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GIG WORK, GENDER, AND JUSTICE: RETHINKING MATERNITY BENEFITS IN INDIA AND BEYOND

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ABSTRACT

The rise of the gig economy in India has transformed employment patterns, but it has also exposed major gaps in social protection frameworks. While the Maternity Benefit Act, 1961, and subsequent amendments represent significant progress in recognizing maternity as a legal right, these provisions are designed for women in formal, long-term employment. Gig and platform workers, constituting millions of livelihoods, remain excluded despite their growing role in India's labor market. This paper examines the historical and legal evolution of maternity protection in India, the constitutional and human rights dimensions of reproductive justice, and the position of gig workers under the Code on Social Security, 2020. Drawing upon comparative perspectives from the European Union, United Kingdom, United States, and developing nations like the Philippines and Brazil, it highlights global trends toward universal maternity protection. The analysis reveals persistent challenges such as definitional ambiguities, weak enforcement, and resistance from digital platforms. To address these gaps, the paper recommends universal maternity benefits decoupled from formal employment, the creation of a dedicated maternity benefit fund for gig workers, and targeted legislative amendments. Ultimately, inclusive maternity protection is essential not only for women's economic participation but also as a marker of social justice in a rapidly changing economy.

Keywords: *Gig economy, Maternity Benefit Act, Social Security Code, Women workers, Constitutional rights, Social justice.*

1. INTRODUCTION

“No country can ever truly flourish if it stifles the potential of its women and deprives itself of the contributions of half its citizens.”

— Michelle Obama

Employment in India is undergoing major changes. Traditional, permanent jobs are no longer the only option. Increasingly, people work in what is called the *gig economy*.

The Code on Social Security, 2020 defines a “*gig worker*” as a person who performs work outside the traditional employer–employee relationship.¹ It also defines a “*platform worker*” as a worker who connects with organizations or individuals through an online platform and provides services for payment.²

According to the NITI Aayog Report (2022), India had 7.7 million gig workers in 2020–21. This number is projected to increase to 23.5 million by 2029–30.³ Popular companies like Uber, Ola, Swiggy, and Zomato rely heavily on this workforce. While gig work offers flexibility, it comes with insecurity, lack of fixed wages, and limited legal protection.

1.1 Gendered Impact: Women and Exclusion

The gig economy does not affect all workers equally. Women face particular disadvantages. They often balance paid work with unpaid care responsibilities. Pregnancy and childcare make them more vulnerable in the absence of workplace protections.

The International Labour Organization, 2018 notes that women in informal and platform-based work are among the most excluded from maternity protection.⁴ In India, female labor force participation remains low at 23% (World Bank, 2022).⁵ Without maternity support, many women are forced to leave the workforce, reinforcing gender inequality.

Indian courts have acknowledged that maternity is not a private issue but a matter of social justice. In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, the Supreme Court held that even daily wage workers are entitled to maternity benefits.⁶ Yet, gig workers remain outside the coverage of the Maternity Benefit Act, 1961, highlighting a major gap in law and policy.⁷

¹ Code on Social Security 2020, s 2(35).

² Ibid s 2(61).

³ NITI Aayog, India’s Booming Gig and Platform Economy (NITI Aayog 2022) <https://www.niti.gov.in/> accessed 4 September 2025.

⁴ International Labour Organization, *Women and Men in the Informal Economy: A Statistical Picture* (3rd edn, ILO 2018).

⁵ World Bank, *Labour Force Participation Rate, Female (% of female population ages 15+)* (World Bank 2022) <https://data.worldbank.org/> accessed 4 September 2025.

⁶ (2000) 3 SCC 224.

⁷ Maternity Benefit Act 1961.

1.2 Importance of Maternity Benefits

The Maternity Benefit Act, 1961 defines *maternity benefit* under Section 3(o) as the payment due to a woman during her absence from work owing to childbirth.⁸ The Act embodies the directive in Article 42 of the Constitution, which requires the State to ensure just and humane conditions of work and maternity relief.⁹

Reproductive rights are part of the right to life under Article 21, as held in *Suchita Srivastava v. Chandigarh Administration*.¹⁰ Denial of maternity benefits is therefore not only contrary to statutory law but also inconsistent with constitutional guarantees of equality (Article 14), non-discrimination (Article 15(3)), and dignity (Article 21).

