



## A Reflection on the Sri Lankan Legal Regime Relating to Maternity Protection

Lakshani Perera\*

### Abstract

Pregnancy and maternity are vulnerable times for working women due to health and safety hazards, work-related stress, job insecurity, loss of career opportunities, promotions, and progression etc. Mostly, they experience bias and discrimination from their employers due to the difficulty in matching up to the productivity of their male counterparts. In response to that, the International Labour Organization has introduced three main Conventions on maternity protection with the aim of safeguarding rights of pregnant women at the workplace. This paper attempts to see whether Sri Lanka is in line with these Conventions by taking domestic instruments on maternity protection into consideration. Through the analysis in this paper, it becomes evident that the Sri Lankan law on maternity protection does not uniform and discriminate working women based on the type and the sector of employment they belong to. Therefore, it is indisputable that to promote gender equality and women's empowerment, it is necessary to have robust maternity protection laws which guarantee pregnant women's and nursing mother's job security and access to equal opportunities and treatment in the workplace.

**Keywords:** *Conventions, maternity protection laws, maternity rights, maternity benefits, discrimination.*

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\* LL.B (Hons) (Colombo).

## **Introduction**

Women face discrimination at the workplace due to the simple reason of their reproductive roles, because they are viewed as primary caregivers which comes with a burden if employed in a workplace. Expectant women and nursing mothers require adequate time to give birth, recover, and nurse their children. This results in discriminating women in job interviews solely based on their gender and marital status. Consequently, pregnancy and maternity become vulnerable times for working women, as there can be health and safety hazards coupled with job insecurity during such periods. Thus, adequate maternity protection is needed to preserve health of the mother and her newborn, and to further ensure gender equality, women's empowerment, job security, continuation of flow of income and equal access to employment and treatment in the workplace<sup>1</sup>. By taking measures to safeguard pregnant workers will enable them to combine their reproductive and productive roles successfully and combat all forms of discrimination in employment based on maternity. Hence, it is important to strengthen maternity protection and extend it to include all types of women workers in the economy.

This paper tries to analyse into what extent International Labour Organization (ILO) Conventions on maternity protection have been domestically incorporated into the laws of Sri Lanka by identify gaps and giving recommendations to improve the effectiveness of such provisions.

## **International and Domestic Legal Framework on Maternity Protection**

The ILO has set out international standards on maternity protection by introducing three Conventions<sup>2</sup>: namely Maternity Protection Convention, 1919 (No.3), Maternity Protection Convention (Revised), 1952 (No. 103) and Maternity Protection Convention, 2000 (No. 183). These Conventions ensure that working women are not subjected

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<sup>1</sup> 'MaternityProtection' (International Labour Organization) <<https://www.ilo.org/travail/areasofwork/maternity-protection/lang--en/index.htm>> accessed 5 May 2021.

<sup>2</sup> These ILO Conventions on maternity protection safeguard women's employment rights at the workplace during maternity, and occupational safety and health components that are essential to protect the health of pregnant and nursing women and their children.

See International Labour Office; Social Protection Department, 'Social protection for maternity: key policy trends and statistics' (2015) 1 <<https://www.usp2030.org/gimi/RessourcePDF.action?ressource.ressourceid=51579>> accessed 5 May 2021.

to discrimination at the workplace due to their reproductive roles. Sri Lanka has only ratified Maternity Protection Convention (Revised), 1952 (No.103) and yet to ratify the latest Maternity Protection Convention, 2000 (No.183). Additionally, Sri Lanka also has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>3</sup>. These Conventions impose an international obligation on Sri Lanka to promote equal opportunity for employment by guaranteeing maternity rights of women at the workplace. This paper attempts to analyse whether the Sri Lankan legal framework on maternity protection is in line with the aforesaid ratified Conventions.

The domestic legal framework relating to maternity protection in Sri Lanka mainly comprises of four statutory instruments covering different sectors of women in the labour market. The Maternity Benefits Ordinance No. 32 of 1939 (as amended) applies to women employed in trades<sup>4</sup> while the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 (as amended) applies to women employed in shops and offices<sup>5</sup>. While the above two statutes cover the private sector women workers, Volume I of the Establishment Code of the Government of Democratic Socialist Republic of Sri Lanka (Establishment Code) provides maternity benefits to women employed in the public sector. Moreover, the University Grants Commission Circular No.10/2013 governs the female employees in the university community. Furthermore, the Women's Charter of Sri Lanka emphasizes prevention of gender-based discrimination against women on grounds of marriage and pregnancy<sup>6</sup>. Hence, it is needed to be analyzed whether these domestic instruments are in line with the international obligations cast down on Sri Lanka.

