THE LAW ON THE RIGHT TO PUBLIC BREAST FEEDING:

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Abstract

In this study a critical evaluation of the role of the law in cases where it is uncertain whether women are likely or unlikely to stand up to breastfeed shaming. In that context, this answer might be far from being clear. Considering the different schools of feminism and natural jurisprudence this right remains vital considering its links with the health rights of the child. However, this study shall explore the ways in which laws of breastfeeding have evolved. Bearing in mind the different schools of jurisprudence the presence as to the purpose of law in this area, there are varied opinions on the purpose of the law. The study explores the UK law in comparison to America in developing a clearer understanding of the ways in which the two societies are using the law to regulate issues of breastfeeding. Prisms of equality discrimination law and employment law are applied in both countries though on the basis of different conceptual and theoretical reasoning. For a global perspective of this area the absence of international clarity on how, why and when the law must protect breastfeeding is dealt with in times of time and situations of humanitarian emergencies. Lessons disability law might learn from breastfeeding wars are also highlighted. The vulnerability of breastfeeding in situations of armed conflicts or breastfeeding with disabilities is incidental to this piece.

A. Views of breast feeding mothers on the reasons to legitimise liberty:

In their struggle to have to protect the liberty and freedom to breast feed in public, nine reasons have been identified to justify why State and other authorities need to promote provide support and protect this maternal right as well the ways in which it is carried.

1. Firstly because some of the breast feeding mother report that there is a psychological mother-child bonding through looking into each other's eyes. In some cases it is highly likely that the argument of breast covering might easily cover the baby's eyes as well. Thus covering the baby's eyes might to some extent impact that bonding.[1]

2. Another reason breast reason seems synonymous with the applying the golden rule to babies by treating them in the same way we like to be treated. That stems from the fact that normally and

[1] The Breast feed network in Scotland https://www.breastfeedingnetwork.org.uk/breastfeeding-help/out-about/ see Motherhood and more <http://www.motherhoodandmore.com/2013/08/whats-so-hard-about-covering-up-to-html.html> accessed on 17 December 2015

logically it would be discomforting to eat under a blanket. This makes mother argue that it becomes unrealistic to compellingly or even compulsively place breast feeding mothers in situations that make them feed babies in such circumstances.[2] However that view has been contested by some writers who argue that covering up is meant as a symbolic gesture of that food as well as its sources must be covered and treated with respect.[3]

3. In terms of the presumptions underpinning issues of covering it has been contended that breast covering is likely on some occasions to even draw more attention to the mother in case it is used and it is claimed that some breast feeding mother might moreover feel awkward and uncomfortable by it.[4]

4. Covering has been an oxymoron because since some of the babies fights back as a gesture of protesting such covering. Therefore that leads to cases where the bread feeding mother spending the whole time having to put back on the child. Some women have mentioned that focusing more on the blanket itself which causes a nip-slip.[5]

5. Additionally because the public exercise of this right is internationally perceived as a lawful right. Regardless of how the mother's choice of how to publicly breastfeed, the act or activity has no detrimental impact on the rights of third parties.[6] If anything it might be urged that that public breast feeding is not undertaken out of preference but it happens out of urgency to ensure health of third party (the child) has right to feed and health that need promoting and prioritising through protecting the acts of the mother. (In this case it arguable that a '*maternal doctrine of privity'* might be inferred in law to extend the understanding of public rights for third party beneficiaries.

6. There is a possibility that outlawing stereotypes of covering and breastfeeding might inspire and supports the interests of other forthcoming mothers that might want to breastfeed in public as well.[7] This might in the long run show that the community encourages and merits reproduction.

7. At the same time covering is contrary to the reality that breastfeeding is normal act that those mothers involved must neither feel embarrassed or having to hide it.[8] Thus some mothers are of the view that supporting covering it misleading, misguiding and a misconceived approach.

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[2] Ibid.
[3] Elizabeth Grattham, 'The *human interest and social justice for over twenty five years.* The Top 20 Reasons Why Every Mother Should Cover Up When Breastfeeding < http://www.iamnotthebabysitter.com/cover-while-breastfeeding/> accessed on 17 D3ecember 2015.
[4] see Motherhood and more <http://www.motherhoodandmore.com/2013/08/whats-so-hard-about-covering-up-to-html.html> accessed on 17 December 2015
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.

