

**SIGNIFICANCE OF MATERNITY BENEFITS: BANGLADESH PERSPECTIVES****Fatema-tuj-zuhra**Department of Law,  
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With the advent of modern age, as the number of women employees are growing, the maternity leave and other maternity benefit has become increasingly common. But there was no beneficial piece of legislation in the horizon which is intended to achieve the object of doing social justice to women workers. In many parts of the world, very little is known about maternity leave by women themselves before they become pregnant. Many are unaware of their rights. Thus women are falling behind in their careers throughout the world as well as Bangladesh. The objective of this article is to serve as a compilation of knowledge about maternity leave and other benefits offered to mothers to get better work life balance. Wide differences in maternity leave policies that exist in Bangladesh have been pointed out in this article. Besides those, special focus has been made on maternity benefit which should be treated as a right of women not as privilege.

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**KEYWORDS:** female worker, maternity, maternity leave, maternity benefit, maternity leave policies.**INTRODUCTION**

There has been an impressive rise in the proportion of women who have entered the workforce in Bangladesh and throughout the world. At the same time, the number of working women with small children has also increased. In Bangladesh the number of women working has also gone up in the last 20 years. According to World Bank statistics, the number of women working in 1980 was approximately 14 million whereas in 2004 it was 23 million.<sup>1</sup> With women working, maternity leave is of course an issue, since the majority of women have children at some time of their lives.

It is an important benefit to the female employees and it plays an important role to increase organizational loyalty, efficiency and job satisfaction.

Maternity leave now often called parental leave or family leave is the time a mother (or father) takes off from work for taking care of a child for certain period.

Maternity leave may be termed as a period of approved absence for a female worker granted for the purpose of giving birth and taking care of newborn child. Such type of leave is allowed to a mother before and after the birth of a child. Usually, the term maternity benefit is applied in case of working women. It indicates the payment made to a woman for giving birth of a child. All sorts of costs

associated with maternity care may be treated as maternity benefit.<sup>2</sup>

Maternity is a condition which requires differential treatment to achieve genuine equality and, in this sense, it is more of a premise of the principle of equality than a dispensation (ILO, 1996). Generally, maternity leave is available to mothers only (Thevenon & Solaz, 2013). At first, maternity leaves were introduced to protect the health of working mothers and their newborn child (Thevenon & Solaz, 2013), to protect female workers from heavy work conditions, and later, to pre-serve job opportunities of young mothers who want to return to their job after birth (Zhelyazkova, 2013). Maternity leave is important as future cognitive and emotional development (Harris, 1983; Lewis & Brooks-Gunn, 1979); to improve the welfare of children, and expansions, increase in the quantity and quality of child-parent interactions (Dustmann & Schonberg, 2011). It is also important for the health and wellbeing of mothers and children; child development; family formation and functionality; women's labor-force attachment and career progression; and gender equality in paid employment and the household (Galtry & Callister, 2005; Carneiro et al., 2011) and reducing maternal and child mortality (Younes et al., 2012). Mostly it is important to facilitate breastfeeding and to prevent some adverse health consequences for the mother and many unobservable attributes that affect child

<sup>1</sup> BRAC University Journal, Anam 'Inadequacies and variations of Maternity leave policies throughout the world: Special focus on Bangladesh' vol, no. 1, 2008, pp. 93-98

<sup>2</sup> 12:00 AM, August 26, 2014 / LAST MODIFIED: 01:53 AM, March 08, 2015

<http://www.thedailystar.net/maternity-benefits-right-or-privilege-38659>

development (Dust-mann & Schonberg, 2008, 2011; Carneiro et al., 2011).<sup>3</sup>

### CONCEPT OF MATERNITY BENEFIT

Maternity benefit is a payment made to a woman who is on maternity leave from work. The objective of maternity benefits is to protect the dignity of "Motherhood" by providing the complete & health care to the women & her child when she is not able to perform her duty due to her health condition. There is need for maternity benefits so that a woman is to be able to give quality time to her child without having to worry about whether she will lose her job and her source of income. One of the basic causes of deprivation of women regarding maternity benefits is the weakness of relevant Acts and lack of enforcement of the existing laws.