## **Application of Provisions of the Conventions in Sri Lanka**

### ***a. Informal Sector***

Although Maternity Protection Convention (Revised), 1952 (No.103) extends to protect non-industrial and agricultural occupations, including

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<sup>3</sup> Convention on the Elimination of All Forms of Discrimination Against Women (UN General Assembly, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13) Hereinafter referred to as "CEDAW".

<sup>4</sup> Maternity Benefits Ordinance No. 32 of 1939 (as amended), s 21.

<sup>5</sup> Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended), s 18A.

<sup>6</sup> Women's Charter (Sri Lanka), art 11.

domestic workers and women wage earners working at home<sup>7</sup>, Maternity Benefits Ordinance No.32 of 1939 (as amended) only applies to women workers employed in ‘trades’<sup>8</sup> which excludes domestic workers and wage earners working at home from maternity protection<sup>9</sup>. This contravenes Sri Lanka’s international obligations as Sri Lanka has not opted out of applying maternity protection to these groups of workers as provided in the Convention<sup>10</sup>. However, the term ‘trade’ does not necessarily justify the exclusion of domestic workers and wage earners working at home as the term could potentially accommodate them on the basis that they engage in an occupation or an undertaking<sup>11</sup>. This lack of maternity protection leading to job insecurity and increased risk of poverty forces them to return to work prematurely and puts both mother’s as well child’s health in danger<sup>12</sup>. Therefore, in order to reconcile local laws with international standards, the Ordinance must be interpreted widely to include ‘all wage earners’, irrespective of being in the formal or informal sector, having the right to obtain maternity protection and be free from pregnancy related discrimination. Even though Article 10(i) of the Women’s Charter of Sri Lanka emphasizes women including the ones in the informal sectors should not be discriminated on the grounds of maternity and be given equal rights in employment, this has not been incorporated into the Ordinance. Additionally, if Sri Lanka ratifies Maternity Protection Convention, 2000 (No.183) in future, it would further expand Sri Lanka’s obligation to include all employed women, including those in atypical forms of dependent work<sup>13</sup>, as this Convention does not limit the scope of maternity protection only to the women in formal sector of the economy.

### ***b. Casual Women Employed in Trades***

A casual pregnant woman employed in trade is not entitled to any

<sup>7</sup> Maternity Protection Convention (Revised), 1952 (No. 103), art 1(3)(h).

<sup>8</sup> Maternity Benefits Ordinance No. 32 of 1939 (as amended), s 21.

<sup>9</sup> Unfortunately, due to this exclusion by Maternity Benefits Ordinance No. 32 of 1939 (as amended), women in the informal sector have been made more vulnerable by taking away their legal right to obtain maternity leave.

<sup>10</sup> Maternity Protection Convention (Revised), 1952 (No. 103), art 7.

<sup>11</sup> Sabrina Eusfally and others, ‘Sri Lanka: Domestic Workers’ (March 2015) Law and Governance, 18 <<https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf>> accessed 5 May 2021.

<sup>12</sup> International Labour Office; Social Protection Department, ‘Social protection for maternity: key policy trends and statistics’ (2015) 1 <<https://www.usp2030.org/gimi/RessourcePDF.action?ressource.ressourceId=51579>> accessed 5 May 2021.

<sup>13</sup> Maternity Protection Convention, 2000 (No. 183), art 2.

benefits as Maternity Benefits Ordinance No.32 of 1939 (as amended) clearly excludes employees whose nature of work is casual from the ambit of the Ordinance<sup>14</sup>. However, there is no such restriction in Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 (as amended) which covers every female person employed in business of a shop or office<sup>15</sup>. Similarly, the Establishment Code<sup>16</sup> and the University Grants Commission Circular No.10/2013<sup>17</sup> award maternity benefits to all permanent, temporary, casual and trainee female officers. This disparity in law leads to unequal treatment towards women employed in a similar type of employment. For example, placing casual women workers employed in garment factories, agriculture, and plantation estates in a more vulnerable situation by the Ordinance raises the question on why equals are being treated unequally. Hence, the Ordinance must be amended to include all types of wage earners including the casual employees, as Maternity Protection Convention (Revised), 1952 (No.103) does not place such a restriction based on the type of employment.