8. On the other hand the feeling that comes with covering feeling may be demining.[9] As to some of the women might find it undesirable hugging around with a blanket or a towel all the time.[10]

9. Moreover to some mothers because the might prefer using the Two Shirt Method that they find another method that is comparable to covering.

B. USA and legal developments on rights to public Breastfeeding:

Among the countries of industrialized world the United States has one of the lowest breastfeeding rates.[11] It is therefore unsurprising that it is also alleged to have one of the highest rates of infant mortality rates.[12] Identifying the need to support mothers when they decide to breastfeed, several pieces of legislation are being introduced to protect a mother's right to breastfeed and to promote breastfeeding among working mothers. At the backdrop of such a concern, there was a need to Identifying ways of supporting mothers whenever and wherever they decide to breastfeed. In responding this socio-legal and medical-legal dilemma, USA has seen several pieces of legislation introduced and leading case law decisions have been made, in decisions such as *Martinez v. N.B.C. INC.* [13] with an aim of protecting mother's right to child breastfeeding.[14] Moreover this trend extended further in promoting breastfeeding among working mothers.[15] As a result of those developments the Breastfeeding Promotion Act[16] was introduced in both houses of Congress on June 11, 2009.[17] That Act was aimed at providing a unified national policy to promote the health of mothers, children and communities.[18] That Act led to the amendment of the Civil Rights Act of 1964 commonly known as Pregnancy Discrimination Act[19] by protecting breastfeeding women from dismissal or discrimination in the workplace.[20] That Act also provides tax incentives for businesses that establish private lactation areas in the workplace and allows breastfeeding equipment and consultation services to be tax deductible for families. It is imperative to note that the UK Equality for England and Wales lacks incentives to employers to provide lactation services.

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[9] Ibid.
[10] Ibid.
[11] US.Legal.com, 'Breast Feeding Laws', http://breastfeedinglaws.uslegal.com/ accessed 17 December 2015
[12] Ibid.
[13] *Martinez v. N.B.C. INC. 49 F.Supp.2d 305 (1999)*, Dick v. School Board of Orange County 650 F.2d 783, *Wallace v. Pyro Mining Co. 951 F.2d 351 (6th Cir.1991).*
[14] N. Mohrbacher and K. Kendall-Tackett, 'Breastfeeding Made Simple: Seven Natural Laws for Nursing Mothers 2nd Ed. pg. 207
[15] E. C. Brooks, 'Legal and Ethical Issues for the IBCLC Jones and Barletta', 2013 pg. 188
[16] H.R.2758 - Breastfeeding Promotion Act of 2011
[17] US.Legal.com, 'Breast Feeding Laws', http://breastfeedinglaws.uslegal.com/ accessed 17 December 2015
[18] Ibid
[19] Pregnancy Discrimination Act of 1978 http://www.eeoc.gov/laws/statutes/pregnancy.cfm <accessed 17 December 2015
[20] Ibid

According to BreastfeedingLaw.com that main site on USA laws on breastfeeding,[21] it mentions Alabama, Section 22-1-13 provides for the law the breastfeeding children in public or private locations. This law is to the effect that a mother may breastfeed her child in any location, public or private, where the mother is otherwise authorized to be present.[22]

In Arkansas the law provides that a woman is not in violation of this section for breastfeeding a child in a public place or any place where other individuals are present.[23]

For Minnesota locations used for breast-feeding. A mother may breast-feed in any location, public or private, where the mother and child are otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast-feeding.[24]Furthermore the law indecent exposure and relates to penalties. The law provides that Breast-feeding is not a violation of this section for a woman to breast-feed.[25]

It is currently asserted that majority of the states in the US have legislated the necessary laws on breastfeeding as illustrated by some of the randomly selected States. As noted those laws are either permitting mothers to breastfeed in public places and spaces while others are more concerned with private location. It might be worthwhile highlighting that those laws have also provided that breastfeeding does not constitute part of the criminalised acts of indecent exposure or other forms of criminal behaviour. In essence States with such breastfeeding friendly laws are as many as 43 states.[26] For example the District of Columbia and the Virgin Islands have laws specifically allowing women to breastfeed in any public or private location and 28 states exempt breastfeeding from public indecency laws.

Other States including, California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Indiana, Maine, Minnesota, Mississippi, Montana, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington, Wyoming District of Columbia and Puerto Rico have laws related to breastfeeding in the workplace. The state of Virginia has gone one step further to permit women to breastfeed on any land or property owned by the state.

