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MATERNITY RIGHTS IN THE GIG ECONOMY: A SOCIO-LEGAL STUDY OF PLATFORM WORKERS UNDER THE CODE ON SOCIAL SECURITY, 2020

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ABSTRACT

The rapid proliferation of the gig economy in India has fundamentally restructured the contours of labour relations, giving rise to a novel category of workers who defy classification within traditional employer–employee binaries. Women engaged as platform workers – spanning delivery executives, cab aggregator drivers, domestic service providers, and freelance digital professionals – occupy a particularly precarious position at the intersection of informal labour and digital capitalism. This paper undertakes a socio-legal examination of the maternity rights available to such workers under the Code on Social Security, 2020, which for the first time in Indian legislative history formally acknowledges the existence of gig and platform workers as a distinct category. Notwithstanding this recognition, the Code stops short of extending the full panoply of maternity protections, raising pressing questions of constitutional equity, reproductive justice, and social security architecture. Through a doctrinal analysis of the Code alongside the Maternity Benefit Act, 1961, the Constitution of India, and international instruments such as ILO Convention No. 183, this paper identifies critical lacunae in the current legal regime, interrogates their socio-economic underpinnings, and proposes a rights-based framework for comprehensive maternity protection for platform workers in India.

Keywords: Gig Economy, Platform Workers, Maternity Rights, Code on Social Security 2020, Maternity Benefit Act, Informal Labour, Reproductive Justice, Social Security.

CHAPTER 1: INTRODUCTION

1.1 Background and Context

The gig economy characterised by short-term contracts, flexible work arrangements, and the mediation of labour through digital platforms has emerged as one of the defining features of twenty-first century capitalism. In India, this transformation has been strikingly swift: from ride-hailing services such as Ola and Uber to hyperlocal delivery platforms like Swiggy and Zomato, and from freelance marketplaces such as Upwork to domestic service aggregators like Urban Company, the platform economy has absorbed millions of workers who were previously

engaged in entirely unorganised sectors.¹²⁸⁶ As of 2020–21, India's gig workforce was estimated at 7.7 million workers, a figure projected to expand to 23.5 million by 2029–30, making it one of the fastest-growing segments of the national labour market. Women constitute a significant and growing proportion of this workforce, drawn particularly to home-based digital work, caregiving platforms, and short-term service contracts that ostensibly offer flexibility compatible with domestic responsibilities.

Within this landscape, the question of maternity rights acquires acute significance.

¹²⁸⁶NITI Aayog, India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work (2022) [hereinafter NITI Aayog Report].

The Maternity Benefit Act, 1961, the primary legislation governing maternity protections in India, was conceived in the context of a formal, establishment-based economy. Its foundational architecture premised on the existence of a continuous employment relationship, a fixed employer, and an establishment employing ten or more persons renders it structurally ill-equipped to address the realities of platform-mediated work.¹²⁸⁷ The enactment of the Code on Social Security, 2020 represented a legislative opportunity to bridge this gap, consolidating nine pre-existing central labour enactments into a single, unified code.¹²⁸⁸ However, as this paper demonstrates, the Code's treatment of gig and platform workers in the domain of maternity protection reflects a fundamental ambivalence: acknowledging the category without operationalising the rights.

1.2 Statement of the Problem

Women platform workers in India operate in a regulatory vacuum insofar as maternity rights are concerned. They are not 'employees' within the meaning of the Maternity Benefit Act, 1961, nor are they 'workmen' under the Industrial Disputes Act, 1947. The Code on Social Security, 2020, while introducing the definitional categories of 'gig worker' and 'platform worker,' does not expressly extend maternity benefit provisions to these categories.¹²⁸⁹ This legislative silence has profound consequences: pregnant platform workers face income loss, health risks, and the absence of job security conditions that are incompatible with constitutional guarantees under Articles 21 and 42 and with India's obligations under international labour law.¹²⁹⁰

The problem is further compounded by the socio-economic vulnerabilities peculiar to women in the gig economy: lower average earnings, concentration in low-skill service tasks, exposure to algorithmic management that penalises non-availability, and the absence of collective bargaining mechanisms. The intersection of gender, informality, and digital labour creates a unique axis of disadvantage that the existing legal framework has yet to adequately address.