### INTERNATIONAL STANDARDS ON MATERNITY PROTECTION

Working during pregnancy is not in and of itself a risk. But women around the world continue to face considerable maternity-related threats to their health and economic security. Women continue to face dismissal and discrimination in hiring on the basis of maternity.

Maternity protection is a fundamental labour right enshrined in key universal human rights treaties. The 1948 Universal Declaration of Human Rights (UDHR) states that motherhood and childhood are entitled to special care and assistance, as well as to social security. The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, ensures special protection for mothers during a reasonable period before and after childbirth, including paid leave or leave with adequate social security benefits. The Convention for the elimination of All Forms of Discrimination Against Women (CEDAW), 1979, calls for special measures to guarantee maternity protection, recognized as an essential right and addressed consistently in all aspects of the Convention.

Protecting maternity has been a core issue for the member States of the ILO since its establishment. Over the course of its history, member States have adopted three Conventions on maternity protection (No 3, 1919; No. 103, 1952; No.183, 2000), which have progressively expanded the scope and entitlements of maternity protection at work. The core concerns have been to ensure that women's work does not threaten the health of the woman or child during and after pregnancy, and that women's

reproductive roles do not compromise their economic and employment security.

When the first Maternity Protection Convention, 1919 (No. 3) was adopted, the "provision for child welfare and maternity protection" is also listed among the core aims and purposes of the ILO (Article III, Declaration of Philadelphia, 1944). Since then, the International Labour Conference (ILC) has adopted two further Conventions, supplemented by Recommendations on maternity protection.

Part VIII (on maternity benefits) of the Social Security (Minimum Standards) Convention, 1952 (No. 102) sets minimum requirements for the provision of health care during pregnancy and confinement, and cash maternity benefits replacing lost income. It also sets minimum standards for access to preventive and curative health services in general. Altogether, as of December 2009, 71 countries are party to at least one Maternity Protection Convention or have signed Part VIII of Convention No.102.

The Maternity Protection Convention, 2000 (No. 183), is the most recent maternity protection Convention adopted by ILO member States, and is accompanied by the Maternity Protection Recommendation, 2000 (No. 191).

Convention No. 183 covers all employed women, including those in atypical forms of dependent work, and includes:

- 14 weeks of maternity leave, including six weeks of compulsory post-natal leave;
- Cash benefits during leave of at least two-thirds of previous or insured earnings provided from social insurance or public funds; adequate cash benefits out of social assistance funds for women who do not meet qualifying conditions. Employers shall not be individually liable for the direct cost of such cash benefits.
- Access to medical care, including pre-natal, childbirth and post-natal care, as well as hospitalization when necessary;
- Health protection: the right of pregnant or nursing women not to perform work prejudicial to their health or that of their child;
- Employment protection and non-discrimination during pregnancy, whilst on maternity leave or whilst nursing.
- Breastfeeding: minimum of one daily break, with pay

In particular, cash benefits during the time off employment around childbirth (maternity leave) are one of the crucial elements of maternity protection. They are intended to replace a part or all of the income lost due to the interruption of the women's

<sup>3</sup> *World Vision Research Journal*, Ashiya Akter, 'A Critical Review on the Protection and Promotion of Working Women regarding Maternity Benefit Rights: Bangladesh Perspective' Vol. 8, No. 1, 2014, ISSN:2078-8460.

economic activity, so the woman can rest and recover from pregnancy and childbirth. Without this key financial support, the income loss combined with increased expenditures associated with pregnancy and birth, would pose economic hardship for many families. Under these circumstances, women might feel constrained to resume work even before the expiration of the compulsory leave period after childbirth (six weeks according to Convention 183, art. 4) or before it is medically advisable to do so, with direct adverse consequences for their health.

