
INVISIBLE MOTHERS: THE STRUCTURAL EXCLUSION OF INFORMAL WORKERS AT MATERNITY

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1. INTRODUCTION

Invisible Mothers are the bedrock of our entire ecosystem, who are neglected from a system that guarantees to protect them, in local public areas, and in construction and domestic work, but these are the sections of society that are so normalised despite facing the crucial stripping away of their fundamental rights. India's maternity regime sparks a contrast between its legislation and implementation. Women in the informal sector comprise 90.1% of women workers in India.¹ Informal employment in India includes those working in the informal sector, comprising incorporated private enterprises owned by individuals² More households engaged in the sale and production of goods and services, operated on a proprietary or partnership basis, with fewer than 10 workers, including domestic workers, contributing family workers³ casual day labourers and workers in the formal sector without employer-provided social security.⁴ The definition of Informal employment is not descriptive but lacks an actual employment structure.

Keywords: Maternity Benefit Act, Code on Social Security 2020, informal women workers, Labour Codes, PMMVY.

1.1 Formal versus Informal Employment

Despite the recent consolidated laws on labour in the Social Security Code, 2020, which constitute a progressive development for the inclusion of gig, domestic, and unorganised platform workers in the section. 113 and 114 for benefits enshrined under this code, however,

¹ Gender Study, 'Women in India's Informal Sector: Invisible Yet Indispensable' <https://gender.study/gender-and-governance/women-india-informal-sector-indispensable/> accessed 31st March, 2026.

² Subhasankar Chattopadhyay and Rima Mondal, Investment and growth in a developing economy with a Vast Informal Sector, *The Journal of Developing Areas*, Vol. 50 No.4, Fall 2016, accessed at <https://www.jstor.org/stable/26415519>

³ Maurya, P., & Mohanty, P. (2019). "What restricts access to credit for women's enterprises? Evidence from India's informal sector." *International Journal of Social Economics*, 46(7), 920-937.

⁴ G Raveendran, "Informal Workers in India: Statistical Profile" *Women in Informal Employment: Globalising and Organising*, pg.no.2, (2020)

are restricted by the term ‘registered worker’, leaving a large portion of marginal workers without any other security.⁵ Yet this apparent inclusion is fatally circumscribed: entitlement to benefits is conditioned upon registration as a ‘worker’ under the Code,⁶ thereby converting a statutory right into an administrative precondition that the most marginalised workers, seasonal labourers, home-based workers, and domestic workers, structurally cannot satisfy.⁷ The Formal and Informal differentiation is thus not resolved by the code but rather merely redrawn.

1.2 Problem

One of the main questions this paper attempts to answer is, if the Pradhan Mantri Matritva Vandana Yojana promises pregnant women conditional cash transfers, the Social Security Code, 2020 mentions gig and platform workers, and the Maternity Act, 1961 has added provisions for mandatory 26 paid weeks as amended in 2017, what remains a problem? The Indian Labour Law did not distinguish between nominal exclusion and substantive entitlement.

⁸PMMVY, designed as a compensatory mechanism, reached only 9% coverage by 2023–24, revealing the scheme not as a safety net but as a political gesture. The WIEGO confirms the statistical finding that around 81.8 million. Women in informal structures remain unprotected globally, simultaneously carrying the ‘double burden’ of unwaged domestic work. ILO Convention No. 183, CEDAW Article 11(2), and the Indian Constitution's Articles 14, 15, 21, and 42 all require that maternity protection be universal, non-discriminatory, and enforceable as a right rather than an administrative favour dependent on registration portals, Aadhaar linkages, or executive notification. Three decades of reform have completely disregarded the Ministry of Labour's own Second National Commission Report from 2002, which recognised the need for specialised legislative architecture for informal workers. Therefore, legislative silence, a framework that acknowledges informal workers in law but disregards the methods by which they are enforced, is not the issue this paper seeks to address. A pattern in which the informal woman worker is mentioned in every statute, scheme, and code just enough to prevent the claim that she has been overlooked, while creating entitlement requirements that she will

⁵ Code on Social Security, 2020, s 113 and 114.

⁶ Code on Social Security, 2020 (No. 36 of 2020), s 113(1) (requiring registration through the portal under s 113(2) as a condition precedent to entitlement).

⁷ S Chigateri, “Labour Law Reforms and Women’s Work in India: Assessing the New Labour Codes from a Gender Lens” (Institute of Social Studies Trust, 2021).

⁸ *Maternity Benefit Act, 1961*. https://labour.gov.in/sites/default/files/the_maternity_benefit_act_1961_0.pdf
Nagarajan, R. *Maternity payout covers just 20% of births, claim activists*.

never be able to meet structurally.