Internationally, the ILO Maternity Protection Convention, 2000 (No. 183) requires maternity protection for all employed women, regardless of work arrangement.¹¹ Similarly, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) obligates states to prevent discrimination in employment, including denial of maternity rights.¹² As a signatory to these instruments, India is expected to align its domestic framework with global standards.

2. MATERNITY BENEFIT ACT: A HISTORICAL AND LEGAL ANALYSIS

2.1 Origin and Background

The idea of maternity protection in India has roots in the early twentieth century. The Royal Commission on Labour (1931) recommended maternity benefits for women workers.¹³ Following these recommendations, different provinces passed separate maternity laws, such as the *Bombay Maternity Benefit Act, 1929* and similar enactments in Madras, Uttar Pradesh, and Bengal.¹⁴

The need for uniformity led to the passing of the Maternity Benefit Act, 1961.¹⁵ The Act

⁸ Ibid s 3(o).

⁹ Constitution of India 1950, art 42.

¹⁰ (2009) 9 SCC 1.

¹¹ International Labour Organization, Maternity Protection Convention (Convention No 183, adopted 15 June 2000, entered into force 7 Feb 2002).

¹² Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

¹³ Royal Commission on Labour in India, Report (1931).

¹⁴ Bombay Maternity Benefit Act 1929; Madras Maternity Benefit Act 1934; Uttar Pradesh Maternity Benefit Act 1938; Bengal Maternity Benefit Act 1939.

¹⁵ Ibid 7.

consolidated and replaced earlier provincial laws and created a single national framework. Its object was to regulate employment of women during maternity and to secure payment of maternity benefits.

2.2 Legal Framework of the Act

The Maternity Benefit Act, 1961 applies to factories, mines, plantations, shops, and establishments employing a prescribed number of persons.¹⁶

- Section 3(o) defines *maternity benefit* as the payment to a woman during her absence from work owing to childbirth.¹⁷
- Section 5 provides that every woman is entitled to maternity benefit if she has worked for at least 80 days in the preceding 12 months.¹⁸
- Originally, maternity leave was fixed at 12 weeks—six weeks before and six weeks after delivery.¹⁹
- Provisions were also included for *miscarriage, illness arising out of pregnancy, and prohibition of dismissal during maternity leave*.²⁰

This statutory protection drew its strength from Article 42 of the Constitution, which directs the State to provide just and humane conditions of work and maternity relief.²¹

2.3 Evolution of the Act

The Act has been amended over time to extend greater support.

- The 1976 amendment introduced adoption leave and extended certain benefits.²²
- The 2017 amendment marked a major change, extending paid maternity leave to 26 weeks, with a limit of 8 weeks before delivery.²³
- Provisions were also added for work-from-home arrangements and for establishments with 50 or more employees to provide crèche facilities.²⁴

These amendments reflected the legislature's attempt to adapt to changing work patterns and the growing participation of women in the workforce.

¹⁶ *ibid*, s 2.

¹⁷ *ibid*, s 3(o).

¹⁸ *ibid*, s 5(2).

¹⁹ *ibid*, s 5(3).

²⁰ *ibid*, ss 9–12.

²¹ *ibid* 9.

²² Maternity Benefit (Amendment) Act 1976.

²³ Maternity Benefit (Amendment) Act 2017, s 3.

²⁴ *ibid*, s 11A.

2.4 Strengths of the Framework

The Maternity Benefit Act represented a progressive step for its time. It recognized maternity as a social responsibility and not a personal burden. By granting paid leave and job protection, it advanced women's right to health and dignity. The extension to 26 weeks positioned India among countries with one of the longest durations of maternity leave.²⁵

The Act also set out penalties for non-compliance, creating an enforcement mechanism that made maternity protection a matter of legal right rather than charity.²⁶

2.5 Limitations in the Present Economy

Despite its strengths, the Act was drafted in an era when work was largely formal and structured. Its coverage is limited to women employed in specific establishments. Large sections of the workforce, particularly those in the unorganized sector, contractual work, and gig economy, remain outside its scope.²⁷

The requirement that a woman must have worked for at least 80 days in the preceding year also excludes many short-term and irregular workers.²⁸ In addition, the financial burden of maternity leave falls directly on employers, which discourages hiring of women in certain sectors.