At the same time many States in the US have enacted laws to require public places to have accessible areas designed for breastfeeding that are not bathrooms. There are State laws which

[21] See BreastfeedingLaw.com http://breastfeedinglaw.com/state-laws/alabama/ accessed 17 December 2015

[22] Alabama Code 2006-526, p. 1222, §1

[23] Arkansas Code No. 817, § 1; 2001, No. 1553, § 7; 2001, No. 1665, § 1; 2001, No. 1821, § 2; 2003, No. 862, § 1; 2005, No. 1815, § 1; 2005, No. 1962, § 5; 2007, No. 38, § 1; No. 680, § 1.

[24] Minnesota Code § 145.905

[25] Ibid. Code § 617.23

[26] See BreastfeedingLaw.com http://breastfeedinglaw.com/state-laws/alabama/ accessed 17 December 2015

require licensed child care facilities to provide breastfeeding mothers with a sanitary place that is not a toilet to breastfeed their children.[27]

C. Law on public breasting feeding in the UK.

The Equality Act is specifically applicable to only England and Wales. In that context Section 13(6) of the Equality Act stipulates, dismissing or suspending of a woman because she has been breastfeeding is interpreted as a typical example of an action of that treats such a woman in a less favourable manner than other workers and hence a type of direct discrimination.[28] Section 17(2) of the Act outlaws acts that result into treating a woman in a less favourable manner because of her pregnancy.[29] However unlike USA, Canada and the Scotland breastfeeding that afford unlimited protection to the women's rights to breastfeed, Section 17(3) of the Act limits such a breach to acts of unfavourable treatment that are committed within 26 weeks (which is 2 years and 2 months) of giving birth.[30] Specific reference is made to acts of unfair treatment of a woman because in work places due to breastfeeding as example of acts might express less favourability.[31] Although in November 2015, in the appellate decision of *Flatt v. Canada (Attorney General),*[32] the Canadian Federal Court of Appeal upheld the decision of Public Service Labour Relations and Employment Board (PSLREB) that unfair treatment of women because she is breastfeeding does not amount to discrimination on grounds of sex.[33] That law applies to anyone that provides services and facilities including public premises.[34] Such a legal obligation extends to higher education bodies and associations. Service providers include most organisations who services are directly dealing with the public. In the same vain public and private artificial persons in law are expected to respect the right to breast feeding.[35] Service providers must therefore refrain from either discriminating or harassing the women for public breastfeeding. Discrimination includes refusing to provide a service, providing a lower standard of service or providing a service on different terms.[36] However unlike the USA law which requires employers a duty to make provisions for vacant lactation room as seen the case of *Angela Ames v. Nationwide Mutual Insurance* CO.[37]

(ii) Scottish law on breastfeeding

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[27] Ibid.

[28] Equality Act 2010, Chapter 15, Section 13(6) (a)

[29] Ibid Section 17(2)

[30] Ibid Section 17(3)

[31] Ibid. Section 17(4)

[32] *Flatt v. Canada (Attorney General)*, 2015 FCA 250 (CanLII),

[33] Equality Act 2010, Chapter 1, section 17 (4)

[34] See Health challenge in Wales on http://www.healthchallengewales.org/breastfeeding-welcome-scheme> accessed 17 December 2015

[35] Ibid.

[36] Ibid.

[37] Angela Ames v. Nationwide Mutual Insurance CO 28 U.S.C. § 1254(1).

Scottish model of criminalising and protection of public breastfeeding:

Unlike other parts of the UK, in Scotland there is this a criminal model for dealing with persons that interfere with Breastfeeding etc. (Scotland) Act 2005 asp 1 (Scottish Act). It is unclear whether other countries struggling with enforcement of breastfeeding laws have a lesson to learn from the Scottish law. What is this telling us about to role of criminal law in protecting rights to public breastfeeding?

Accordingly, Breastfeeding etc. (Scotland) Act 2005 asp 1 (Scottish Act)

This Act came into force in force from September 1, 2009 to present. The Act contains several provisions but for purposes of this study is section 1 that creates an offence of preventing or stopping a child from being fed milk.