### ***c. Maternity Leave***

The Maternity Protection Convention (Revised), 1952 (No.103)<sup>18</sup> mandates a twelve-week maternity leave comprising of a compulsory leave not less than six weeks after childbirth, to facilitate the mother to recover and rest<sup>19</sup>. This is intended to protect women from being pressured to return to work, which could be detrimental to their health and the child. In case of a delivery of a live child, a women worker shall be entitled to ten weeks of maternity leave under Maternity Benefits Ordinance No. 32 of 1939 (as amended)<sup>20</sup> and seventy days of maternity leave under Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended)<sup>21</sup>

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<sup>14</sup> Maternity Benefits Ordinance No. 32 of 1939 (as amended), s 21.

<sup>15</sup> Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended), s 18A.

<sup>16</sup> Establishment Code, Volume I, Chapter XII, s 18:1.

<sup>17</sup> University Grants Commission Circular No. 10/2013, s 1(a).

<sup>18</sup> Maternity Protection Convention (Revised), 1952 (No. 103), arts 3(2) & 3(3).

<sup>19</sup> It is to be noted that article 4 of Maternity Protection Convention, 2000 (No. 183) mandates a minimum of 14 weeks and its accompanying Recommendation No.191 goes further and suggests member States to increase it to at least 18 weeks.

<sup>20</sup> Maternity Benefits Ordinance No. 32 of 1939 (as amended), s 3(1)(a).

<sup>21</sup> Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended), s 18B(2)(a).

after her confinement<sup>22</sup>. However, only the Ordinance provides extra two weeks of maternity leave up to the date of her confinement in cases of both live and still births<sup>23</sup>. On the other hand, in case of a live childbirth, public sector workers and university employees are entitled to eighty-four working days of full pay maternity leave which includes four weeks of compulsory leave<sup>24</sup>. Similarly, in the case of a still birth or the death of the child before the expiry of six weeks from the date of the childbirth, both public sector workers and university employees are entitled to six weeks of full pay leave<sup>25</sup>. On the contrary, both the Ordinance and the Act is silent on whether a private sector worker is entitled to full pay leave if her child died before the expiry of six weeks from the date of childbirth. Nevertheless, both the Ordinance and the Act provides for maternity leave of four weeks if the confinement does not result in delivery of a live child<sup>26</sup>.

Thus, it can be seen that the entitlement for maternity leave differs based on the sector of the employment. Hence, this discrimination between pregnant women based on the sector of their employment must be abrogated, and all should be equally treated by giving twelve weeks of maternity leave including compulsory leave of six weeks as mandated by the international obligations. If Sri Lanka ratifies the Maternity Protection Convention, 2000 (No.183), then it will impose an obligation on the State to extend maternity leave up to fourteen weeks. This will further ensure that maternity rights of working women are being guaranteed.

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<sup>22</sup> Up until the Maternity Benefits (Amendment) Act, No.15 of 2018, women regulated by Maternity Benefits Ordinance No. 32 of 1939 (as amended) only had 84 calendar days of maternity leave. This was discriminatory considering majority of women employed in Sri Lanka are governed by this and their maternity leave was lesser than the ones governed by Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 and the Establishment code. Moreover, they had lesser number of days of maternity leave depending on the number of children they already had, which was hugely discriminatory towards working mothers with family responsibilities. This discriminatory provision was similarly applied to the women covered by Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 (as amended). With the Maternity Benefits (Amendment) Act, No.15 of 2018 and Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) Act, No.14 of 2018, this discriminatory provision was removed giving all women equal number of days of maternity leave irrespective of the number of children.

<sup>23</sup> Maternity Benefits Ordinance No.32 of 1939 (as amended), s 3.

<sup>24</sup> Establishment Code, Volume I, Chapter XII, s 18:1:2; University Grants Commission Circular No. 10/2013, s 1(a)(i).

