms and conventions.

This paper is hence divided into three sections:

1. The rationale for an approach to the issues related to working mothers, breast-feeding and the law.
2. Review of prevailing laws and policies, and their implementation.
3. Proposals for comprehensive legislation and policies.

## 1. The rationale :

Considering the issues from the standpoint of the welfare, health and development of both women and children, and in the light of women's productive responsibilities as workers, the basic argument adopted here is that of all laws and polities affecting the working mother in relation to breast feeding, those concerning maternity leave and benefits are of primary significance, those relating to crèches for working mothers are secondary, while yet another set of other laws and policies can be considered as tertiary support systems. Before taking up the analysis of the prevailing laws and policies from this perspective, the underlying rationale for this argument is outlined below.

1. Current medical opinion holds that exclusive breast feeding is essential for the child for the first four months of life, with supplementaty feeding ideally being started at four months Continued breast feeding is recommended during the period of weaning for several months thereafter. If the main concern is to find ways of allowing the mother to remain constantly available to the child during the first four months of life, it makes sense to begin by considering maternity leave and benefits as the primary instrument to assist working women.

There is some divergence of opinion about how long breast-feeding should continue, some specialists being in favour of continuing till the child is two years of age. There are also strong arguments supporting the hypothesis that prolonged breast-feeding reduces the chances of conception and hence contributes towards spacing of births. These controversies however do not affect the position as regards the first four months about which there is near unanimity.

2. Studies, which provide the following kinds of evidence, need serious consideration:

The volume of milk production in women during the first year does not vary much, but there is a definite variation with regard to the attainment of peak lactation Amongst those women who may be termed 'early producers', peak is attained at the end of the third month, while the 'late producers' reach the peak only after six months.

It has been found that working women in agricultural societies arranae for some kind of substitute feeding through caretakers in their absence during day-time and try to compensate by offering unrestricted suckling during the night (Helsing and King, 1984). This disrupted feeding pattern not only reduces lactation, which is responsive to demand and thus the total availability of breast

milk to the child, but also increases the risk of diarrhoeal infection as a consequence of unhygienic substitute feeding, both factors contributing to malnutrition of the child (Population Reports, 1984).

It has been found that amongst urban slum women in India many are unable to breast feed the child exclusively for more than two months, their lactation failure being related to their own low levels of nutrition and health (Gopalan, 1990).

These findings, which underline the need to provide the mother with adequate rest, nutrition and care during the first few months, also indicate the primary importance of maternity leave and benefits in this context.

3. Creches for children below six years form an essential support service for working mothers as well as a developmental service for children and hence require powerful advocacy. However, creches as support for breast feeding are meaningful only under conditions which may be in practice difficult to meet, i.e., they must be

- a. Close enough to the mothers' work place to be accessible for feeding throughout the day and
- b. Competent to take care of infants during the first few months of life.

As far as the former is concerned, most women workers find it difficult to carry the child to the work place, especially if they have to travel long distances in urban areas. Besides, the environment at the work place may be unhealthy, hazardous or otherwise undesirable for infants. World-wide experience in the last fifty years has not found the work-place to be the best location for child care, being found satisfactory only in those cases where the work-place and the housing site coincide, as in the case of institutional campuses, large construction sites, and workers' housing colonies. Even the socialist countries, which have pioneered the work-place crèche, are gradually moving towards creches in residential areas.

As far as the second condition is concerned, it must be noted that the youngest infants, for whom breast-feeding is relevant, are also the most vulnerable and risky to care for, and creches find it difficult to manage them except in very favourable circumstances. In general, the tendency is to concentrate on children older than one year of age, some countries even going so far as to lay down the minimum age for admission to the creche. Even in Vietnam, which has the most extensive coverage of young children (0-3

years) in creche it is comparatively rare to find infants below eight months of age in the creche.

The creche seen merely as an aid to breast-feeding may must therefore, be considered only as a secondary support.

3. Tertiary support systems are needed, which have yet to evolve, including such elements as part-time work, take-home work, flexi-time, and shift work for mothers in the first year after child birth, and extended parental or family leave later on.