1.3 Objectives, Methodology, and Scope

This paper pursues the following objectives:

- (i) To map the existing legal framework governing maternity rights in India and identify its applicability to platform workers.
- (ii) To undertake a critical analysis of the Code on Social Security, 2020, with specific reference to gig and platform worker provisions.
- (iii) To explore the socio-economic realities of women platform workers and assess the adequacy of current protections.
- (iv) To undertake a comparative analysis of international and foreign jurisdictional approaches to maternity protection in the gig economy.
- (v) To propose reform recommendations grounded in constitutional values and international best practices.

The methodology employed is primarily doctrinal, involving systematic analysis of statutory provisions, judicial decisions, and secondary literature. The paper also draws upon socio-legal analysis to situate legal norms within their lived social context. The scope is limited to maternity benefits *stricto sensu* encompassing paid maternity leave, nursing breaks, crèche facilities, and prohibition of dismissal on account of pregnancy and does not extend to broader reproductive health

¹²⁸⁷Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (India). The Act provides for payment of maternity benefit and certain other benefits to women employed in establishments.

¹²⁸⁸The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India). The Code amalgamates nine central labour enactments relating to social security.

¹²⁸⁹Code on Social Security, 2020, §2(35). 'Gig Worker' means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship.

¹²⁹⁰Constitution of India, art. 42. The State shall make provision for securing just and humane conditions of work and for maternity relief.

rights, though these are acknowledged where relevant.

CHAPTER 2: UNDERSTANDING THE GIG ECONOMY AND PLATFORM WORK IN INDIA

2.1 Defining the Gig Economy: Conceptual Contours

The term 'gig economy' lacks a single, universally accepted definition in either academic literature or legislative instruments. In its broadest sense, it refers to a labour market characterised by the prevalence of short-term contracts or freelance work, as opposed to permanent employment. Platform work a subset of gig work specifically denotes labour performed through digital intermediary platforms that algorithmically match service providers with consumers. The distinguishing features of platform work include: the absence of a permanent employer–employee relationship; payment on a per-task or per-ride basis; worker classification as 'independent contractors' or 'service providers'; and the exercise of significant control by the platform over work processes through algorithmic management.

In the Indian context, the gig economy encompasses a diverse range of sectors: transportation and logistics (Ola, Uber, Porter, Dunzo), food and grocery delivery (Swiggy, Zomato, BigBasket), domestic and personal services (Urban Company, Housejoy), digital freelancing (Upwork, Fiverr, Toptal), healthcare support, and education technology platforms. The workforce is equally heterogeneous, spanning highly skilled software developers and content creators at one end to semi-skilled delivery personnel and unskilled domestic helpers at the other. Women are disproportionately represented in the domestic service, education, and healthcare segments, often working part-time or intermittently.

2.2 Women in the Indian Gig Economy: A Socio-Economic Profile

Despite the rhetoric of flexibility and empowerment that often accompanies

platform work, the reality for women gig workers in India is considerably more complex. The International Labour Organization has noted that in developing countries, the informal economy of which platform work is increasingly considered a part employs approximately 89% of women workers, exposing them to endemic vulnerabilities including income insecurity, lack of social protection, and limited access to dispute resolution mechanisms.¹²⁹¹ In the gig economy specifically, women face additional structural constraints: lower acceptance rates owing to societal restrictions on mobility, concentration in lower-paying tasks, customer-driven rating systems that embed social biases, and the 'double burden' of reproductive labour alongside paid platform work.

A survey conducted by the NITI Aayog in 2022 revealed that women gig workers earn, on average, 30–40% less than their male counterparts performing equivalent tasks, a gap attributable to fewer working hours, task segregation, and algorithmic penalties for non-availability during peak hours periods that frequently coincide with domestic care responsibilities. When pregnant, these workers face a stark binary: continue working through pregnancy without any income support or health protection, or cease work entirely and forfeit their earnings. Neither option is consistent with the state's constitutional obligations.