<sup>25</sup> Establishment Code, Volume I, Chapter XII, s 18:2:4; University Grants Commission Circular No. 10/2013, s 1(a)(iv).

<sup>26</sup> Maternity Benefits Ordinance No.32 of 1939 (as amended), s 3(1)(b); Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended), s 18B(2)(b).

#### ***d. Extension of Maternity Leave***

The Maternity Protection Convention (Revised), 1952 (No.103) provides additional leaves before and after confinement in case of illness medically certified arising out of pregnancy and confinement<sup>27</sup>. Such additional leave where an illness arises is not available to women covered under Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended) and Maternity Benefits Ordinance No.32 of 1939 (as amended). This is a serious discriminatory deficiency in the law as such women are more vulnerable to serious health risks than the public sector and university workers. Only university workers can obtain an additional six months leave if they are suffering complications arising from childbirth<sup>28</sup>. However, this is unsatisfactory as such additional leave does not entitle her to any payment which is contrary to what is provided by the Convention No 103<sup>29</sup>. Also the Establishment Code is silent on whether a woman can obtain paid additional leave in such situations.

Progressively, the domestic legal regime goes a step further and provides extension of maternity leave in cases where the child needs to be looked after. Public sector employees has the facility of obtaining eighty-four days half pay and another eighty-four days no pay leave if required for the purpose of looking after the child<sup>30</sup>. University workers have a limited right where they can obtain an additional six-month no pay maternity leave in a situation where the child is in an abnormal condition requiring the mother's personal care<sup>31</sup>. However, neither Maternity Benefits Ordinance No.32 of 1939 (as amended) nor Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 (as amended) entitles private sector female workers such a right to extend their maternity leave. Hence, this discriminatory treatment between sectors of employment must be eradicated by making provisions giving all working women equal right of additional leave as per the Maternity Protection Convention (Revised), 1952 (No. 103).

<sup>27</sup> Maternity Protection Convention (Revised), 1952 (No. 103), arts 3(5) & (6).

<sup>28</sup> University Grants Commission Circular No. 10/2013, s 1(d)(i) & (ii).

<sup>29</sup> Article 4 of Maternity Protection Convention (Revised), 1952 (No.103) provides that when a woman is on maternity leave as per given in article 3, she will be entitled to cash and medical benefits.

<sup>30</sup> Establishment Code, Volume I, Chapter XII, ss 18:3 & 18:4.

<sup>31</sup> University Grants Commission Circular No. 10/2013, s 1(d)(i) & (ii).

### ***e. Paternity and Parental Leave***

In Sri Lanka, women are cast down with the primary duty of upbringing the child which places working women at a disadvantage than men. Yet the law has done little to change this attitude by providing meaningful paternity<sup>32</sup> and parental leaves<sup>33</sup> to enable men to play more equal parts in child-rearing. By providing such leaves will indirectly benefit working women as the father's support in child-rearing is also employed which will lessen the burden on women. Even though providing parental and paternity leave will be a burden on the employer, nevertheless in the long run it will help to avoid the cost of having to hire and train new employees to replace those who chose to leave to look after their children. It will also benefit the employer as it can increase the overall productivity of work due to raising the morale of the employees.

Sri Lanka has introduced paternity leave of three days only to the male public servants which has to be claimed within one month of the birth of the child<sup>34</sup>. However, this is discriminatory as private sector male workers and informal sector workers do not enjoy such a right. It is also questionable whether three days of paternity leave is enough to lessen the burden on women in child-rearing. Whilst Women's Charter of Sri Lanka emphasizes the State should work towards granting of parental leave<sup>35</sup>, such provisions haven't been incorporated into the law.

Moreover, although there are no ILO standard exists concerning paternity and parental leave, conclusion number 27 of the 'Resolution Concerning Gender Equality at the Heart of Decent Work' adopted by the International Labour Conference in 2009 addressed the Governments to include paternity and parental leave. Thus, Sri Lanka need to challenge this cultural stereotyping on woman as being the primary caregivers, by bringing laws

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<sup>32</sup> Paternity leave aims to enable fathers to spend time with the mother and their newborn at childbirth, participate in events or celebrations related to its birth, and to carry out other related formalities.