### **III. The review:**

#### *The magnitude of the need*

Who are working mothers and how many? Census figures and estimates by various agencies (Shramshakti, 1988) indicate that there may be about 10 crores of working women in India, many of them below the poverty line. Estimates based on census data (Swaminathan, 1991) indicate that there may be at least two crores working mothers of young children (aged 0-6 years) whose 4.5 crores young children are in need of day-care. It is not possible to state how many of these children are infants (0-1 years) who heed breast feeding, but clearly the number would rut into several millions, perhaps a crore, and concern several million working mothers. Most such working mothers of young children work out of economic necessity, which is made more imperative by the high incidence of female-headed families among the poor.

#### **Definition and scope of the law:**

To, whom do the laws apply? In general, it is found that law and statutory, welfare provisions do not affect all categories of women uniformly but are applicable only to workers in the organised sector and in establishments of over a specified size. Self-employed, contract workers, those in small establishments may find themselves outside the scope of these laws.

It is estimated (Shram Shakti, 1988) that 89% of all working women are in the informal sector and only 11% in the organised sector. It is dif f icult to draw the line between the two, though size of establishment and self-employment are two criteria which can be used to make distinctions. Thus, the majority of women in agriculture, construction, forestry, fisheries, dairying, and handicrafts may be self- employed, or work in small

establishments, or as contract workers, and so may be said to be in the unorganised or informal sector, women working in mines, factories, plantations, transport, utilities, etc., may be said to be in the organised sector. However, the agriculture sector includes large force of wage-labour, more than 50% of whom are women, while women working in shops, offices, schools, hospitals, welfare institutions, etc., in the category 'services and professionals' can be found in both groups.

### **Prevailing policies**

Several laws and service rules Government policies and schemes, as well as norms and conventions affect the opportunity of working women to breast-feed their children. However, the only law, which speaks direct to the issue, is the Maternity Benefits Act (1961)

1. The act applies to women working in establishments employing 10 or more persons (including mines, factories, plantations offices, shops, circuses) that. It applies to practically all women in the organised sector.
2. The act provides that a woman (who has actually worked for a period of not less than 160 days) shall be entitled to maternity benefit for absence from work not exceeding three months (six weeks immediately preceding and including the day of delivery and for the six weeks immediately following that day). This obviously restricts the period of exclusive breast-feeding of the infant to six weeks.
3. A woman is also entitled to an additional period of leave with wages upto a maximum of one month, if she is suffering from illness arising out of pregnancy delivery, premature birth or miscarriage. This clause is intended to safeguard the mother's health but cannot be used only to extend the period of breast-feeding.
4. Section 11 rule 6 provides for two nursing breaks of 15 minutes duration each in the course of the mother's working day. If the creche is not attached to the work place she can take not less than 5 or not more than 15 minutes time for travel. This assumes that the mother has access to a creche or some other facility near enough for her to avail of the nursing breaks.

It is evident that the present laws and conventions regarding maternity leave benefits are not supportive to the breast-feeding mother, either quantitatively or qualitatively.

To begin with, the law leaves out, for the basic purpose of maternity leave, the vast majority of women in the unorganised sector including home-based workers, self-employed, contract workers, etc., as well as lets slip many who work in small establishments in the organised sector. And secondly, the provision regarding nursing breaks can become operative only for a minuscule number, as will be seen below.

Qualitatively, the law practically debars healthy mothers from exclusively breast feeding their infants for more than six weeks and more or less compels them to resort to supplementary milk foods, thus running counter to the intention of the new bill for the regulation of infant foods and breast milk substitutes.

### *Creches for working mothers*

1. Creches are statutorily provided to women working in mines, factories and plantations (under the Mines Act, the Factories Act, and the Plantation-s Act) and also to contract labour and inter-state migrant labour (under the Contract Labour Act an the Inter-State Migrant Workers Act). But even this statutory obligation only applies to establishments where more than a specified minimum number of women usually 30, are employed (except in the case of mines). There is no statutory provision for women in the services and professions, who hence have to depend on creches in the voluntary and private sectors.