> (1) Subject to subsection (2), it is an offence deliberately to prevent or stop a person in charge of a child from feeding milk to that child in a public place or on licensed premises.[38]
>
> (2) Subsection (1) does not apply if the child, at the material time, is not lawfully permitted to be in the public place or on the licensed premises otherwise than for the purpose of being fed milk.[39]
>
> (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.[40]
>
> *"Public place"* means any place to which, at the material time, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.[41]

In this case Scotland appears to use its powers to legislate policies and practices in areas of National Health Service to promote and support public breastfeeding. Perhaps devolution of the National Health sector must provide momentum for similar legislation in Wales on purely grounds of using the law in supporting the objectives of the National Health Service.

The significance of USA and UK models of local regions having laws:

Federalisation and delegation of legislative powers might have a role to play.

Regions such as Scotland in the UK and Arkansas in USA enacting their own laws to support breastfeeding suggest that laws on breastfeeding are part of the legal regimes that might benefit from

[38] (Scotland) Act 2005 asp 1 (Scottish Act).
[39] Ibid.
[40] Ibid.
[41] Ibid.

decentralisation of law making powers. Of course the centralisation might have a rope to play as well in some respects.

The also shows the implementation of laws for promoting and protecting breast feeding might be more effective through grass root measures and approaches.

D. National Health Service (NHS) as an advocate for breast feeding in the UK:

It is asserted that if a mother is are able to breastfeed, the benefits to her and the baby are numerous and some of these include:

- In case a mother is are able to breastfeed the benefits to her and the baby are numerous and some of these include:
- Breast milk is the only natural food that is specifically designed for the baby.[42]
- Breastfeeding protects the baby from infections and diseases than bottle-feeding.[43]
- Breast milk provides health benefits for the baby through increasing maternal immunity.[44]
- Some maternal related health problems could be overcome by breast feeding.[45]
- It is cheaper since the mother will not need to pay for milk or bottles etc.[46]
- It has more chances of availability than bottle feeding.[47]
- The milk of breast feeding mother is always at the right temperature.[48]
- There is higher connection between breast feeding mothers and the child this increasing the high likelihood of building a stronger physical and emotional bond between mother and baby.[49]
- It can give you a great sense of achievement.[50]

[42] See NHS Report, 'More breastfeeding 'would save NHS millions', < http://www.nhs.uk/news/2014/12December/Pages/More-breastfeeding-would-save-NHS-millions.aspx> accessed 17 December 2015.
[43] Ibid.
[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Ibid.
[50] Ibid.

Perhaps failure to embrace flexibility and tolerance in how public breast feeding must or ought or be done might have indirect health effects of polices. Moreover some policies are that would seek promote rights to breast feeding, rights of maternal reproductive health and the burdens associated with the society as a potential barrier to child bearing. The following evidence suggest that health practitioners prefer to dispense with traditional stereotypes that might directly or indirectly portray breast feeding as cumbersome, undesirable, heinous to those mothers willing to adopt the practice.

E. Right to public breast feeding to scientific evidence on health care:

According to the NHS 2005 infant feeding survey;[51]

I. Overall, if the proportion of women exclusively breastfeeding for at least four months increased the NHS would save £11 million per year for the three reduced infant infections.[52]

II. Increasing the breastfeeding in neonatal units could save £6.12 million per year by reducing the incidence of necrotising enter colitis.[53]
Necrotizing enterocolitis (NEC) is a medical condition primarily seen in premature infants.[54]

III. To save £21 million from breast cancer, breastfeeding rates for women would have to halve the number who have never breastfed and double the number of women who breastfeed for 7 to 18 months.

IV. If the health gains for women using National Institute for Health and Care Excellence (NICE) figures for Quality of Life Years is added, the widely reported saving of £31 million is estimated.[55]

Effects and impacts of Discriminative and demining gestures to women for breast feeding:

This also exposes the weakness of the law in regulating practices that compromises some of the inherent rights associated with protecting children's rights.

Discriminative tendencies have led to some more than 40 federal States of the US to develop laws aimed at protecting the mother's right to nurse in public.