While the Act reflects the values of its time, its framework struggles to meet the realities of modern employment, where increasing numbers of women work outside traditional employer–employee relationships.

3. GIG WORKERS IN INDIAN LEGAL FRAMEWORK

3.1 Defining Gig and Platform Workers

The Code on Social Security, 2020 is the first Indian legislation to formally recognize gig and platform workers.²⁹

- Section 2(35): A *gig worker* is defined as a person who performs work or participates in a work arrangement and earns from such activities outside of the traditional employer–employee relationship.³⁰

²⁵ ILO, *Maternity and Paternity at Work: Law and Practice Across the World* (2014).

²⁶ *ibid* 7, ss 21–23.

²⁷ International Labour Organization, *Women and the Future of Work in India* (ILO 2018).

²⁸ *ibid* 7, s 5(2).

²⁹ *ibid* 1.

³⁰ *ibid* s 2(35).

- Section 2(61): A *platform worker* is one who performs work using an online platform to access organizations or individuals and provides services for payment.³¹

This recognition is significant because it acknowledges that millions of workers in India—drivers for Uber and Ola, food delivery partners with Swiggy and Zomato, freelancers on digital platforms—form part of a growing workforce not covered by earlier labor laws.

3.2 Position under the Code on Social Security, 2020

The Code provides for certain schemes to extend social security to gig and platform workers.

- Chapter IX (Sections 109–114): empowers the central and state governments to frame welfare schemes on health, maternity, disability, life cover, old-age protection, and other benefits for gig and platform workers.³²
- Workers are required to be registered on a central portal to access these schemes.
- Aggregators (companies like Uber, Swiggy, Zomato) are required to contribute between 1% to 2% of their annual turnover towards a social security fund for gig and platform workers.³³

This framework represents the first statutory attempt to include such workers in India’s social security net.

3.3 Current Status under Indian Labor Law

Despite this recognition, gig workers still occupy an uncertain place in Indian labor law.

1. Not “employees” in the strict sense: Gig workers do not fall under the definition of “workman” under the Industrial Disputes Act, 1947³⁴ or “employee” under most labor statutes. This means they are excluded from protections like minimum wages, gratuity, provident fund, or maternity benefits.
2. Limited social security: While the Code on Social Security, 2020 has provisions, most schemes are yet to be implemented effectively. As a result, gig workers remain without practical access to maternity relief, healthcare, or retirement security.
3. Dependence on judicial recognition: Courts in India have begun to acknowledge the unique vulnerabilities of gig workers, but there is no settled jurisprudence. For example, in *Nitisha v. Union of India*, the Supreme Court emphasized substantive equality in

³¹ *ibid* s 2(61).

³² *ibid* ss 109–114.

³³ *ibid* s 114(4).

³⁴ Industrial Disputes Act 1947, s 2(s).

employment, which could guide future interpretations for extending benefits to gig workers, though the case did not directly involve them.³⁵

3.4 Emerging Concerns

The recognition in the Code is more symbolic than substantive. Until welfare schemes are operationalized and enforcement mechanisms are in place, gig workers remain on the margins of labor protection. Their classification as neither employees nor entirely independent contractors leaves them in a “grey zone” of law, with limited bargaining power and little legal recourse.

4. CONSTITUTIONAL & HUMAN RIGHTS DIMENSIONS

4.1 Right to Equality and Non-Discrimination

The Indian Constitution places equality at its core.