2.3 The Legal Status Conundrum: Employee, Worker, or Independent Contractor?

The legal classification of platform workers lies at the heart of the maternity rights question. Platforms uniformly classify their workers as 'independent contractors' or 'service partners,' a characterisation designed to avoid the statutory obligations including social security contributions and maternity benefits that attach to the employe–employee relationship. Courts in several jurisdictions have, however, rejected this characterisation when

¹²⁹¹ILO, Women and Men in the Informal Economy: A Statistical Picture, 3rd ed. (Geneva: ILO, 2018). Report notes that 89% of women in developing countries work in the informal economy.

confronted with the reality of algorithmic control, economic dependence, and the subordination of platform workers to the platform's unilateral terms.¹²⁹²

In India, the Supreme Court has adopted a functional approach to the determination of employment status, examining factors such as the degree of control exercised, the economic reality of the relationship, and the vulnerability of the worker, rather than the formal label assigned by the parties. The Code on Social Security, 2020 itself partially recognises this by defining 'gig worker' and 'platform worker' as distinct categories, neither fully assimilated into the category of 'employee' nor dismissed as self-employed. This definitional middle ground, however, creates ambiguity rather than clarity in the operationalisation of rights.

CHAPTER 3: LEGAL FRAMEWORK GOVERNING MATERNITY RIGHTS IN INDIA

3.1 Constitutional Foundations

The Indian Constitution provides the normative bedrock for maternity rights through a constellation of provisions spread across the Fundamental Rights and the Directive Principles of State Policy. Article 21, as expansively interpreted by the Supreme Court, encompasses the right to health, the right to livelihood, and, by extension, the right of a pregnant worker to receive adequate maternity support as an aspect of her right to live with dignity.¹²⁹³ In *Olga Tellis v. Bombay Municipal Corporation*, the Court held that the right to livelihood is an essential component of the right to life, a principle of direct relevance to platform workers who depend on their gig earnings for sustenance.¹²⁹⁴

Article 42 explicitly directs the State to make provision for securing just and humane

conditions of work and for maternity relief, imposing a positive constitutional obligation that cannot be satisfied by a statute that leaves an entire category of working women without coverage. Article 39(d) mandates equal pay for equal work, while Article 46 calls for the promotion of educational and economic interests of weaker sections. Cumulatively, these provisions establish a constitutional imperative for comprehensive maternity protection that is indifferent to the formality of the employment relationship.¹²⁹⁵

3.2 The Maternity Benefit Act, 1961: Provisions and Limitations

The Maternity Benefit Act, 1961 remains the principal statutory instrument for maternity protection in the formal sector. It provides for: (i) paid maternity leave of 26 weeks for the first two children and 12 weeks for subsequent children; (ii) a medical bonus where no pre-natal and post-natal confinement expenses are provided; (iii) nursing breaks twice daily until the child is 15 months old; (iv) the option of working from home under certain conditions; (v) crèche facilities in establishments employing 50 or more workers; and (vi) prohibition of dismissal or variation of service conditions to the detriment of a pregnant employee. The Act's applicability, however, is expressly confined to establishments factories, mines, plantations, shops, and 'other establishments' employing ten or more persons. Its definition of 'woman' covers female employees, including those employed through contractors, but does not extend to genuinely self-employed persons or independent contractors. Platform workers, classified as service partners rather than employees, thus fall outside the Act's protective ambit a gap of staggering proportions given the tens of millions of women engaged in platform work.

¹²⁹²*Uber BV v. Aslam* [2021] UKSC 5. The UK Supreme Court upheld the Employment Tribunal's decision that Uber drivers are 'workers' entitled to statutory employment rights.

¹²⁹³Constitution of India, art. 21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

¹²⁹⁴*Olga Tellis & Ors. v. Bombay Municipal Corporation*, AIR 1986 SC 180. The Court interpreted Article 21 broadly to include the right to livelihood as part of the right to life.

¹²⁹⁵Constitution of India, art. 39(d). The State shall, in particular, direct its policy towards securing equal pay for equal work for both men and women.

3.3 International Obligations: ILO Convention No. 183 and UN Standards

India's international obligations under the ILO's Maternity Protection Convention, 2000 (No. 183) are of direct relevance to this inquiry. Convention No. 183 provides for: a minimum of 14 weeks of maternity leave; cash benefits at a level not less than two-thirds of previous earnings; health protection during pregnancy and nursing; and prohibition of dismissal from the time of notification of pregnancy until the end of maternity leave.¹²⁹⁶ Crucially, the Convention calls upon member states to extend these protections progressively to all employed women, including those in atypical forms of employment a category that plainly encompasses platform workers.¹²⁹⁷

Although India has not ratified Convention No. 183, the Supreme Court has consistently recognised ILO standards as legitimate interpretive aids in construing domestic labour legislation, and the government has in various policy documents expressed commitment to aligning national law with ILO norms. The UN's Sustainable Development Goal 8 (Decent Work and Economic Growth) and Goal 5 (Gender Equality) further reinforce the normative framework within which the rights of women platform workers must be assessed.