[51] Infant feeding survey 2005: The information centre knowledge for care', Keith Bolling, Catherine Grant, Becky Hamlyn, Alex Thornton (eds). < http://www.hscic.gov.uk/catalogue/PUB00619/infa-feed-serv-2005-rep.pdf> accessed on the 17 December 2016
[52] Ibid
[53] Ibid
[54] *Sodhi C, Richardson W, Gribar S, Hackam DJ "The development of animal models for the study of necrotizing enterocolitis" Dis Model Mech 1 (2-3): (2008) pg. 94–8.*
[55] NHS and evidence based support for breast feeding: http://www.hscic.gov.uk/catalogue/PUB00619/infa-feed-serv-2005-rep.pdf

The act of criticising breast feeding may lead to health impacts on the child as the mother becomes a conformist to discouraging trends of public breast feeding.

> "Increase in breastfeeding could save NHS £40m a year," The Independent reports after a recent economic modelling study projected a reduction in childhood diseases and breast cancer rates would lead to considerable savings for the health service."[56]

However it can be inferred that Child bearing might become burdensome due to the negative outcomes of mistreating or dehumanising mothers for public breast feeding. These attitudes might perhaps contribute to the

Impact

It might be necessary to carry out more research of the effect of public stereotypes especially in certain communities that frown at women for breast feeding in public.

F. The Right based approach in legitimising breast feeding.

What does the CEDAW say in relation to breast feeding related discrimination?

According to the obligations of States Parties in the CEDAW, they are expected to condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

> "To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women."[57]

It is unclear whether state have considered whether confronting and compelling a mother and hashing them for neither hiding or covering before breast feeding should constitute a criminal act of some kind for which the actor might be prosecuted and punished for his or her actions.[58] It might be a way in which criminal law might an active and proactive role in protecting the mother, child and the entire family. Otherwise absence of criminal law providing criminal sanctions for acts that infringe the

[56] See NHS<http://www.nhs.uk/conditions/pregnancy-and-baby/pages/breastfeeding-in-public.aspx#close>ACCSEDON> 17 December 2015
[57] Convention on Elimination of All forms of Discrimination Against Women Article 2 (b) (e)
[58] See Breastfeeding etc. (Scotland) Act 2005 Sections (3) and (4) the Offence of preventing or stopping a child from being fed milk.

liberty and freedom of the mother to freely and breast feed in public exposes this marginalised group of women to discriminative publicly manifested stereotypes.

In addition to the above Article 2 of the CEDAW also states,

> "To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."[59]

This might be perhaps more useful in cases where the State has vested legislative powers in hands of regional, federalised and localised centres to ensure that such an obligation is upheld. At least at places of work, in universities and churches, public transports, parks among other places within these regional areas ensuring that breast feeding women are treated with respect in Scotland.[60] The organisations in which they are involved should be informed of their duty of placing notices that acts and gestures that contravene women's right to breast feed constitute an offence and are punishable in law.[61]

More to that,

> "To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women"[62]

A classic example of where such measures are ingrained in a criminal legal framework is evidenced in law of Scotland that was highlighted in the earlier section.

Offence of preventing or stopping a child from being fed milk

The Breastfeeding Act provided that Subject to subsection (2), it is an offence deliberately to prevent or stop a person in charge of a child from feeding milk to that child in a public place or on licensed premises.[63]

Furthermore the above act provides that offence does not apply if the child, at the material time, is not lawfully permitted to be in the public place or on the licensed premises otherwise than for the purpose of being fed milk.[64]

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[59] Convention on Elimination of All for(Scotland) Act 2005 asp 1 (Scottish Act). ms of Discrimination Against Women Article 2 (e)

[60] Breastfeeding etc. (Scotland) Act 2005 Sections (3) and (4) < http://www.legislation.gov.uk/asp/2005/1/section/1> accessed on the 17 December 2015

[61] Ibid.

[62] Convention on Elimination of All forms of Discrimination Against Women Article 2 (f)

[63] (Scotland) Act 2005 asp 1 (Scottish Act).

The punitive measure is provided that a person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.[65]

For interpretative purposes the section sheds more light of the meaning of the child in this context to be limited to the age of two years.[66] It is imperative to note that the law attaches a much broader definition to feeding encompass bottle-feeding rather than only breastfeeding.[67] It must be recalled that the NHS advocates for the former rather than the latter.

G. Situations the increase challenges of breastfeeding in global context.

(a) Breasting mothers with disabilities.