2. Creches to support women in the unorganised sector are sought to be promoted by the Scheme of Assistance for Creches for Children of working/Ailing Mothers, a Central Government scheme which offers financial assistance to voluntary agencies to run creches for children aged 0-6 years of working women below the poverty line.

In quantitative terms, the present laws and policies regarding creches leave out the majority of working women in the unorganised sector and their children.

In qualitative terms, it may be noted that the funding pattern of the scheme for creches makes it very difficult for NGOs, without additional resources to run creches as a satisfactory day-care service, juded in terms of meeting the needs of the mother or in terms of promoting the all around development of the child (Swaminathan, 1985).

As far at implementation is concerned the available evidence (Appendix I) indicates that:

- a. The Provision of creches is highly inadequate in relation to the total number of working women and their children aged 0-6.
- b. Very few creches keep infants (0-2 years) especially those young enough to need breast feeding and
- c. Only a very small number of creches are located at working places.

The work-place creche as a support to breast-feeding is not at present an option for the great majority of working women in our country. Under prevailing conditions, it may be unrealistic to expect infants below 6-8 months to be kept in creches at the work-site and only a few mothers may be willing to utilise them.

### **Comparison with other countries:**

It is interesting to compare our laws and policies with those of other countries. In the developing world most countries are in a position similar to ours, still bound by the shackles of the colonial past. The outstanding exceptions are the socialist's countries. Most countries of the industrialised world have evolved more protective laws and policies for mothers and children, with the lead again being taken by the Socialist countries (Appendix II).

### **III. The proposals:**

A radical change of perspective is needed which recognises that woman's reproductive role is a form of "social production" that is, time spent on maternity is not to be seen merely as "absence" from economically productive work, but as "presence" in the socially and economically productive work of rearing the next generation, or in building human capital or human resource development. From this stand point, a woman who is fulfilling the double roles of production and reproduction simultaneously (the working mother) needs social support from several sources, namely, the family, society (in the sense of community) the state and the employer. And it is only in relation to the last two categories, namely, state and employer, that the law can play a significant role.

Laws and policies which attempt to promote breast feeding merely by restrictions on artificial feeding without simultaneously providing positive social support measures may be damaging to children besides being unfair and unjust to women. By limiting

women's options and forcing women to make painful choices between child and work, such an approach places the burden of both choice and guilt on individual women, denying social responsibility for mother and child.

To genuinely promote the health and welfare of both mothers and children, there is need for comprehensive legislation and policies which will consider maternity and child care services jointly, since pregnancy, childbirth, lactation, infant care and day-care form a continuum of needs. Such a perspective should concern itself with mothers and children for the entire period from pregnancy up to the time the child, reaches the school-going age, with varying responses to each stage.

### **Maternity Benefits Act:**

The single most important step from the point of view of breast-feeding is the amendment of the Maternity Benefits Act along lines more sensitive to the needs of mother and child. The following suggestions attempt to tackle the problem directly.

1. Maternity leave as such should be calculated from the day of childbirth and should be for a period of four months.
2. Mothers may have, the option extending maternity leave for a further period, at first on half pay, and then no pay, but without loss of other service benefits, seniority, etc.
3. Leave during the final stages of pregnancy from 2 to 4 weeks may be taken, as medically advised, and should be treated on par with medical leave. This leave should not be deducted from maternity leave.
4. Women should not be transferred or subjected to other punitive actions or suffer loss of benefits during the basic maternity leave period of four months.
5. Nursing breaks should be of 40 minutes duration each 20 minutes for feeding and 20 minutes for travel and may be allowed till the child reaches the age of 12 months.

*The rule should be applicable*

- a. When there is a creche facility, statutory or otherwise, at or near work place, defined as ten minutes travel time each way.
- b. When there is any arrangement individual or organised, by which the mother can go to the child or the child be brought to the mother within this time period. In the latter case, nursing space should also be provided.

It is understood that maternity leave of four months has already been introduced in the States of Haryana, Punjab and West Bengal. Details about the provisions are awaited.

In addition to legislation, supportive practices like part-time work, take-home work, and shift work in the first year after child birth and extended parental or family leave later on should first be tried out as schemes or optionals, so that they can later be integrated into the system through law.