1.2 Methodology

This Paper uses a doctrinal analysis method, drawing on primary legislation such as the Maternity Benefits Act, 1961, and the Code on Social Security, 2020. National Food Security Act, 2013, with PMMVY Scheme. Academic Journals, Judicial Precedents, Parliamentary Committee Reports and drawing from NCEUS, PLFS and ILO Convention for their data and principles.

2. LEGAL FRAMEWORKS

2.1 Maternity Benefits Act, 1961

The Maternity Benefit Act was passed with the assent of the President on 12th December, 1961, with the objective of protecting the dignity of Motherhood and ensuring the safety of both the mother and her Child, especially in employment, where workers are often discriminated against and dismissed on the grounds of pregnancy. The Court imposed a strict Penalty on the employer, mandating 26 weeks of paid leave, along with prenatal and postnatal care.⁹The current Act has been amended 7 times, with the latest amendment in 2017. In *B. Shah versus. Presiding Officer, Labour Court (1978)*¹⁰ held that the Maternity Benefits Act is not a social welfare mechanism but a measure for recognizing Women's biological needs and payment of wages included Sundays along with other days in a week by reading section.3(n) of the Act. In the landmark judgement of *Municipal Corporation in Delhi versus. Female Workers (Muster Roll) and Others AIR 2000*¹¹ There was a dispute as to whether casual women in the Muster Roll would be eligible for benefits under the Maternity Benefits Act, 1961, and whether 'Industrial' would constitute under this act. Under the Maternity Benefits Act, 1961 held not long before these places were home to these women now they are forced to work due to economic crisis, engaged in cleaning of trenches, heavy workload which is detrimental to health of Mother and baby which is the background of Preamble, Article 14, 15 (3), in Part III and Article 38,39 (a),(b),(c), 42,43 despite such judicial expansion, statutory framework remains weak, which makes no such arrangements for the unorganised sector of women; even creche

⁹ S K Saluja, "Maternity Benefits in India: Rights of Women as a mother" 6(3) *International Journal of Law, Management and Humanities* (2023).

¹⁰ *B. Shah v. Presiding Officer, Labour Court*, (1977) 4 SCC 384

¹¹ *Municipal Corpn. of Delhi v. Female Workers (Muster Roll)*, (2000) 3 SCC 224 SCC Online

facilities are available only for employees in sectors of 50 or more.¹²

2.2 Code on Social Security 2020

The Social Security Code, 2020, has been defined under Section. 2(35) ‘gig worker’ as a person who works out of a traditional work set and earns.¹³ Further, Section 2(36) defined ‘home-based Worker’. The Restriction provided under Sec. 113(2) through the e-Shram portal, converting a statutory right into an administrative precondition. To gain benefits under this code, one has to register and read the section. 114 empowers the Central Government to *formulate* schemes for unorganised workers, but creates no justiciable entitlement as of March 2025; no maternity-specific scheme has been notified under this provision. According to the Parliamentary Standing Committee¹⁴ on Labour, Report on the Code on Social Security, 2020 (Lok Sabha Secretariat, 2020), chaired by Shri Bhartruhari Mahtab. There was ambiguity in terms of ‘gig worker’ and ‘platform worker’ as well as ‘unorganised sector’. The committee recommended making clear the provisions in sec. 2(35) and 2(56) also note that Gig workers and platform workers are likely to form a separate class with a distinct nature of work, involving characteristics of both organised and unorganised workers or in which category they come. The definition of ‘gig workers’ is too broad, while ‘platform workers’ is too narrow.¹⁵ However, there has been no change in their definition as of the law ministry’s current status. The Standing Committee on Labour (2020) recommended that the Code provide a framework for achieving universal social security within a definite time frame and made several recommendations to expand coverage of establishments, employees, and benefit types.¹⁶ The Committee suggested that the definition of establishment should also include exchanges of services involving fewer than 10 workers.¹⁷ The Social Security code mandates the registration of every platform worker, gig worker, and unorganised worker based on a self-declaration submitted in the form prescribed by the Central Government, either electronically or otherwise, along with an Aadhaar number.¹⁸ In the existing code, there are no provisions for funded net

¹² Section 11A of the Maternity Act, 1961 Amendment 2017

¹³ Sec. 2(35) of Code on Social Security 2020.

¹⁴ Business Today, “Rebooting Economy XXII: Why is India reluctant to provide unemployment allowance?” available at, Rebooting Economy XXII: Why is India reluctant to provide unemployment allowance? - BusinessToday, Accessed 31 March 2026.

¹⁵ Standing Committee on Labour (2019–20), *Report on the Code on Social Security, 2019* (Lok Sabha Secretariat, 31 July 2020) paras 14.3, 14.6 <https://eparlib.nic.in/handle/123456789/13>,

¹⁶ A T Ivneet K Walia, “Protecting Women in the Informal Economy: A Critical Analysis of India’s Social Security Code 2020” in *Gender and Global Economic Stability*, Vol II (Springer Nature, 2026)

¹⁷ Lukmaan IAS, The New Labour Code and Implications for Women Workers, March 29, 2026.