The approaches used in debates on laws of breastfeeding are not mentioning the challenges of breastfeeding with disabilities.[68] This issue is crucial since it would improve the protection afforded to the health of children born by breastfeeding mothers.[69] Thus the presence of breastfeeding mothers makes the issue of diversity of this minority fraction to be immense value to future legislators and policy makers.[70] Of course there are some websites of public health as well as online activist blogs referring to this issue,[71] nonetheless the law should be seen as an important vehicle for deconstructing the one-sided view of perception of the modern problems facing breastfeeding mothers.[72] That is to say a paradigm of narrowing these debates to gender rather is reducing the room for concepts of diversity such as disabilities is excluding mother with disabilities to be benefit from such legal developments.[73]

(b) Breastfeeding mothers in refugees camps

The issues around reconceiving the situations of breastfeeding include the welfare of breastfeeding mother that might end up as refugees in another jurisdiction. This raises questions of social justice and distributive equity in debates that tend to assume gender without factoring how income inequalities

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[64] Ibid. Section 2
[65] Ibid. Section 3
[66] Ibid Section 4
[67] Ibid Section 4 (a) (b)
[68] N. Siebenaler and J. Roger, 'Breastfeeding with maternal physical impartments ',R. Mannel, P. J. Martens and M. Walker (eds.) 'Core Curriculum for Lactation Consultant Practice', 2nd Edition, International Lactation Consultation Association, Jones and Barrette Publishers, 2008, pg. 500
[69] E. C. Brooks, 'Legal and Ethical Issues for the IBCLC Jones and Barletta', 2013 pg. 188
[70] N. Mohrbacher and K. Kendall-Tackett, 'Breastfeeding Made Simple: Seven Natural Laws for Nursing Mothers 2nd Ed. pg. 207
[71] See NHS on Breastfeeding with a disability <http://www.amazingbreastmilk.nhs.uk/how-to-breastfeed/feeding-with-a-disability/>accessed 12 January 2016 , see also My mummy does; http://www.mymummydoes.co.uk/breastfeeding/breast-feeding-with-a-disability/>accessed 12 January 2016
[72] N. Siebenaler and J. Roger, 'Breastfeeding with maternal physical impartments ',R. Mannel, P. J. Martens and M. Walker (eds.) 'Core Curriculum for Lactation Consultant Practice', 2nd Edition, International Lactation Consultation Association, Jones and Barrette Publishers, 2008, pg. 500
[73] See Unity law <http://www.maternityaction.org.uk/wp/>accessed 12 January 2016, see also The Breastfeeding Network, 'Breastfeeding in Public',<https://www.breastfeedingnetwork.org.uk/breastfeeding-help/out-about/>accessed 12 January 2016

make increase vulnerability to breastfeeding wars.[74] The absence of specific social measures aimed at such individuals in host States raises issues of economic debates of how their protection might encourage and widen the scope of debates on issues of breastfeeding.[75] Although this shows that being a refugee would intensify the difficulties of a breastfeeding woman,[76] it remains challenging to use refugee law as a widow for strengthening the legitimacy of this matter.[77] That is due to the fear of creating division among refugees and asylum seekers that might complicate issues of identifying this group as propounded by scholars in refugees and asylum seeker laws.[78]

(c)Breastfeeding mothers in the midst of ongoing armed conflict.

At a glance it might be assumed that International humanitarian law is the source of law that can source of protection for breastfeeding mothers in the midst of an ongoing armed conflict. That is certainly true considering that mothers with disabilities are also most likely to be non-combatants. That makes exploring the Fourth Geneva Convention[79] and Additional Protocol 1 vital.[80] According to Article 76, Additional Protocol 1 requires that pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases prioritised.[81]

Additionally the Protocol also clarifies on the punishment by stating that to the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.[82]

Article 49 of the Fourth Geneva Convention refers to resettling and relocation of non-combatants. However it is completely silent on whether breastfeeding remains vital or holds any significance in such situations.[83]

However the entire framework of this protection is too generalised by referring to all non-combatants or women in Additional Protocol 1.[84] This basic protection is rather weak and poorly

[74] *Martinez v. N.B.C. INC. 49 F.Supp.2d 305 (1999)*, Dick v. School Board of Orange County 650 F.2d 783, *Wallace v. Pyro Mining Co. 951 F.2d 351 (6th Cir.1991).*

[75] Reproductive health in refugee situations: An inter-Agency field Manual (UNFPA, UNHCR, WHO) 1999 <http://helid.digicollection.org/en/d/Jwho34e/6.8.html#Jwho34e.6.8> accessed 16 January 2016

[76] Ibid.