As of January 2012, 65 ILO member States were party to at least one of the maternity protection Conventions, with virtually all countries having adopted some measures of maternity protection. The International Labour Organization, 2010 global estimates, based on the revision of the legal provisions of 167 countries, shows that there have been noticeable improvements in maternity protection legislation since 1994. Globally, 30 per cent of the member States fully meet the requirements of Convention No. 183 on all three aspects: they provide for at least 14 weeks of leave at a rate of at least two-thirds of previous earnings, paid by social security or public funds. The regions with the highest proportion of countries in conformity with these aspects of the Convention are Central Asia and Europe, while conformity is particularly low in Asia and the Pacific and the Middle East.<sup>4</sup>

The period of leave referred to in Articles 4 and 5 of the Convention should be considered as a period of service for determination of her rights. Recommendation No. 191, Paragraph 5 Whatever the importance of a woman wage-earner's right to be reinstated in her previous work, and however effectively it may be recognized and applied, it is not in itself enough to prevent women's procreative role from becoming an obstacle to the realization of equality of opportunity and treatment. For this, it must be ensured that a woman's absence on maternity leave and the extension of that leave does not result in the loss or reduction of entitlements and benefits under the terms of the employment contract, which would only exacerbate the often considerable differences between men and women wage-earners.<sup>5</sup>

### **MATERNITY LEAVE POLICIES THROUGHOUT THE WORLD**

Maternity leave around the world looks very different from country to country. There are even a few surprises: some developed nations, like the United States, have horrible maternity leave policies that differ from state to state.

Legal expert, Karel van der Molen notes that the U.S. and Papua New Guinea, in particular, are "the only two countries that do not have paid maternity leave which is mandated by their respective central governments."

This is, of course, extremely disconcerting as paid maternity leave is crucial to protect the health and economic security of women and their children.

The International Labour Organisation warns that if paid leave is not granted, "long leave periods, especially without job protection, may damage women's attachment to and advancement in paid work, resulting in wage penalties."

When we look at the South African situation, we see many pros and many cons.

Legal expert, Sheri Breslaw says that: "South African law does provide some statutory financial benefits for working mothers in that the Basic Conditions of Employment Act provides for 4 months mandatory maternity leave being provided to expectant mothers, during which time their jobs are secure and they are able to claim Unemployment Insurance Fund (UIF) benefits.

Fortunately, there are companies in South Africa which are more flexible and forward thinking in their approach to maternity benefits, affording mothers the option of paid maternity leave and flexible working time on return to work for a fixed period of time. This is largely in keeping with international trends, particularly in Europe."

In Sweden, for example which continues to be one of the world's most progressive countries in education, women's rights and overall standard of living – women can take 56 weeks of maternity leave while getting paid 80 percent of their incomes. Women also get benefits for an additional 13 weeks with a fixed rate.<sup>6</sup>

In Canada, women can take up to 50 weeks of maternity leave with a wage of 55 percent of their incomes. Both men and women are also eligible to receive 35 weeks of benefits from Canada's employment insurance and parents can either share these weeks or split them up.<sup>7</sup>

When it comes to supporting working mothers, companies in the UAE are still lagging behind those in other countries. The duration of statutory paid maternity leave for employees in the country's private sector lasts for 45 calendar days or about six

<sup>4</sup> ILO: *Maternity at work: A review of national legislation*. Second Edition. Findings from the ILO Database of Conditions of Work and Employment Laws, (Geneva, 2010).

<sup>5</sup> Maternity and paternity at work under ILO

<sup>6</sup> <http://myrepublica.com/opinion/story/25422/infographics-maternity-benefits-around-the-world.html>

<sup>7</sup> *ibid*

weeks, while the other markets grant up to 24 or even more than 40 weeks of vacation, according to a consulting firm. According to Mercer's 2014 Worldwide Benefits and Employment Guidelines, while most markets around the world have become more generous with leave allowances, a few countries, including the UAE, consistently rank among the lowest in paid maternity leave. In comparison, women in Norway enjoy 49 weeks, while those in Ireland are entitled to 26 weeks. Working women in Vietnam, Poland and Singapore are also entitled to a longer time off lasting for 24, 20 and 16 weeks respectively.<sup>8</sup>

In France, a mother's postpartum leave is taken pretty seriously. French women are guaranteed 100 percent of their pay for 16 weeks (six weeks before birth and 10 weeks after). For families with two children, women can take an additional 2.5 years of job-protected family leave and their partner can take six months. And all families in France with two or more children are entitled to family benefits, a monthly cash payment from the French government.<sup>9</sup>

In Finland, you'd have plenty of time to prep for baby's arrival. Paid maternity leave starts 50 days before your due date and continues for four months after giving birth. There's also a system, Paternal Allowance, that lets men to take time off work as well.