¹⁸ Suresh Nadagoudar and Rajashree Patil, Social Security Code, 2020: An Analysis, 2021, Volume 10, No.2, Pg. no. 25, Christ University Law Journal, ISSN 2278 4322 /<https://doi.org/10.12728/culj.19.2>

schemes for unorganised workers, leaving them to the Central government and ad hoc for further net schemes. Women working as helpers have no legal framework protecting them from wage theft, arbitrary dismissal or workplace harassment. They operate in a grey zone where their contributions are economically vital but legally invisible.

2.3 Eligibility Criteria

Eligibility for benefits under the Maternity Benefits Act, 1961, as determined in Section 5 and Section 2(1)(b), requires that a woman must have worked for the employer for at least 80 days within the preceding 12 months.¹⁹ preceding her expected delivery date, in an establishment employing ten or more persons, a dual eligibility barrier that operates simultaneously.²⁰ The Code on Social Security has mandated health and maternity benefits provisions under the section. 45 and 109 (1), which provide for the framing of welfare schemes, including maternity benefits for these workers, yet the code remains inoperative. Under the Maternity Protection Convention, 2000, the General Conference of the ILO adopted it in order to protect the health and safety of women; it directs States to adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work that is prejudicial to the health of the mother or the child.²¹ Maternity leave is to include a period of six weeks' compulsory leave after childbirth, with a view to protecting the health of the mother and the child.²² Law Commission Report: proof of continuous employment for 80 days is a mandatory condition, yet women in the unorganised sector often work with multiple employers and are unable to fulfil this requirement. The Law Commission of India's recommendations to include women from the unorganised sector have not been implemented. The Parliamentary Standing Committee on Labour found that even after 12 years of the enactment²³ Under the Unorganised Workers Social Security Act 2008, only six per cent of unorganised workers are covered by one or another form of social security, demonstrating that eligibility conditions, as designed, are not barriers that workers overcome; they are barriers that workers simply never clear.²⁴

¹⁹ PMF IAS, Maternity benefits to women in the Unorganised Sector, Available at Maternity benefits to women in the Unorganised Sector, accessed 31st March 2026

²⁰ Section 5 and 2(1)(b) of the Maternity Act, 1961.

²¹ Ntando Ncamane, "An analysis of informal workers and the coverage of South Africa's Covid-19 Temporary Employee/Employer Relief Scheme (TERS)" Volume.28, Scielo Analytics, 2024

²² Law Commission Report, Report No.259 On "Early Childhood Development and Legal Entitlements", 27 August 2015.

²³ Saurabh Bhattacharjee, "Challenges to Social Security for Self-Employed Workers in India and the Code for Social Security Bill 2019", Dvara Research, Aug.21.2020

<https://dvararesearch.com/challenges-to-social-security-for-self-employed-workers-in-india-and-the-code-for-social-security-bill-2019/>

²⁴ Shubh Ashish Singh and Ayushi Kumari, 'Challenges and Opportunities: Women's Working Conditions in

Their lack of exposure to complex, competitive urban life and the absence of skills compels them to enter the unorganised sector, leaving them outside the eligibility criteria due to a lack of knowledge of and familiarity with registration procedures.²⁵

3. STRUCTURAL EXCLUSION OF INFORMAL WORKERS

Although maternity benefits are provided for in Indian legislation, their implementation remains limited in practice. The origins of social security in India can be traced to 1947. Over the years, India has seen the majority of its population join the informal sector. Social Security has undergone major changes, as outlined in the Beveridge Committee Report in 1942, which described it as “freedom from want,” and its provisions were limited to the maintenance of employment, children’s allowances, and comprehensive health services.²⁶ In the year 2018-19, the nature of employment was around 90% in India’s Labour Market.²⁷ This section analyses three interlocking structural mechanisms through which this exclusion is produced and sustained: the employer-employee limitation, the informal labour reality, and the invisibility of domestic and gig workers.

3.1 The Employer- Employee Limitation

The GoI initiated the reform of labour laws into codes as: (a) The Code on Wages, 2019, (b) The Occupational Safety, Health and Working Conditions Code, 2020, (c) The Code on Social Security, 2020, (d) The Industrial Relations Code, 2020. The Code on Wages Act further consolidated legislation in which the Minimum Wages Act, 1948, was applicable only to ‘schedule of employment’, removing the distinction between schedule and non-schedule employment. The definition of ‘employee’ and ‘employer’ has been expanded to include both formal and informal employees.²⁸ However, the Minimum Wages Act, along with the Payment of Wages Act, 1936, prevented workers from falling under this definition unless their income was subject to predetermined ceilings or otherwise exempted. Further, the power to set the

India's Unorganised Sector' (SSRN, 2 February 2024) <https://ssrn.com/abstract=4714308> accessed 31st March 2026.