#### **Creches and child care services:**

Creches and childcare services are an essential facility for the children of working mothers both as

- a. Support service for working women and
- b. As a strategy for the protection, care and healthy and all-round development of young children.

Even though creches may play only a limited role as far as breast feeding alone is concerned, laws and policies for maternity and childcare must be considered as a whole. It is therefore suggested that:

1. Contributions towards the provision of creche and childcare facilities be made compulsory for all employers under the Shops and Establishments Act. This will bring many more women employed in services and professions under the purview of protective legislation.

2. The existing rules be amended so that the statutory obligation to provide creche facilities may be fulfilled not only by each employer maintaining a creche but also by groups of employers coming together to jointly finance and maintain common creches and by creches financed by employers' contributions but managed by appropriate agencies, either governmental or non-governmental.

An example of such legislation is the recent amendment to the rules under the Factories Act in Tamil Nadu (Appendix III). While an example of support policy it the scheme being introduced by the Ministry of Labour, Government of India providing training and financial incentives to groups of employers on industrial estates who are willing to run common creches, either by themselves or by funding appropriate voluntary agencies.

From the experience so far, it is clear that such 'enabling' legislation can be translated into reality only with the help of further supportive laws, policies and schemes. It is hence proposed that such support be through setting up a National Child Care Fund as an autonomous or statutory body, exclusively for the purpose of funding, monitoring and supervising child care services for the children of women workers. Details about how such a fund could be financed and managed may be found in the memoranda of the Forum for Creche and Child Care Services (FORCES) submitted in 1989, 1990, 1991 and 1992 (Appendix IV).

Suggestions for a National Child Care Fund drawing on contributions from employers state, parents and donations (with tax relief) from the public, and devoted exclusively to the financing of creches and day-care for all children who need it have been made in Shram Shakti (1988). This document also, includes detailed suggestions for setting up a national network of childcare services.

### **Extending the benefits to the unorganised sector:**

It must be recognised that such protective welfare legislation and policies will first become available to women workers in the organised sector, who are not only a small minority of all women workers, but also already more privileged and more affluent than their sisters in the informal sector. In the present stage, this is inevitable. Studies have found serious and disturbing decline in breast-feeding among urban women in services and professionals belong to the middle and lower-middle classes. Hence, though the urban service sector working women may be numerically fewer than women in the unorganised sector, they deserve serious attention from the point of view of promotion of breast-feeding.

But there are ways in which these benefits can be extended step by step the unorganised sector. Two main approaches can be followed.

1. Extending statutory benefits to other categories of workers through occupation specific legislation such as Bidi and Cigar Workers Act, and through proposed new legislation such as Construction Labour Bill, the Agricultural Workers Bill and the Karnataka Rural Development, Employment Generation and Employment Guarantee Bill.
2. Developing maternity and child care schemes as part of a social security network for women and children.

Examples of both approaches already exist.

1. Employment Guarantee Act (Maharashtra) which provides maternity benefits to women working in projects covered by the Act.
2. Maternity Benefit Scheme of Tamil Nadu and Maternal Protection Scheme of Gujarat, which provide some financial help to women below the poverty, line.

Similar schemes may also be available in other states.

### **Conclusion:**

It must be recognised that such legislation is likely to meet with considerable resistance from employers. Further, women workers themselves and women's organisations may be opposed to it, fearing adverse consequences on women's employment and discrimination against women. Trade unions, who have in the past been lukewarm to women's issues, may also be unlikely to offer support. Hence a widespread, active and sustained campaign of public education must precede and follow the enactment of such laws in order to contain the possible damage to women's advancement and to promote advance the cause of women and children.

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## **APPENDIX-I**

### **CRECHES AND DAY CARE SERVICES**

According to Government of India (Programme of Action NPE 1992, Ministry of Human Resources Development) there were 12,470 creches in 1991-92 serving about 3 lakh children. These figures, which include both statutory and voluntary creches, do not

specify the numbers of children in each groups, nor the number of working mothers. Another estimate (Swamitathan, 1991) indicates that about 2.5 lakh children are found in 10,000 creches in the voluntary sector and only about 50,000 children are in creches in the statutory sector. No specific information is available about the numbers of children in the age groups 0-2 years and 2-6 years in either sector.