In Australia, there is no maternity leave. There is "parental leave," meaning either mom or dad can take government-paid leave for up to 18 weeks. Or they can share the leave. One parent, for example, could use 10 weeks and the other eight.

In at least 178 countries around the world, paid leave is guaranteed for working moms, while more than 50 countries provide wage benefits for fathers, according to the ILO. The United States, along with Papua Newgeni, the Swaziland, Liberia and Lesotho are some of the only countries in the world that provide no type of financial support for mothers, according to a study done by Mc Gill University's Institute for Health and Social Policy.

### **MATERNITY LEAVE RELATED POLICIES IN BANGLADESH**

In Bangladesh, there was some discrimination found in maternity leave administration in few sectors. It was seen in the garment sector that most women were restricted to leave their jobs after the birth of their children and if they hunted to start work again in the same factory they would have to start as new

employees with lower wages and salaries instead of returning to their former positions; and some owners provided leave to their employees but did not pay them as per the provisions of the Law.<sup>10</sup>

Before the amalgamation of all the labour laws through the Bangladesh Labour Act 2006, there were three distinct acts for the regulation of maternity benefits for women for certain periods before and after child birth and for the payment of maternity benefits to them. These were The Maternity Benefits Act 1939 (which was most widely used in manufacturing, service and other organizations), The Mines Maternity Benefit Act 1941, and The Maternity Benefits (Tea Estate) Act 1950. All three of these acts have been repealed and amalgamated into the new labour laws under Chapter IV as "Maternity Benefits".<sup>11</sup>

As per the Bangladesh Labour Act 2006 (amended in 2013), woman employees of any establishment who has worked there for at least six months will be entitled to pregnancy leave along with full pay.

The law clearly states that every woman employed in any establishment shall be entitled to the payment of maternity benefit in respect of the period of eight weeks preceding the possible date of her delivery and eight weeks immediately following the day of her delivery. For these 16 weeks of leave in total, the benefit she will be entitled to consists of a payment depending on her current wages. To be more precise, the payment of maternity benefit will have to be calculated according to average of three months of salary prior to leave or average of daily wages for the period of her actual absence depending on the nature of her job. The payment of maternity benefit shall be made wholly in cash.

In the event that the woman dies on the day of delivery or within eight weeks after that, maternity benefit will have to be paid to the person who takes care of the child. If both the woman and the child die, the benefit is to be paid to the person she nominated. There is however some restrictions on this maternity benefit right. The woman will be entitled to only two pregnancy leave along with full pay. If she already has two or more children alive, at the time of delivery, she will not be allowed maternity benefit for the third child.

Furthermore, employers are prohibited to discharge, dismiss, and terminate any pregnant woman before

<sup>8</sup> <http://gulfnnews.com/uae/health/maternity-leave-in-uae-among-lowest-in-world-1.1500102>

Medical experts in UAE urge private companies to grant more leave days for working mothers

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<sup>9</sup> <http://www.thebump.com/a/maternity-leave-around-the-world>

<sup>10</sup> Anam, R.L.(2008). 'Inequalities and variations of maternity leave policies throughout the world: Special focus on Bangladesh'. *BRAC University Journal*, 1, p:93-98

<sup>11</sup> 'A Critical Review on the Protection and Promotion of Working Women regarding Maternity Benefit Rights: Bangladesh perspective' by Ashiya Akter, *World Vision Research Journal*, ISSN:2078-8460, Vol- 08

six months of the date of her delivery and the eight weeks after the date of delivery. If the employer gives notice or order of dismissal, discharge or removal to a woman 'without sufficient cause' within the above mentioned period, she will not be deprived of the maternity benefit to which she may have become entitled according to the law.

However, interestingly enough, there are no specific laws that exist for management level (women) staff. The Finance Ministry issued a gazette of notification amending Rule 197(1) of Part-I of the Bangladesh Service Rules provide for permanent government servants, the right to take six months but still The Bangladesh Labour Act provides a worker with the right to take 16 weeks maternity leave. As a result the workers employed in the private sector are given one third of the maternity leave than the women permanently employed in the public sector.<sup>12</sup>