<sup>33</sup> Parental leave refers to a relatively long-term leave available to either parent, allowing them to take care of an infant or young child over a period of time, usually following the maternity or paternity leave period. See A. T. P. L. Abeykoon, Ravi P Rannan-Eliya and others, 'Study on the Establishment of Maternity Protection Insurance in Sri Lanka' Institute for Health Policy (2014) 22.

<sup>34</sup> Establishment Code, Volume I, Chapter XII, s 18:11.

<sup>35</sup> Women's Charter (Sri Lanka), art 11(2).



to provide sufficient paternity and parental leave and recognizing that both mothers and fathers have equal and shared responsibilities as breadwinners and caregivers. Hence, by enabling both men and women to play more equal parts in child-rearing will ultimately promote gender equality and equal opportunities and treatment in the workplace<sup>36</sup>.

### ***f. Nursing Breaks***

The Maternity Protection Convention (Revised), 1952 (No.103) entitles a woman to nurse her child by interrupting work, which shall be counted as working hours and be remunerated<sup>37</sup>. There is a wide disparity in our law with regard to nursing intervals as those governed by Maternity Benefits Ordinance No. 32 of 1939 (as amended)<sup>38</sup> and Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended)<sup>39</sup> receive two nursing intervals per day till the child is one year old, while public employees<sup>40</sup> receive only one hour per day to leave the workplace early till the child is six months old. On the contrary, university workers are entitled to two nursing periods of one hour each per day till the child is one year old<sup>41</sup>. This shows that the public workers have been put in an unfavourable position than the private sector workers. Both the Ordinance and the Act entitle women workers to a nursing interval of not less than thirty minutes where an employer provides a creche or a suitable place, and to an interval of not less than one hour where there is no creche provided. However, it is questionable whether such nursing intervals are practical considering the time of traveling from workplace to home to breastfeed the child. Since CEDAW stipulates that States should promote establishment and development of a network of child-care facilities to enable parents to combine family obligations with work responsibilities and participation in public life<sup>42</sup>, Sri Lanka should make provisions for the establishment of creches and child-care facilities near

<sup>36</sup> International Labour Office; Conditions of Work and Employment Programme, 'Maternity Protection Resource Package- From Aspiration to Reality for All, Module 5: International rights and guidance on Maternity Protection at work' (2012) 41 < <http://mprp.ilo.org/allegati/en/m5.pdf>> accessed 5 May 2021.

<sup>37</sup> Maternity Protection Convention (Revised), 1952 (No. 103), arts 5(1) & 5(2).

<sup>38</sup> Maternity Benefits Ordinance No. 32 of 1939 (as amended), s 12B.

<sup>39</sup> Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended), s 18I. It is to be noted that until the Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) Act, No. 14 of 2018, women governed by this Act did not have any nursing intervals.

<sup>40</sup> Establishment Code, Volume I, Chapter XII, s 18:6.

<sup>41</sup> University Grants Commission Circular No. 10/2013, s 1(b).

<sup>42</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art 11(2)(c).

to the workplace for the betterment of women workers in all sectors of employment.

Considering this issue of nursing intervals, Maternity Protection Convention, 2000 (No.183) has introduced the system of transferring daily breaks into a daily reduction of working hours<sup>43</sup>. This progressive enactment can be adopted into our law to minimise the drawbacks in the current legal framework relating to nursing breaks. Even though the World Health Organization recommends exclusive breastfeeding for infants until the age of six months and to continue to breastfeed for two years or beyond, Sri Lanka is falling behind this as the law only allows nursing intervals up to one year of age of the child. Hence, it is clear that our law must be unified by giving equal amounts of nursing breaks to working mothers, without any discrimination based on the sector of employment.

### ***g. Occupational Safety and Health***

CEDAW stipulates that States should ensure effective right to work of pregnant women and prevent discrimination by providing special protection to them during their pregnancy in types of work that proved to be harmful<sup>45</sup>. Lack of occupational safety protection measures in the working environment during pregnancy leads to exposure to hazards that can result in health risks and complications<sup>46</sup> for the mother and her unborn child<sup>47</sup>. Jobs involving exposure to toxic and biological chemicals, and excessive physical labour are injurious to the health of pregnant women, especially during first three months of pregnancy as it is the most vulnerable period for the development of the fetus<sup>48</sup>. Such situations force women to choose either between working in an unsafe environment or leaving their job.