CHAPTER 4: THE CODE ON SOCIAL SECURITY, 2020 AND GIG WORKERS

4.1 Overview of the Code: Structure and Objectives

The Code on Social Security, 2020 represents the most significant consolidation of Indian social security legislation in independent history, subsuming nine pre-existing enactments – including the Employees' Provident Funds and Miscellaneous Provisions

Act, 1952, the Employees' State Insurance Act, 1948, the Maternity Benefit Act, 1961, and the Unorganised Workers' Social Security Act, 2008 – into a single legislative instrument.¹²⁹⁸ The Code's stated objective is to extend the coverage of social security to all workers, including those in the unorganised, gig, and platform sectors, while rationalising and simplifying compliance procedures for enterprises.

The Code introduces three new chapters dedicated to social security schemes for unorganised workers, gig workers, and platform workers respectively. This tripartite structure signals a legislative intent to address the heterogeneity of India's non-formal workforce. However, the treatment of maternity protection within this new architecture reveals a fundamental ambivalence: the Code empowers the Central or State Government to formulate welfare schemes for gig and platform workers encompassing life and disability cover, accident insurance, health and maternity benefits, old age protection, and crèche facilities – but does not mandate such schemes or specify their content.

4.2 Recognition of Gig and Platform Workers: A Critical Assessment

Section 2(35) of the Code defines 'gig worker' as 'a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship,' while Section 2(61) defines 'platform worker' as 'a person engaged in or undertaking platform work.' These definitions, broad as they are, constitute the first formal legislative acknowledgement in Indian law of the category of workers who power the platform economy. The significance of this recognition cannot be understated from a constitutional perspective: once the legislature acknowledges a category of workers, it assumes a positive obligation under Articles 21

¹²⁹⁶International Labour Organization, Maternity Protection Convention (No. 183), 2000, 39 ILM 754 (2000). Convention provides for 14 weeks of maternity leave, health protection and prohibition of dismissal.

¹²⁹⁷International Labour Organization, Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103) and the Maternity Protection Recommendation, 1952 (No. 95), ILC 88th Session, 2000.

¹²⁹⁸Unorganised Workers' Social Security Act, 2008, No. 33, Acts of Parliament, 2008 (India). This Act was repealed and subsumed into the Code on Social Security, 2020.

and 42 to ensure that their fundamental interests including maternity protection are adequately safeguarded.

However, the Code's approach to the operationalisation of this recognition is marked by an excessive delegation to executive discretion. Section 114 of the Code empowers the Central Government to frame social security schemes for unorganised workers, gig workers, and platform workers by notification, without prescribing minimum standards, mandatory coverage ratios, or enforceable timelines. The Code on Social Security (Central) Rules, 2021 have not yet prescribed any specific maternity benefit scheme for gig or platform workers, leaving the statutory promise of protection unoperationalised nearly four years after the Code's enactment.¹²⁹⁹

4.3 Maternity Benefits Under the Code: An Analysis of Section 114

Section 114 of the Code provides that the Central Government or the State Government, as the case may be, shall, by notification, formulate suitable welfare schemes for unorganised workers, including schemes relating to life and disability cover, health and maternity benefits, old age protection, and any other benefit as may be determined by the Central Government. The inclusion of 'maternity benefits' within this list is significant as a matter of legislative policy, confirming parliamentary awareness of the need to extend such protection to non-formal workers.

Nevertheless, the provision is deeply flawed from a rights-based perspective. By couching maternity protection in the language of 'welfare schemes' rather than 'statutory entitlements,' the Code subordinates maternity rights to governmental largesse. The consequence is a two-tiered system: formal sector employees enjoy justiciable maternity rights enforceable through courts and tribunals, while platform workers are remitted to the

mercy of executive policy a distinction that sits uneasily with the constitutional guarantee of equality before law.