'Most private offices do not grant maternity leave properly,' said Kohinoor Mahmood, project coordinator of Women Workers Development project of the Bangladesh Institute of Labour Studies. According to Bangladesh Bureau of Statistics, there are about 1.21 crore working women in the country and more than 97 lakh of them are engaged in the informal sector which are outside the labour law. Garment Workers' Unity Forum finance secretary Shahidul Islam Shabuj told New Age last month that in his view less than one per cent of garment factories grant female workers maternity leave with pay in accordance with the Labour Act. 'Most of the women who work in the garment sector have their jobs terminated during pregnancy,' he said.<sup>13</sup>

On the other hand, Bangladesh Bank is giving six-month maternity leave to the women employees and it also circulated a notice to all banks and financial institutions to practice this rule. But it is a matter of regret that other than the state-owned banks, most of the banks don't show any respect to the order. In case of private schools, colleges and universities four month maternity leave and benefit is given to the women employees. Many organizations grant two months additional leave without salary. But still it is not given in a proper way. Women who worked under other commercial establishments get three months maternity benefit only.<sup>14</sup>

The finance ministry issued a gazette notification amending Rule 197(1) of Part-I of the Bangladesh Service Rules extending the maternity leave with

effect from January 9. According to the amended rule, a female government servant will be entitled to maternity leave twice during her service. The extended maternity leave, however, will not be applicable to the female officers or workers working in private sectors. Institute of Public Health and Nutrition director Fatima Parveen Chowdhury said that extension of maternity leave would allow working mothers to breastfeed their children for six months. The same provision should be applied to all working mothers, including those engaged in private and informal sectors, she said.' If the extended leave is not made applicable to the private sector, we would appeal to the government to do so.' The amended rule, which replaced the existing one, says, 'When a female government servant applies for maternity leave, the authority mentioned in Rule 149 or Rule 150 as the case may be, shall grant such leave for a period of six months from the date of the commencement of the leave or on her confinement for the purpose of delivery, whichever is earlier.' The period of maternity leave was extended in response to demand from different sectors.

Labour experts welcomed the new government initiative but pointed out that only the women working under Bangladesh Service Rules would get the extended leave – excluding those who work under the Labour Act.<sup>15</sup>

### **Whether Maternity Benefit Is A Right Or Privilege?**

It is a well- established fact that maternity leave benefits increase the chances of women to get back to their work and plays a significant role to increase organizational loyalty, efficiency and job satisfaction. When a woman is engaged in economic activities i.e. when a woman is earning only then it is possible for the entire society to move forward. Without economic independence a woman cannot expect respect of the family members or in the broad sense of the society. And to allow women to continue to work maternity benefits must be ensured.

In our male dominated society maternity benefit is still considered as a women issue and generally taken as a special benefit awarded to women. Again, there is discrimination or inconsistencies between the Labour Act 2006 and the amended Bangladesh Service Rules. Though maternity benefit is ensured as a right under the Labour Act and Bangladesh Service Rules in Bangladesh but in practice those rights are treated as a privilege.

It is evident that, the Participation of women is prominent in the Ready Made Garment (RMG) sector of Bangladesh and with the change of time it is

<sup>12</sup> ibid

<sup>13</sup> 'Maternity leave now for six months', *Dhaka Mirror*, published on January 12, 2011.

<sup>14</sup> A Critical Review on the Protection and Promotion of Working Women regarding Maternity Benefit Rights: Bangladesh perspective by Ashiya Akter, *World Vision Research Journal*, ISSN:2078-8460, Vol- 08

<sup>15</sup> 'Maternity leave now for six months': *Dhaka Mirror*, published on January 12, 2011

increasing in all other sectors of the society. It may be said that women participation in the economic development of the country is of two-fold. Firstly, women are working in RMG sectors and in factories as worker under the Labour Law 2006 and secondly on the other hand a large number of women are working in banks particularly in private banks, in different private and public organizations and in other sectors of the society.

Here, a major difference is that the first group is not literally educated and the second one is highly accomplished under the existing system. The way of working, working environment, remuneration package etc are totally different between these two groups of women but when the question of maternity benefit comes in the light both groups stand on the same footing. It is true that public sector women workers get better benefit than that of private sector, still for all sectors, the maternity benefit of working women is a privilege, not a right.

The Law on maternity benefit in Bangladesh is regulated by the Bangladesh Labour Act, 2006 under Chapter IV called Maternity Benefit. The Maternity Benefits provided under the Labour Act 2006 is for the workers and the definition of worker as provided in Chapter I, section 2 (LXV) clearly excludes the women who are working at the management level. Unfortunately, there exist no specific laws for management level (women) workers.