### **Statutory sector:**

In this sector alone, it is estimated that 3 lakh entitled women (with six and a half lakh young children) are covered by the existing laws. Thus the number of statutory creches mentioned in the previous paragraph is very inadequate in relation to the number of children involved. Still worse, they are often found more in name than actuality, especially in relation to mines, factories, and contract labour, though there are some outstanding exceptions among industries creches. The best record as far as provision for infant close to the mother's place of work is concerned, is in the plantation sector in South India (Swaminathan, 1985).

### **Voluntary sector:**

Many or most of the creches in the voluntary sector have the following characteristics (Swaminathan, 1985)

- a. They do not operate for the whole day or do their timings coincide with the workin hours of mothers.
- b. They usually do not cater to children below two years of age.
- c. They are not located in close proximity to mother's work places.

### **Public sector:**

The largest Indian child care programme, Integrated Child Development Services has no day-care component except in Tamil Nadu and Kerala (Swaminathan, 1990) nor does it provide custodial care even for short periods to children below two years. Creches run by municipal and local authorities exist in some places, but the number is too low to be of significance.

**Private sector:**

There is no estimate of the number of creches in the private sector, or a children/mothers availing of their services. Little is known about the nature of services for infants in private creches, either, with the exception of a few micro studies (Nakhate-Datta, 1987). Available information indicates that they are more likely to be found in residential areas than near the work place.

**APPENDIX II****LAW AND POLICES RELATING TO MATERNITY AND CHILD CARE***A COMPARATIVE OVERVIEW*

A compilation by ILO, of legislation and policies regarding pregnancy, maternity, infant feeding and marketing of breast milk substitutes in 135 countries provided the data base for this overview. Sharp contrasts can be observed between the practices of the Socialist (present and former) and market-oriented countries, as well as a growing divergence in trends between the industrialised countries, where employment is preponderantly in the organised sector and the developing countries, where the informal sector predominates.

This review will consider the data for the developing and industrialised countries in turn.

**Developing countries:**

The countries of the developing world can be categorised into four groups, on the basis of the practices followed in this regard.

1. Standard practice: The majority of countries in the developing world provide three months (or 12 weeks) of maternity leaves most frequently divided up into six weeks before and six weeks after childbirth. This group includes India, and most of the market-oriented countries as well as a few socialist countries Brazil, Jamaica, Peru, Mexico and several other large countries in Latin America and the Caribbean, other South Asian countries, most of the African and Arab countries and several other Asian

countries fall into this group. In almost all, maternity benefit is at 100% of wages with protection against dismissal during maternity leave.

However, a few countries provide much less-Argentina, Ecuador, Iraq and some other Arab countries Kenya, Mozambique the Phillipines, Sudan, Uganda, Singapore and Thailand.

2. Increased emphasis on post-natal period: Some of these countries have begun to recognise the importance of providing more leave in the post-natal than in the pre-natal period and have divided up the 12 weeks leave in different ways, for example

Indonesia, Madagascar, Nicaragua, Trinidad and Tobago, (4 weeks before and 8 weeks after child birth).

Haiti (4 weeks before, 6 weeks after and 2 weeks either before or after, at mother's choice).

Sri Lanka (2 weeks before and 10 weeks after).

3. Extension of post-natal leave: Only a handful of countries have taken steps to provide full three months maternity leave during the post-natal period. These include:

Costa Rica (4 weeks before and 12 weeks after)

Chile and Cuba (6 weeks before and 12 weeks after)

Egypt (12 weeks after pre-natal not specified)

Niger (2 weeks before and 12 weeks after)

4. Socialist practice: While most of the socialist countries in the developin world (such as Cuba, Ethiopia, Nicaragua), fall into the above three categorise, China and Vietnam are outstanding in their different approach to maternity and childcare.

In China, maternity leave ranges from six to twelve months, but at less than full wage; and it is reported that many mothers prefer to return to work earlier in order to earn the full wage.

In Vietnam, maternity leave is provided for four months after birth. Details about the extent of benefit and pre-natal leave, etc. are not available at the time of writing.