<sup>43</sup> Maternity Protection Convention, 2000 (No. 183), art 10.

<sup>44</sup> Infant and young child nutrition, Fifty-fourth World Health Assembly, Seventh plenary meeting (18 May 2001) 2.

<sup>45</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art 11(2)(d).

<sup>46</sup> Moreover, excessive work-related stress, anxiety, unsuitable workloads, or other detriments in the workplace can also put mother's health and her unborn baby at a risk. See Ngeyi Ruth Kanyongolo, 'Maternity Protection at the Workplace' (International Workshop on Maternity Protection, Kingdom of Lesotho, 23 –24 April 2013).

<sup>47</sup> International Labour Office, Conditions of Work and Employment Programme, 'Maternity Protection Resource Package- From Aspiration to Reality for All, Module 12: Assessing national legislation on Maternity Protection at work' (2012) 8 < <http://mprp.itcilo.org/allegati/en/m12.pdf>> accessed 5 May 2021.

<sup>48</sup> H. M. Salihu, J. Myers, E. M. August, 'Pregnancy in the workplace' [2012] 62(2) Occupational Medicine 88, 94.

The Women's Charter of Sri Lanka emphasizes the State should prohibit employment of women during pregnancy in types of work proved to be harmful to them and to the unborn child<sup>49</sup>. However, only Maternity Benefits Ordinance No. 32 of 1939 (as amended)<sup>50</sup> and Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 (as amended)<sup>51</sup> provides provisions for prohibiting employment of a pregnant woman in any work which may be injurious to the woman or her child during the last three months of pregnancy and first three months after confinement. However, this is problematic as pregnant women's health is most crucial not only during the last three months but especially during first six months<sup>52</sup>. Thus, our law which only concerns about the health and safety during the last three months of pregnancy is unreasonable and unjustifiable. Moreover, similar provisions protecting women workers from health hazards during pregnancy cannot be seen in the laws governing public sector and university employees. This is also problematic as they are also being discriminated and differently treated, which is unreasonable as all women are on an equal footing during their pregnancy times.

Since Maternity Benefits Ordinance No.32 of 1939 (as amended) excludes casual workers from its ambit, casual women employed in garment factories, agriculture, and plantation estates have been put in a more vulnerable state than those who are governed by the Ordinance and the Act. Even though they are ones who are being more pressured to return to work amidst the unsafe environment and health risks mainly due to income insecurity, the Ordinance provides no remedy for them. It is also questionable whether the existing laws and regulations truly address the health risks posed to expectant mothers by the ongoing COVID-19 pandemic. Therefore, our law must be amended to protect health of expectant mothers from work which may be harmful to them throughout the pregnancy period without having any exclusions and public private sectorial division<sup>53</sup>.

<sup>49</sup> Women's Charter (Sri Lanka), art 11(vii).

<sup>50</sup> Maternity Benefits Ordinance No. 32 of 1939 (as amended), s 10B(1).

<sup>51</sup> Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended), s 18D(1).

<sup>52</sup> Priya Soma-Pillay, 'Physiological changes in pregnancy' *Cardiovasc Journal of Africa* [2016] 27(2) 89, 91.

<sup>53</sup> If Sri Lanka to ratify Maternity Protection Convention, 2000 (No. 183), it would further State's obligation as article 3 makes States to ensure that pregnant or breastfeeding women are not obliged to perform work which is prejudicial or poses a significant risk to the health of the mother or the child.

### ***i. Job Security***

Maternity Protection Convention (Revised), 1952 (No.103) makes it unlawful for an employer to dismiss women from work during their maternity leave<sup>54</sup>. CEDAW also provides that States should take measures to prohibit dismissal on the grounds of pregnancy, marital status and maternity leave<sup>55</sup>. This protection is provided to women so that they will not be discriminated based on engaging in reproductive behaviour<sup>56</sup>. The Women's Charter of Sri Lanka highlights that the State should prohibit dismissal of women on the grounds of marriage, pregnancy or of maternity leave<sup>57</sup>. Accordingly, Maternity Benefits Ordinance No.32 of 1939 (as amended)<sup>58</sup> and Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 (as amended)<sup>59</sup> protect employees in the private sector from dismissal due to maternity reasons, which shifts the burden of proving termination happened due to reasons other than maternity onto the employer. However, female employees in the public sector do not enjoy such a protection as the law is silent on this matter. Nevertheless, there have been no cases of dismissal of public workers on grounds of maternity so far<sup>60</sup>. This shows that the public sector is de facto compliant with the Convention, but not on a de jure basis<sup>61</sup>. On the other hand, public workers are being protected from discrimination based on maternity leave for salary increments, promotions, and pension schemes<sup>62</sup>, whereas private sector workers do not enjoy such a right. Thus, this lack of uniformity in our law must be addressed by giving women equal safeguards relating to job security during pregnancy.