- Article 14 guarantees equality before the law and equal protection of the laws. Denial of maternity benefits to women in informal or gig work creates an artificial classification that undermines substantive equality.³⁶
- Article 15(3) allows the State to make special provisions for women and children. Maternity protection is one such measure of protective discrimination, enabling women to compete on equal footing in the workforce.³⁷

The Supreme Court has repeatedly stressed that equality must be *real and substantive*, not merely formal. In *Air India v. Nargesh Meerza*, the Court struck down discriminatory service rules that forced air hostesses to retire upon pregnancy, calling them arbitrary and violative of Article 14.³⁸

4.2 Right to Dignity and Reproductive Choice

The right to life under Article 21 includes dignity, health, and autonomy. Reproductive rights are seen as an integral part of personal liberty.

In *Suchita Srivastava v. Chandigarh Administration*, the Court held that a woman’s reproductive choices form part of her personal liberty under Article 21.³⁹ This recognition extends beyond mere freedom from coercion—it requires the State to create conditions in

³⁵ (2021) 4 SCC 279.

³⁶ *ibid* 9, art 14.

³⁷ *ibid* art 15(3).

³⁸ (1981) 4 SCC 335.

³⁹ (2009) 9 SCC 1.

which women can exercise motherhood with dignity.

Maternity benefits, therefore, are not charity but an essential component of the constitutional guarantee of dignified life.

4.3 Social Justice and Directive Principles

The Directive Principles of State Policy reinforce these rights.

- Article 39(d): Equal pay for equal work.
- Article 42: Provision for just and humane conditions of work and maternity relief.
- Article 43: Living wage and decent standard of life for workers.

Though non-justiciable, these principles guide interpretation of fundamental rights. In *Randhir Singh v. Union of India*, the Supreme Court held that equality of pay is a constitutional goal enforceable through Articles 14 and 16.⁴⁰ Similarly, maternity protection is an obligation that flows from both fundamental rights and directive principles.

4.4 Supreme Court's Progressive Approach

Indian courts have taken a progressive view when interpreting maternity rights, extending protections to categories of workers not expressly covered by statute.

- ***Municipal Corporation of Delhi v. Female Workers (Muster Roll)***: Daily-wage women workers were held entitled to maternity benefits, as denial would violate Article 14 and 21.⁴¹
- ***B. Shah v. Presiding Officer, Labour Court***: The Court interpreted the Maternity Benefit Act liberally, emphasizing that the legislation is a social welfare measure intended to protect both mother and child.⁴²
- ***Olga Tellis v. Bombay Municipal Corporation***: Though not about maternity, this case expanded the scope of Article 21 to include livelihood, reinforcing that social rights cannot be separated from constitutional guarantees of life and dignity.⁴³

These judgments illustrate how constitutional interpretation has often bridged legislative gaps, ensuring maternity protection as a fundamental aspect of human rights.

⁴⁰ (1982) 1 SCC 618.

⁴¹ *ibid* 6.

⁴² (1977) 4 SCC 384.

⁴³ (1985) 3 SCC 545.

4.5 International Human Rights Standards

India's obligations also arise from international law.

- **CEDAW (1979):** Requires states to eliminate discrimination in employment, including protection against dismissal due to maternity.⁴⁴
- **ILO Maternity Protection Convention (2000, No. 183):** Guarantees maternity leave, benefits, and workplace protection for all women workers, irrespective of contract type.⁴⁵
- **Universal Declaration of Human Rights, Article 25(2):** Recognizes special care and assistance for motherhood.⁴⁶

As a signatory, India is expected to harmonize domestic laws with these global commitments.

5. COMPARATIVE & INTERNATIONAL PERSPECTIVE

5.1 European Union

The European Union has taken a proactive approach to platform work.

- The Directive on Transparent and Predictable Working Conditions (2019/1152/EU) ensures minimum rights for all workers, including those in non-standard forms of work.⁴⁷
- The Pregnant Workers Directive (92/85/EEC) mandates at least 14 weeks of paid maternity leave, workplace adjustments, and protection against dismissal due to pregnancy.⁴⁸
- The EU is currently negotiating a Platform Work Directive, which aims to grant platform workers basic employment rights, including access to social security and parental benefits.⁴⁹

This framework demonstrates the EU's movement toward recognizing platform workers as entitled to maternity protection equivalent to regular employees.