In both countries there is an extensive network of creche and childcare centres.

### **Some comments:**

The significance of the facts outlined above can be appreciated in the context of the following observations.

1. In most of the developing world, the majority of women are working in the informal or unorganised sector, and hence the type of provisions described above would apply to only a minority, more specifically to those working in government and in large public and private sector concerns.
2. Most of these countries (several of which, are ex-colonies) have borrowed their legislation from the industrialised countries, and few have made serious efforts to develop new laws more appropriate to their own economies.
3. Several are now making adaptations, mostly by providing for extension of leave beyond the period statutory period, for varying periods, and at varying levels of benefit. This is the most encouraging approach so far and the one most commonly being adopted.
4. In many of these countries, legislation regarding creches and nursing breaks has also been borrowed from industrialised countries, and hence creches and nursing break are legally required in units employing more than a certain number of women. However, creches are very little developed in most of these countries and where they do exist, they are not observed to meet the needs of infants.
5. It is surprising that most of the Socialist countries in the developing world are not much in advance of others in this respect, in spite of the importance

theoretically attached by them to women's liberation and participation in the work force.

In China, maternity provision must be seen in the light of the emphasis on the one-child family norm. Also, it must be noted that actual implementation is more likely among government cadres and public workers, and in urban areas and large establishments. There is evidence that childcare provisions have been rapidly eroded in the last decade.

In Vietnam, the new laws mentioned above came into force in 1939 and details are not available as of now.

### **Industrialised countries:**

The industrialised countries can also be grouped into four categories in terms of provision for maternity and childcare. Ranging from the best to the worst, these are:

1. Socialist: All of these provide for fairly long periods of maternity leave at full pay, with for job security and provision for extension of leave, as well as work place nurseries and creches. Examples:

*Bulgaria (4 months post-natal with possible extensions for first child and more for subsequent children).*

*Czechoslovakia (22 weeks post-natal for first child with possible extensions and more for subsequent children, also additional for single mothers).*

*Hungary (20 weeks with not more than 9 weeks of these pre-natal, and possible further extensions).*

*Poland (15 weeks for first child and more for subsequent children).*

*Romania (14 weeks of which at least 7 must be post-natal).*

*USSR former (118 months post-natal).*

*Yugoslava (6-12 months post-natal with possibility of half-time work upto two years).*

These findings relate to the pre-1989 period, and in the light of the sweeping political developments' of the last three years and fundamental changes taking place in the former socialist economies, its not yet clear how these provisions will be or have already been altered).

2. Scandinavian: These countries, which have the highest percapita incomes in the world and a long history of welfare-oriented socialist governments, provide long maternity leave but at less than full wage and have of late moved to providing parental leave which can be taken by either parent. Examples:

*Denmark (20 weeks post-natal, 10 of which may be taken by either parent, with further parental leave upto two years).*

*Finland (35 weeks post natal, 2 of which may be taken by either parent, with supplementary unpaid leave upto one year).*

*Norway (18 weeks, upto 6 of which may be pre-natal, 12 of the total may be taken by either parent, supplementary unpaid leave available).*

*Sweden (84 weeks, most of it available to either parent).*

3. Western European: The countries which, form part of the EEC have wide variations among them, with Wester Europe setting the pace. Most pay less than full wages during the leave period. Examples:

*France (16 weeks with additional for breast feeding mothers)*

*German (26 weeks, and upto 3 years parental leave).*

*Italy (48 weeks, with upto 26 weeks parental leave, and supplementary leave for 6 months).*

4. Anglo-American: The countries in this group, which includes Britain, Canada, Australia, New Zealand and the US, have favourable provision in the developed world, with the US undoubtedly at the bottom.