<sup>54</sup> Maternity Protection Convention (Revised), 1952 (No. 103), art 6.

<sup>55</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art 11(2)(a).

<sup>56</sup> Article 9 of Maternity Protection Convention, 2000 (No. 183) provides stronger employment protection by requiring measures to ensure that maternity does not cause discrimination, including in access to employment, and explicitly prohibits pregnancy tests as part of candidate selection procedures except in very limited specific circumstances.

<sup>57</sup> Women's Charter (Sri Lanka), art 11(iv).

<sup>58</sup> Maternity Protection Convention, 2000 (No. 183) ss 10 & 10A.

<sup>59</sup> Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended), ss 18E & 18F.

<sup>60</sup> A. T. P. L. Abeykoon, Ravi P Rannan-Eliya and others, 'Study on the Establishment of Maternity Protection Insurance in Sri Lanka' Institute for Health Policy (2014) 14.

<sup>61</sup> *ibid*.

<sup>62</sup> Establishment Code, Volume I, Chapter XII, s18:9 and University Grants Commission Circular No. 10/2013, s 1(d)(iv).

### ***k. Employer Liability Schemes***

Employer liability schemes which make employers bear the entire cost of maternity benefits unfortunately works against the interests of women workers, as employers may get reluctant to hire women in order to avoid costs. As a result, employers' liability schemes have long been viewed as detrimental to the interests of women<sup>63</sup>. In Sri Lanka, maternity benefit payments are financed through employer liability schemes<sup>64</sup>. This is not compliant with Maternity Protection Convention (Revised), 1952 (No.103) which imposes an obligation on Sri Lanka to replace employer liability financing of maternity cash benefits with either a scheme financed by public funds or a social insurance scheme<sup>65</sup>. Thus, Sri Lanka should move towards bringing social insurance schemes which are funded through employer and employee contributions and complemented by government funds to improve social security coverage for working women.

### **Conclusion**

Sri Lanka is progressive being compliant with the international standards on maternity protection at the workplace. However, there are certain limitations and disparities in the law as discussed above which discriminates pregnant women and nursing mothers based on the type and sectorial division of their employment. This lack of uniformity in maternity protection laws, which treats pregnant women differently even though all of them are facing similar problems during maternity, must be done away with. Hence, Sri Lanka needs to uniform the domestic legislation governing maternity rights and protection at the workplace by making legal reforms which guarantee job security, occupational health and safety, social insurance schemes, paternity and parental leave, nursing breaks, childcare facilities, extension of maternity leave to all employees without any discrimination based on the sector of employment. Additionally, by ratifying Maternity Protection Convention, 2000 (No.183) will further impose an obligation

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<sup>63</sup> A. T. P. L. Abeykoon, Ravi P Rannan-Eliya and others, 'Study on the Establishment of Maternity Protection Insurance in Sri Lanka' Institute for Health Policy (2014) 24.

<sup>64</sup> Maternity Benefits Ordinance No. 32 of 1939 (as amended), s 5.

<sup>65</sup> Maternity Protection Convention (Revised), 1952 (No. 103), arts 4(3) & 4(8). However, ratification of Maternity Protection Convention, 2000 (No. 183) by Sri Lanka would negate such noncompliance as it authorizes employers to bear the cost of maternity benefits for countries like Sri Lanka, which have legislated for employer liability prior to the adoption of the said Convention.

on Sri Lanka to reform the domestic laws up to the present international standards. It is indisputable that strong maternity protection laws which enable women to actively participate in the labour force will ultimately improve economic efficiency of the country. Therefore, by amending maternity protection laws to safeguard labour rights of working women as discussed in this paper will make Sri Lanka in line with the international standards.