4.4 Aggregator Obligations and the National Social Security Fund

The Code introduces a novel mechanism for financing social security for gig and platform workers through mandatory contributions from aggregators the platform companies that engage these workers. Section 114(4) of the Code provides that every aggregator shall contribute to a Social Security Fund to be established by the Central Government, at a rate not exceeding 2% of annual turnover or 5% of the amount payable to gig workers and platform workers, as notified. This contribution mechanism represents a meaningful, if modest, step towards recognising the financial responsibility of platforms for the welfare of their workers.

The Social Security Fund, once operationalised, could serve as the financial vehicle for a maternity benefit scheme for platform workers. However, the fund's creation and governance structure remain largely at the Central Government's discretion, and no specific allocation for maternity benefits has been earmarked. A rights-based architecture would require not merely the establishment of the fund but the specification of minimum standards for maternity benefits including the duration of paid leave, the quantum of cash benefits, and the conditions of eligibility directly in the statute or through mandatory delegated legislation.

CHAPTER 5: SOCIO-LEGAL ANALYSIS – WOMEN, WORK, AND REPRODUCTIVE JUSTICE

5.1 The Reproductive Justice Framework

The concept of reproductive justice developed by Black feminist scholars and activists in the United States in the 1990s and subsequently adopted in international human rights discourse provides a powerful analytical lens through which to examine the maternity rights of platform workers. Reproductive justice

¹²⁹⁹Code on Social Security (Central) Rules, 2021, Ministry of Labour and Employment Notification G.S.R. 708(E) (2021).

posits that every person has the right not only to have children, but to parent them in safe and supportive environments, and that the state is obligated to create conditions in which these rights can be exercised. Applied to the gig economy, this framework demands not merely non-interference with the reproductive choices of platform workers, but affirmative state action to ensure that economic participation in platform work does not come at the cost of reproductive wellbeing.¹³⁰⁰

For women platform workers in India, the current absence of maternity protection creates a forced choice between economic survival and reproductive health a choice that no constitutional democracy committed to equality and human dignity can countenance. A platform delivery executive who continues working through her third trimester to avoid income loss, or a domestic service provider who resumes workdays after childbirth for fear of losing her customer ratings, is exercising not a free choice but a coerced one. The law's failure to intervene in this coercion is itself a form of structural violence.

5.2 Algorithmic Management and Its Gendered Consequences

Algorithmic management the use of automated systems to monitor, evaluate, and direct worker behaviour interacts with pregnancy and maternity in ways that are distinctively harmful to women platform workers. Platform algorithms typically reward availability, response speed, and task completion rates, while penalising periods of non-availability through reduced visibility, lower task allocations, and ratings degradation. For a pregnant worker or a new mother who cannot maintain her pre-pregnancy activity levels, the algorithmic system effectively imposes an economic penalty on her reproductive status precisely the harm that anti-discrimination

provisions in maternity legislation are designed to prevent.

The Supreme Court's recognition in *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* that maternity benefits cannot be denied to casual workers who are not employed in a regular capacity represents a doctrinal foundation upon which a similar principle could be extended to platform workers. The Court's reasoning that the exploitative character of non-standard employment cannot be used as a justification for denying maternity protection is of direct relevance to the platform economy.¹³⁰¹

5.3 Intersectionality: Caste, Class, and Digital Labour

Any socio-legal analysis of maternity rights in the gig economy must reckon with the intersectional dimensions of disadvantage that structure women's participation in platform work. In India, platform workers are disproportionately drawn from lower-caste and lower-class backgrounds, particularly in the domestic service and delivery segments. For these workers, the absence of maternity protection is compounded by caste-based discrimination in task allocation, the digital divide that limits their access to better-paying platform opportunities, and the absence of any meaningful collective voice in the determination of platform terms and conditions.¹³⁰² B.R. Ambedkar's insistence on the centrality of economic rights to substantive equality articulated as early as 1943 finds renewed relevance in the context of platform workers whose formal legal recognition has not been matched by material protection.¹³⁰³

¹³⁰⁰Ministry of Women and Child Development, National Policy for Women 2016 (Draft), Government of India (2016). The policy recognises the need to mainstream gender in socio-economic planning.