*Australia (from 6 weeks to one year, but mostly unpaid).*

*Canada (37 weeks. at 60% pay for Federal Government employees, unpaid leave only for provincial and local government employees and 15 weeks in the private sector).*

*New Zealand (26 weeks, at least 20 after birth, at allowances equal to sickness benefit).*

*United Kingdom (44 weeks starting at 90% wages for the first 6 weeks, with levels of benefit declining over the period).*

*USA (no maternity policy as such, left to private arrangements and usually based on earned leave. In some states, provision available as pregnancy disability).*

*In the US, job protection is available only to a limited extent under the Pregnancy Discrimination Act, elsewhere, jobs are protected.*

*In these countries, there is hardly any statutory provision for child care services (including private, public corporate and voluntary are highly inadequate).*

### **Some comments:**

The significance of these measures can be understood in the light of the following:

1. The laws have evolved over a period of time, as an expression of basic social philosophies and in response to social movements.

2. In Western Europe and Scandinavia, maternity and childcare policy has to be seen in the context of

- dwindling family size and official population policy promoting a higher birth rate,

- universality of nuclear families as well as increasing incidence of single parent families and

- influence of powerful labour and women's movements in shaping social policy.

In Consequence, it can be observed that there is a substantial provision for creches and childcare facilities. A relationship can also be found between the concept of extended parental leave and the minimum age of entry to childcare centres, legally or conventionally defined.

2. In the socialist countries, the policy of liberal maternity benefits and extensive provision for Creches and child care services has been a basic plank of social policy since the Communist Revolution and was an expression of the socialist commitment to the liberation of women and to the active participation of women in economic, political and social life. The kind of changes likely to take place in the former socialist countries are as yet unclear.

3. Sadly, the Anglo-American tradition, which gives least importance to state intervention for the protection of mother and Child, and leaves everything to market forces, is the one which seems to have been the model for most of the developing countries.

### **APPENDIX III**

#### **AMENDMENT TO RULE 76-A OF THE TAMIL NADU FACTORIES ACT (1950) (DRAFT)**

In the said rules in Rule 76A (1) after sub-rule (2), the following sub-rule shall be inserted namely:

**2-A (a)** If factories or group of factories or clutter of factories in an area which are statutorily required to provide a creche decide by mutual agreement amount themselves to run common creche within one kilometer radius from such factories in the form of a group or chain of creches, adequately and appropriately to provide for the needs of all eligible employees in the area and to share the expenditure and maintenance in the running of such common creche facilities proportionately to the number of eligible children, such, factories may apply to Chief Inspector in writing for grant of exemption from providing a separate creche. Chief Inspector may exempt such factories, subject to conditions as he may deem fit, after satisfying himself that alternate arrangements are adequate and, appropriate to meet the needs of all the eligible employees in the area. Such contributions shall then be deemed compulsory.

(b) Where the factories are availing on payment of suitable contributions the common creche facilities adequate and appropriate to meet the needs of all the eligible employees in the area and provided by the promotional institutions such as SIDCO, SIPCOT or by the Employers' Association or by Voluntary organisations aided by the State Government or Central Government, such factories may apply to the chief Inspector in writing for grant of exemption from providing a separate creche. Chief inspector may exempt such factories subject to such conditions as he may deem fit, after satisfying himself that alternate arrangements are adequate and appropriate to meet the needs of all the eligible employees in the area.

(2) in sub-rule (3), for the expression sub-rule (1) the expression sub-rule (1) and (2-A) shall be substituted.

## APPENDIX IV

### FORUM FOR CRECHE AND CHILD CARE SERVICE (TAMIL NADU)

#### MEMORANDUM

It is half a century since the need for child care services for working women was first recognised by the National Planning Committee in 1940; but fifty years later this is still a dream, though several distinguished bodies have strongly recommended it from time to time (committee on the Status of women, 1974; the National Perspective Plan for Women, 1988; the National Commission on Women in the Unorganised Sector, 1988).

Today the magnitude of the problem is greater than ever before. In India, fifteen crore women in families below the poverty line make up the female work force with 90% in the unorganised sector. They work long hours for low wages at the cost of their own their children's health. As not only mothers but also adults in the family have to work to earn a living, the very survival and development of crores of young children below six are threatened by neglect and lack of essential care and young girls are deprived of education because of the need to take care of younger siblings and carry out domestic chores. The institutionalised childcare services available do not make up for the lacuna in familial care and support. As a result, high IMR, low retention at primary school, poor health and malnutrition are common characteristics of vast numbers of Indian children.