⁴⁴ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

⁴⁵ ILO Maternity Protection Convention 2000 (No 183) (adopted 15 June 2000, entered into force 7 February 2002).

⁴⁶ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 25(2).

⁴⁷ Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union [2019] OJ L186/105.

⁴⁸ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers [1992] OJ L348/1.

⁴⁹ European Commission, Proposal for a Directive on Improving Working Conditions in Platform Work COM (2021) 762 final.

5.2 United Kingdom

The UK adopts a layered approach, distinguishing between “employees,” “workers,” and “self-employed.”

- Women classified as *employees* or *workers* are eligible for Statutory Maternity Pay (SMP) or Maternity Allowance, provided they meet minimum earnings and contribution requirements.⁵⁰
- Gig workers, such as Uber drivers, were traditionally excluded. However, in *Uber BV v. Aslam*, the UK Supreme Court held that Uber drivers are “workers,” not independent contractors.⁵¹ This recognition entitles them to paid leave, minimum wage, and potentially maternity-related protections.

The UK experience highlights how judicial interpretation can extend labor rights to gig workers.

5.3 United States

The United States has a fragmented system.

- There is no federal law guaranteeing paid maternity leave. Instead, the Family and Medical Leave Act (1993) provides up to 12 weeks of unpaid leave for eligible employees.⁵²
- Gig workers, typically classified as independent contractors, are excluded from these protections.
- Some states, like California and New York, have introduced paid family leave programs funded through payroll taxes, but these rarely cover gig workers unless they opt into state insurance schemes.⁵³

The U.S. model shows the challenges of relying on state-driven or voluntary systems, which leave many gig workers unprotected.

5.4 Developing Countries

Several developing countries have also recognized the unique vulnerabilities of informal and platform-based workers.

⁵⁰ Employment Rights Act 1996 (UK), pt VIII; Social Security Contributions and Benefits Act 1992 (UK), s 35.
⁵¹ [2021] ICR 657.

⁵² Family and Medical Leave Act of 1993, 29 USC §§ 2601–2654.

⁵³ State of California, Paid Family Leave Benefits (CA Employment Development Department, 2023) <https://edd.ca.gov> accessed 4 September 2025.

- **South Africa:** The *Basic Conditions of Employment Act* provides maternity leave to employees, and recent debates have focused on extending benefits to platform workers.⁵⁴
- **Brazil:** The *Consolidation of Labour Laws* mandates paid maternity leave, and courts have increasingly been willing to question misclassification of workers in platform companies like Uber.⁵⁵
- **Philippines:** The *Expanded Maternity Leave Law, 2019* guarantees 105 days of paid maternity leave for all working women, with government subsidies covering informal and contractual workers.⁵⁶

These examples suggest that even resource-constrained states are attempting to universalize maternity protection beyond formal employment.

5.5 Lessons for India

The international experience provides useful insights:

1. **Broadening definitions:** Many jurisdictions are moving away from narrow employee–employer concepts to include platform and non-standard workers within maternity frameworks.
2. **Judicial activism:** Courts in the UK and Brazil have played an important role in reclassifying gig workers and extending them rights.
3. **Shared responsibility:** Some systems (EU, Philippines) fund maternity benefits through a combination of employer, state, and social insurance contributions, rather than burdening employers alone.
4. **Universal minimum standards:** Instruments like the EU directives and ILO conventions show that maternity protection is increasingly treated as a human right applicable to all working women, irrespective of contract type.

For India, these experiences highlight possible pathways in designing maternity protection for gig workers, while balancing economic feasibility and gender justice.

⁵⁴ Basic Conditions of Employment Act 75 of 1997 (South Africa), s 25.

⁵⁵ Consolidação das Leis do Trabalho (Decree Law No 5.452, 1 May 1943) (Brazil).

⁵⁶ Republic Act No 11210 (Philippines), Expanded Maternity Leave Law 2019.