¹³⁰¹*Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, AIR 2000 SC 1274. The Supreme Court held that maternity benefits cannot be denied to casual workers, extending the scope beyond regular employees.

¹³⁰²*Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161. The Court affirmed that fundamental rights must be interpreted expansively to protect vulnerable and marginalised labour.

¹³⁰³B. R. Ambedkar, 'Labour and Parliamentary Democracy', Speech delivered at the Indian Labour Conference, 7 November 1943, reproduced in Dr. Babasaheb Ambedkar Writings and Speeches, vol. 10 (Mumbai: Education Dept., Govt. of Maharashtra, 1991), p. 211.

CHAPTER 6: COMPARATIVE ANALYSIS

6.1 United Kingdom: The Uber Decision and Worker Status

The United Kingdom Supreme Court's landmark decision in *Uber BV v. Aslam* [2021] is instructive for Indian jurisprudence in its categorical rejection of platform companies' characterisation of their workers as independent contractors. The Court held that Uber drivers are 'workers' a category intermediate between employees and self-employed persons under UK employment law entitled to the national minimum wage, holiday pay, and other statutory protections. While the UK's category of 'worker' does not automatically attract maternity pay (which is reserved for 'employees'), the decision's underlying methodology substance over form, reality over contractual label is directly applicable to Indian adjudication of platform worker status. Following *Uber v. Aslam*, the UK government has moved to extend enhanced protections to workers, including proposals to strengthen maternity rights for those in atypical employment. The UK's approach demonstrates that judicial reclassification of platform workers as a protected category is both legally coherent and practically feasible, providing a template for Indian courts and legislators.

6.2 European Union: The Directive on Transparent and Predictable Working Conditions

The European Union's Directive 2019/1152 on transparent and predictable working conditions requires member states to ensure that all workers including those in variable-hours arrangements and platform work receive clear information about their working conditions and enjoy minimum rights including paid leave and access to social protection. The Directive creates a rebuttable presumption of employment status for platform workers, reversing the burden of proof so that platforms must demonstrate that a worker is genuinely

self-employed rather than requiring workers to prove they are employees.¹³⁰⁴

The EU's approach is particularly relevant to the Indian context because it directly addresses the information asymmetry and power imbalance that characterise the platform-worker relationship. By imposing on platforms, the obligation to demonstrate non-employment status, the Directive provides a model for legislative reform that could be adapted within the Indian constitutional framework, consistent with the doctrine of reasonable classification under Article

CHAPTER 7: CHALLENGES, GAPS, AND CRITICAL OBSERVATIONS

7.1 Definitional Ambiguity and Enforcement Gaps

The most fundamental challenge in securing maternity rights for platform workers under the Code on Social Security, 2020 lies in the ambiguity of their legal status. Unlike the Maternity Benefit Act, which applies to all 'women' employed in covered establishments creating a clear binary of covered and uncovered the Code creates a new category of worker whose entitlements remain undefined. The absence of Rules specifying the content, eligibility conditions, and enforcement mechanism of maternity schemes for gig and platform workers creates an enforcement vacuum that is exploited by platforms and leaves aggrieved workers without a legally cognisable remedy.

The inspectorate regime under the Code also presents challenges for platform worker protection. The Code replaces the establishment-based inspection system with a unified inspection and facilitation system, but the practical modalities of inspection and enforcement in the context of platform work which may involve workers operating across multiple states and interacting with platforms

¹³⁰⁴European Parliament and Council Directive 2019/1152 on transparent and predictable working conditions in the European Union, OJ L 186, 11.7.2019, p. 105–121.

through digital interfaces have not been worked out. A woman platform worker seeking to enforce maternity rights would face significant practical difficulties in identifying the appropriate authority, filing a complaint, and obtaining timely relief.

7.2 The Welfare Scheme Model: Structural Limitations

The Code's choice of the welfare scheme model rather than the statutory entitlement model for extending social security to gig and platform workers reflects a broader policy orientation towards flexibility and incremental extension of coverage. While this approach may have pragmatic advantages in the short term, it is structurally inadequate as a means of securing maternity rights for several reasons.