Provision of day care becomes essential in order

- i. ensure equal opportunity to work for all women.
- ii. translate into reality the constitutional guarantees for the child under Articles 39 (f); and
- iii. provide impetus to the enrolment and reduce dropout of girls from school, to achieve the objective of Article 45 of the Constitution.

But day care cannot be seen merely as a support service for working parents. It must not only provide custodial care but attend to the all-round development of children – physical, psychological and social – in a holistic manner.

Countrywide, very few children (12%) receive childcare services, and even fewer get full day care. But Tamil Nadu is unique in possessing a statewide network of 29,000 childcare centres, through the integrated grid of ICDS, NMS, TINP and creches. While the existence of this infrastructure is a matter of gratification, it is nevertheless very far from being a full-fledged day-care service equipped to meet the needs of poor working women and to promote the all-round development of children. The centres are widely perceived as feeding centres, and often offer little more than food; at best, custodial care is provided for a few hours, and the worker/Child ratio does not permit much more. There is no possibility of day-care for infants below 2 in the scheme. Besides, in the context of about 15 lakh women and 25 lakh children needing day-care in Tamil Nadu the services do not reach many struggling, marginalised groups like construction workers, migrant labourers, fisherfolk, etc. The scheme as it now functions has many weaknesses, both quantitative and qualitative.

The Forum for Creche and Child Care Services (FORCES) is a network of organisations committed to advocating and campaigning for the care and development of children (0-6 years) of the poor and underprivileged in India and has been in existence since 1988-89. The Tamil Nadu FORCES has been formed in January 1992.

Tamil Nadu Forum for Creche and Child Care Services urges the Government of Tamil Nadu to take immediate action to convert, in a phased programme all the existing child care centres in the network into full-fledged day-care centres, which can support working parents in the unorganised sector, enable girls to attend school, promote the all-round development of the young child and move towards the eradication of child labour. This would involve attention to the following three aspects:

## **1. Provision for the holistic care and development of children:**

To raise the standard of child care and meet the needs of child development it is necessary to

- improve the worker-child ratio to permit more individualised child care
- raise the remuneration of childcare workers to at least the level of minimum wages.
- improve and upgrade the physical facilities of child care centres including a clean and healthy environment, outdoor play space and equipment, toilets and sanitation, etc.
- provide sufficient low-cost toys, play materials and educational aids for children's mental development and
- provide adequate training to workers, as well as guidance, monitoring and supervision.

All of this would have financial implications and require additional funds.

### **Decentralization:**

The involvement of the community on a mass scale is essential if such a large scale and diversified programme is to succeed. This implies a gradual move towards decentralised management and accountability to the local community in the long run. To begin with, parent groups and/or Mahalir Mandrams which are able and willing may be encouraged to become involved in the management of the child care centres in stages, by offering support, expressing their needs and preferences and monitoring implementation. Appropriate alternative structures including provision for participation by childcare workers may be allowed to emerge in the process of development. While the state must continue to accept responsibility for providing the minimum basic needs of shelter, food and workers salaries, local groups may be encouraged to raise community resources to improve and develop the programme, drawing on the support of other institutions such as educational institutions, voluntary agencies, charitable trusts, business organisations, service clubs, student services,

retirees, trade unions, co-operatives, local governments, etc. Parent's voluntary contributions in cash and kind may be utilised at the local level.

### **Special Child Care Fund:**

A special fund for creches and childcare should be set up by the government to finance the scheme. Contributions to this fund may be from several sources, such as:

- access on all employment, regardless of the number and gender of workers employed.
- welfare funds, labour welfare funds and other benefit funds.
- insurance schemes, such as health insurance, LIC and ESI.
- tax-deductible donations

A note on the Special Fund prepared by FORCES at the national level is appended.

The FORUM will be happy to cooperate with the government in every respect, in reviewing and reformulating policy, in conducting studies and reviews of amendments required in existing legislation on childcare, in suggesting, developing and implementing schemes, in training, monitoring, and evaluation and in any other manner needed.

The FORUM requests the Government to urgently initiate action for this purpose for the development of the people of Tamil Nadu.