6. CRITICAL ISSUES & CHALLENGES

6.1 Definitional Ambiguity of Gig Workers

The Code on Social Security, 2020 formally defines *gig workers* and *platform workers*.⁵⁷ Yet, their status under broader Indian labor law remains unsettled.

- They are not classified as “employees” under the Industrial Disputes Act, 1947 or other traditional labor statutes.⁵⁸
- They are also not treated as purely independent contractors, since platform companies exert significant control over pricing, working conditions, and ratings.

This ambiguity places gig workers in a legal *grey zone*. Without recognition as employees, they cannot claim statutory benefits like maternity leave, provident fund, or gratuity.⁵⁹ But without full independence, they lack the bargaining power to secure protections on their own. The absence of a clear legal category makes it difficult to extend maternity benefits through existing frameworks.

6.2 Resistance from Platforms

Gig economy platforms often resist extending statutory benefits, citing cost and operational challenges. Companies like Uber, Ola, Zomato, and Swiggy argue that classifying gig workers as employees would disrupt their business model and raise costs significantly.⁶⁰ Maternity benefits, especially paid leave, are seen as a financial liability that could reduce hiring of women workers. Platforms also argue that gig work offers flexibility and autonomy, and imposing traditional employment protections could undermine these advantages.

This resistance creates a conflict between business efficiency and social justice. While platforms benefit from women’s labor, they externalize the cost of maternity by leaving workers to manage without formal protection.

6.3 Lack of Clarity in Government Schemes

The Code on Social Security, 2020 empowers governments to create welfare schemes for gig workers, including those related to maternity.⁶¹ However, several challenges persist:

⁵⁷ *ibid* 1., s 2(35), s 2(61).

⁵⁸ Industrial Disputes Act 1947, s 2(s).

⁵⁹ *ibid* 7; Payment of Gratuity Act 1972; Employees’ Provident Funds and Miscellaneous Provisions Act 1952.

⁶⁰ NITI Aayog, India’s Booming Gig and Platform Economy (NITI Aayog 2022) <https://www.niti.gov.in/> accessed 4 September 2025.

⁶¹ *ibid* 33.

- 1. No dedicated maternity schemes yet:** While the Code mentions health and maternity as areas for potential schemes, no specific nationwide program has been operationalized.
- 2. Fragmented responsibility:** Both central and state governments may design schemes, leading to uneven implementation across regions.
- 3. Aggregator contribution issues:** Platforms are required to contribute 1–2% of annual turnover to a social security fund, but there is little clarity on collection, allocation, and monitoring of these funds.⁶²
- 4. Registration hurdles:** Access to schemes depends on gig workers being registered on a central portal. Many workers, especially women in informal or low-literacy contexts, remain unregistered and unaware of their entitlements.

The result is a legal framework that exists more on paper than in practice, leaving gig workers effectively excluded from maternity protection.

6.4 Broader Structural Challenges

Beyond law and platforms, there are structural barriers:

- Low female participation in gig economy: With women constituting only a small share of gig workers in India, maternity issues are often sidelined in policy debates.⁶³
- Social stigma: Pregnancy and childcare are still treated as private burdens rather than collective responsibilities, reinforcing workplace exclusion.
- Weak enforcement: Even in formal sectors, compliance with maternity law is uneven.⁶⁴ For gig work, enforcement is even more challenging due to decentralized, app-based employment.

7. RECOMMENDATIONS

7.1 Universal Maternity Benefits

Maternity protection must be treated as a universal right and not as a privilege linked only to formal employment.

⁶² *ibid* 33.

⁶³ World Bank, Labour Force Participation Rate, Female (% of female population ages 15+) (World Bank 2022) <https://data.worldbank.org/> accessed 4 September 2025.

⁶⁴ International Labour Organization, *Maternity and Paternity at Work: Law and Practice across the World* (ILO 2014).

- India can design a national maternity benefit framework that covers all working women, irrespective of contract type, sector, or work arrangement.⁶⁵
- The model may draw inspiration from the Philippines' Expanded Maternity Leave Law, 2019, which guarantees paid leave to all women, with costs partly absorbed by government funds.⁶⁶
- By decoupling maternity benefits from traditional employment, gig workers and informal workers can be brought into the safety net without creating barriers to women's participation in the labor force.