[77] A. L. Nemece, 'What Can Disability Learn from the Breastfeeding Wars?' (2011) 2(31)

[78] Reproductive health in refugee situations: An inter-Agency field Manual (UNFPA, UNHCR, WHO) 1999 <http://helid.digicollection.org/en/d/Jwho34e/6.8.html#Jwho34e.6.8> accessed 16 January 2016

[79] *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) ('Fourth Geneva Convention').

[80] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I)

[81] Additional Protocol 1 Article 76 (2)

[82] Ibid Article 76 (3)

[83] the Fourth Geneva Convention Article 49 of

positioned to render the more victimised and more vulnerable women legal protection For example women breastfeeding in armed conflict or those breastfeeding with disabilities during times of armed conflict might need more deserving protection considering their experiences in day to day situations.[85] It is imperative to clarify that Additional Protocol 1 also outlaws acts of sexual violence against women and those with infants.[86] It is imperative to highlight that having infants does not necessary make a mother a breastfeeding victim. Accordingly it is likely that the prevalence of sexual violence in regions of armed conflict would in itself pose salient threat to a breastfeeding mother. It must be noted that most laws relating to breastfeeding are focusing on situations of peace with less effort to find wider application of these laws to those women faced with globally situations. It must be noted that disabilities might lead to victimization then how much more should it be emphasised that being a Breastfeeding Mother with disabilities during armed conflict escalates that victimisation especially where the law seems silent.

Lessons and connection with other studies:

The exclusion of mothers with disabilities in most debates for developing laws for dealing with breastfeeding wars has similarities with the exclusion of persons with disabilities in the genesis of laws of war.[87] Generally speaking the discussion of how the law is changing the perspective of breasting and women has important lessons in how law of armed conflict must change to step up the minimalist that is far ineffective in affording adequate protection to this group.[88] Indeed the solutions to breastfeeding wars are pointing in the direction of law in also being a solution through providing for inclusion of person with disabilities in times of armed conflict.[89] Of course the extent of complication and application of social model in the disability context leads to differences; nonetheless that variance should be considered an insignificant argument to displace the presence of correlation with what the law might be expected to respond, in terms of persons with disabilities.

Conclusion:

It is apparent that using the right based approach and the criminal model of enforcement might have a role to play in improving attitudes of the general public on issues of breast feeding. It is apparent that breast feeding is an area of convergence where the some policy can be used to promote the rights of

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[84] Additional Protocol 1, Article 76

[85] *Martinez v. N.B.C. INC. 49 F.Supp.2d 305 (1999)*, Dick v. School Board of Orange County 650 F.2d 783, *Wallace v. Pyro Mining Co. 951 F.2d 351 (6th Cir.1991).*

[86] Additional Protocol 1, Article 76 (1)

[87] N. Siebenaler and J. Roger, 'Breastfeeding with maternal physical impartments ',R. Mannel, P. J. Martens and M. Walker (eds.) 'Core Curriculum for Lactation Consultant Practice', 2nd Edition, International Lactation Consultation Association, Jones and Barrette Publishers, 2008, pg. 500 , see also *Martinez v. N.B.C. INC. 49 F.Supp.2d 305 (1999)*, Dick v. School Board of Orange County 650 F.2d 783, *Wallace v. Pyro Mining Co. 951 F.2d 351 (6th Cir.1991).*

[88] Additional Protocol 1, Article 76

[89] A. L. Nemece, 'What Can Disability Learn from the Breastfeeding Wars?', (2011) 2(31)

women but at the same time strengthening the right of the child. This is classic example that is synonymous with the commercial law principle of having third party beneficiaries from rights in cases of the principle-agent relationship. In those cases the acts of one party are interpreted to be aimed at benefiting the third other who might be secondly to the main or principle basis of the contractual obligations.

Secondly this an another area where law could be used to support interest of health care and medical practitioners through encouraging the legal regimes that would improve attitudes to public breast feeding and protection of rights that are collateral to maternal reproductive health.

There several sets of municipal laws protecting breastfeeding in within different countries as discussed above. However it must be emphasized that those laws are still limited in two ways. They only apply to acts to done breastfeeding within the domestic jurisdiction of the legislating State. Secondly such laws are intended to apply in situations of peace rather than times of armed conflict. Thus international law might help is clarifying what protection standards must be globally applied by State actors and individuals in times of peace and situations of armed conflict.