Rule 197(1) of part-I of the Bangladesh Service Rules provides for permanent government servants the right to take six months' maternity leave and the Bangladesh Labour Act provides a worker with the right to take 16 weeks maternity leave. And the women working in private sectors are totally ignored. That's why it is clear that, though maternity benefit is ensured as a right by the Bangladesh Labour Act, 2006 but in practice those provisions are treated as a special privilege for women as they are the weak part of a country.

A mother is a mother. It is immaterial for an infant whether its mother comes within the definition of worker or not. The needs of a mother do not vary by the types of work she does. Proper implementation of the existing laws and increase of facilities for private sector working women must be ensured by the Government. Maternity benefits should no longer be treated as a privilege but a right of women.

### RECOMMENDATION

The fundamental purpose for providing maternity benefits is to preserve the self-respect for motherliness, protect the health of women, complete safety of the child etc. Due to the increasing number of women employees in the government and private

sector, it became necessary to grant maternity leave and other maternity allowances to working women.

While extending the maternity leave provisions of public servants to 6 months (24 weeks) the government has ignored the private sector where most irregularities are prevalent.<sup>16</sup> Rather, it should be universal for employed women in all sectors.

There is a need for a common policy which should be more voice and equity (to ensure more equality in all sectors) in practice of standards. So, the maternity leave policies should be reviewed and should not be used as an excuse for employing women on short-term basis.

In Bangladesh, only handful organizations have recently started to offer their female employees on-site child care, although this is a requirement as per law. Such additional welfare measures can create a more equitable workplace and increase employee loyalty.

With absence of direct intervention from the Government, related/vested groups should take notice of the irregularities in labour law practice including maternity issues. Recently, prolonged efforts of trade unionists, consumers and human rights activists/NGOs to exert pressure on buyers to take greater responsibility for working conditions have resulted in the proliferation of codes that garment manufacturers now have to accept before they can win an order from these buyers. Indeed, the BGMEA/BKMEA, at least have realized that conformity is the key to future survival in the post-MFA competitive environment. As a result, there has been a marked improvement in health and safety standards in the major factories as well as a range of other benefits, such as payment on time, proper overtime, maternity leave, etc. But these are the large establishments (with forward and backward linkage) who are more complaint. These types of efforts are required in all sectors employing women to create a sense of equity/ fairness in the workplace.<sup>17</sup>

Such measures can elevate the status of women as competent workers by enhancing their self-worth and allowing them the freedom of balancing work and non-work needs, job security, self-determination and hence increase equity and voice at their workplaces.

### CONCLUSION

Women are entering the workforce in a large percentage throughout the world since the second half of the twentieth century. Bangladesh is not an

<sup>16</sup> The Daily Star, Dec 19, 2010

<sup>17</sup> Maternity Benefits under the Bangladesh Labour Law 2006 'An analysis – with focus on the RMG Industry' <https://faisalhgury.wordpress.com/2013/07/12/maternity-benefits-under-the-bangladesh-labour-law-2006-an-analysis-with-focus-on-the-rmg-industry/>

exception from this phenomenon. This is a general conception that no nation can go forward keeping half of their population out of workforce in this present world. So empowerment of women is being promoted globally for economic and social development of a country. But women are exception than that of men because of their maternity. It is a natural quality of woman which must be protected for human civilization. Job security must be provided to the women for the period of pregnancy, child birth and pre child birth for utilization of this great workforce effectively. No disparity is accepted for women workers for their maternity period. Now a days maternity benefit is widely recognized as a right of women nationally and internationally. But it is being observed that the application of this benefit is not universal in many countries. Such in Bangladesh, women in public sectors are enjoying the benefits on the other hand in the private sectors it depends on the will of their employer. Whereas 80% out of sixteen million women workers are engaged in the production of Ready Made Garments who are contributing 60% of our annual budget. Mostly they are the victim of this discrimination. A mother is neither a public nor a private mother. This should be guaranteed by the law of the land to allow maternity benefits equally to all women workers. It is essential for our national interest to promote this workforce and health of a mother and a child must be taken care of to build a healthy nation.

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