7.2 Social Security Fund for Gig Workers

The Code on Social Security, 2020 already mandates aggregator contributions, but implementation remains weak.⁶⁷ Strengthening this mechanism is critical.

- A dedicated Maternity Benefit Fund should be carved out of the social security fund created from aggregator contributions (1–2% of turnover).⁶⁸
- Contributions can be supplemented by central and state government support, ensuring shared responsibility.
- Disbursement should be direct-to-beneficiary, avoiding middlemen and delays.
- Special registration drives targeting women gig workers can ensure they are enrolled and aware of their entitlements.

This would create a sustainable pool of resources for maternity relief, without overburdening a single actor.

7.3 Legislative Amendments

Both the Maternity Benefit Act, 1961 (MBA) and the Code on Social Security, 2020 require targeted reforms.

1. Amendments to the Maternity Benefit Act:

- Expand the scope of the Act to explicitly include gig and platform workers.
- Allow funding support through a combination of employer, government, and aggregator contributions, rather than solely employer liability.⁶⁹

⁶⁵ *ibid* 7.

⁶⁶ Republic Act No 11210, Expanded Maternity Leave Law (Philippines, 2019).

⁶⁷ *ibid* 1, s 114.

⁶⁸ *ibid* s 109.

⁶⁹ *ibid* 7, s 27; cf Maternity Benefit (Amendment) Act 2017.

2. Amendments to the Code on Social Security, 2020:

- Operationalize clear **maternity-specific schemes** under Chapter IX.
- Provide statutory timelines for creating, funding, and enforcing these schemes.
- Clarify definitions to ensure that women gig workers are not excluded due to technicalities in registration or classification.⁷⁰

These legislative changes would close the current gap between recognition on paper and protection in practice.

7.4 Administrative and Policy Measures

Beyond law, supportive policies are needed:

- **Awareness campaigns** to educate gig workers, especially women, about their rights.
- **Digital platforms** should be made legally responsible for facilitating registration of women workers on the social security portal.
- **Public-private partnerships** may be used to establish crèche facilities accessible to gig workers, modeled on the 2017 amendment to the MBA.⁷¹

7.5 Learning from Global Practices

India can borrow elements from international models:

- From the EU, the principle of *universal minimum standards* irrespective of employment category.⁷²
- From the UK, judicial willingness to reclassify gig workers in ways that extend protections.
- From developing countries like the Philippines, shared-cost systems that recognize maternity as a social responsibility, not just an employer's burden.⁷³

8. CONCLUSION

The rise of the gig economy has challenged traditional categories of labor law. Millions of workers now earn their livelihood outside permanent employer–employee relationships. While this flexibility creates opportunities, it also exposes workers, especially women, to new

⁷⁰ *ibid* 1, ch IX.

⁷¹ Maternity Benefit (Amendment) Act 2017, s 11A.

⁷² Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding [1992] OJ L348/1.

⁷³ Republic Act No 11210 (n 2).

vulnerabilities. Maternity protection is one of the clearest examples of this gap.

Indian law has made significant progress in recognizing maternity as a right. The Maternity Benefit Act, 1961 and its amendments mark important steps in securing women's health, dignity, and equality. Yet, the framework still assumes regular, long-term employment. Gig and platform workers, despite contributing to India's growth story, remain at the margins of this protection.

The Code on Social Security, 2020 provides a foundation by recognizing gig workers, but its promises remain largely on paper. Without effective schemes and legislative clarity, maternity benefits continue to be a privilege for the few, rather than a universal guarantee.

The future of labor rights in India will be defined by how the law adapts to non-standard work. If gig workers remain outside social security, the promise of equality under the Constitution risks becoming hollow. Inclusive maternity protection, by contrast, would affirm that motherhood is not a private burden but a shared social responsibility.

Ensuring maternity rights for gig workers is therefore more than a policy adjustment. It is a marker of true social justice, a recognition that women, regardless of how or where they work, deserve protection, dignity, and equal opportunity to participate in the economy.

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