First, welfare schemes are inherently contingent on governmental will and budgetary allocation, making them vulnerable to political cycles and fiscal pressures. Second, welfare schemes typically involve conditionalities registration, proof of work history, income thresholds that may be difficult for platform workers to satisfy, particularly given the opacity of algorithmic systems that do not provide verifiable work records. Third, the welfare scheme model does not create justiciable rights; a worker denied maternity benefits under a scheme has no actionable remedy in a civil court or labour tribunal, relegating her to administrative grievance mechanisms of doubtful efficacy.

7.3 The Registration Problem and Digital Exclusion

The Code envisages a system of registration of gig and platform workers through a dedicated portal, which would serve as the gateway to social security benefits. The NITI Aayog has reported that as of 2022, the registration infrastructure for gig workers under the Code has not been fully operationalised, and awareness among workers themselves remains extremely low. For women platform workers many of whom operate at the margins

of digital literacy, use shared devices, and lack access to reliable internet connectivity the registration requirement itself constitutes a barrier to benefit access. Any maternity protection scheme that conditions entitlement on digital registration without robust outreach, assistance, and alternative modes of enrolment will fail to reach the most vulnerable workers.

CHAPTER 8: RECOMMENDATIONS AND CONCLUSION

8.1 Recommendations for Legislative and Policy Reform

On the basis of the foregoing analysis, this paper advances the following recommendations for the reform of the maternity rights regime for platform workers in India:

- (i) Statutory Amendment of the Code: The Code on Social Security, 2020 should be amended to include a dedicated chapter or section specifically addressing maternity entitlements for gig and platform workers, converting the current discretionary scheme model into a system of justiciable statutory rights.
- (ii) Minimum Standards Prescribed in Rules: The Code on Social Security (Central) Rules should be amended to prescribe minimum standards for maternity benefits for platform workers, including: a minimum of 12 weeks of paid leave; cash benefits equivalent to the worker's average weekly earnings in the preceding 12 months; health protection during pregnancy; and prohibition of algorithmic penalisation on account of maternity-related non-availability.
- (iii) Aggregator Accountability: Platform companies should be subjected to mandatory reporting requirements on the number of women workers engaged, their pregnancy status, and benefits paid, to be filed with the relevant Employees' State Insurance Corporation or equivalent authority. Platforms found

to have algorithmically penalised pregnant workers or new mothers should be subject to enhanced contributions to the Social Security Fund.

- (iv) **Accessible Registration:** The government should establish mobile-based and offline registration mechanisms for gig and platform workers, with dedicated assistance for women workers and provisions for those without digital access. Registration should not be a prerequisite for the accrual of maternity entitlements, though it may be required for the payment of benefits.
- (v) **Judicial Recognition:** Courts adjudicating disputes involving platform workers should adopt the substance-over-form principle articulated in *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* and extend its logic to platform workers, recognising that the exploitative conditions of platform work cannot displace the state's maternity protection obligations.

8.2 Conclusion

The maternity rights of platform workers constitute one of the most pressing unresolved questions at the intersection of labour law, social security, and gender justice in contemporary India. The Code on Social Security, 2020, for all its architectural ambition, has thus far failed to translate the formal recognition of gig and platform workers into substantive maternity protection. This failure is not merely a technical lacuna; it reflects deeper structural biases in legal systems that were built around the stable, formal employment relationship and have struggled to adapt to the fluid, algorithmically mediated realities of platform work.

The constitutional framework particularly Articles 14, 21, and 42 provides ample normative resources for a rights-based approach to maternity protection that does not distinguish

between formal and informal workers, between employees and platform workers, between those with an 'employer' and those who work for an algorithm. India's obligations under ILO Convention No. 183 and the broader international human rights framework reinforce this constitutional imperative.

The path forward requires a combination of legislative action, judicial creativity, and administrative will. The legislature must amend the Code to create enforceable maternity entitlements for platform workers, not merely aspirational schemes. Courts must be willing to look beyond contractual labels and recognise the functional employment reality of platform work. And the executive must operationalise the Social Security Fund and registration infrastructure that would make these entitlements accessible to the millions of women who power India's platform economy often at the cost of their own health, wellbeing, and reproductive dignity.

As the eminent jurist and founding father B.R. Ambedkar observed, political democracy cannot last unless there is also social democracy at its base. For platform workers particularly women navigating the intersection of digital labour and reproductive life – social democracy demands nothing less than comprehensive, enforceable, and accessible maternity protection.

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