²⁵ H M Qaiser Jahan, “Women Workers in Unorganised Sector in India: Problems and Prospects” 2(4) *South Asian Journal of Multidisciplinary Studies*, 2015

²⁶ S B Ashima Majumdar, “Social Security and Informal Sector in India” 48(42) *Economic and Political Weekly* 69 (2013).

²⁷ Mridusmita Bordoloi, “Social Security for Informal workers in India- exploring India’s Labour Market Policies on Provisioning of Social Security to Informal Workers in the Unorganised Sector”, Centre for Policy Research.

²⁸ M N Dr Kasturi Gakul, “The Code on Wages 2019: A Reform or an Illusion” 12 *International Journal of Creative Research Thoughts* 346 (2024).

National wage floor is given to the State Government and the Central Government. Thus, the government need to ratify section 114 of the Code on Social Security, 2020, without conditionality of registration, decouple entitlement from the employer-employee relationship entirely for unorganised workers, and vest enforcement authority in a dedicated statutory body rather than leaving it to executive discretion that four years of inaction have demonstrated will not be exercised voluntarily.

3.2 Informal Labour Reality

Because decades of policy neglect have separated the legislative imagination of the worker from the empirical reality of the worker, it is necessary to first understand what informal labour actually looks like in India in order to comprehend why the eligibility architecture fails. According to the Periodic Labour Force Survey 2023–2024, 81.8% of Indian women work in informal jobs, mostly in construction, street vending, domestic service, home-based production, and agriculture.²⁹ It is a structural impossibility and not a reasonable qualifying standard when compared to the 80-day continuous employment requirement under Section 5 of the Maternity Benefit Act. A condition calibrated for a factory worker with a fixed annual contract cannot be met by a seasonal agricultural worker whose paddy-harvesting engagement lasts six weeks. NCEUS (2008) recommended a system for registering all informal workers through Workers Facilitation Centres (WFCs) at the local level, in Village Panchayats and Municipal governments in towns. These WFCs could be designated agencies, such as NGOs, trade unions, or cooperative organisations/associations, working among informal workers in a given locality. In the absence of such organisations, the local government itself should act as WFCs. Registration will be based on self-certification. However, these recommendations were ignored under Social Security, and the adopted system, in the form of Rashtriya Swastha Bhima Yojana (RSBY), was enacted and implemented. It was a rights-based one for the poor, rather than as workers in the informal sector or informal employment.³⁰ The mismatch between statutory and labour reality makes maternity protection ineffective.

3.3 Domestic and Gig Invisibility

The exclusion of Domestic and Gig visibility is quite evident from the Code on Social

²⁹ Ministry of Statistics and Programme Implementation, *Periodic Labour Force Survey Annual Report 2023–24* (Government of India, 2024) 32, 41

³⁰ K P Kannan, “Social Security in the Lockdown: A Time to Revisit the NCEUS Recommendations” *Indian Journal of Labour Economics* 143 (2020)

Security, 2020, the definition of domestic workers included in ‘wage workers’ along with home-based workers and construction workers. But this was soon removed, creating a hindrance and prompting a warning from the Parliamentary Standing Committee on Labour to include a proper definition of domestic workers.³¹ There were approximately 5.235 million domestic workers in India in 2017–18, according to the Periodic Labour Force Survey (PLFS), (Raveendran, 2020) made up primarily of women, including SCs, from the migrant sector. Gig and platform workers are in a similarly unstable and, in some ways, more dishonest position. Sections 113 and 114 of the Code on Social Security, 2020, specifically expand the Code's scope to include gig and platform workers; this is regarded as a significant legislative advancement. Yet as the ILO's 2024 report on India's platform economy confirms, close to four years after the Code's enactment, not a single operative social security scheme had been notified for this category of workers.³² The inclusion of gig workers remains symbolic, as no provision for Maternity Benefits has been operationalised.

The Structural exclusion of Informal Workers is not a mistake but an oversight of a targeted amendment. Under the 2017 Amendment, women can take only up to 12 weeks of paid leave for a third or subsequent child, even if they already have two children. This was challenged under *Deepika Singh versus. Central Administrative Tribunal. SC (2023)*³³ expanded the meaning of Maternity rights, holding that the definition of “family” must be read inclusively, and that maternity leave should be provided as a component of the Right to Life under Article 21. The court used this case as an interpretation of purposive to be valid. The court held the employer responsible for implementing progressive employment policies and held PGMIER Chandigarh in violation of the principles of Natural Justice for refusing maternity leave.

4. SCHEME VS. RIGHTS

The Scheme was initially enacted to benefit all groups in society; certain restrictions have been imposed, creating a gap between rights and the Scheme. This Section will analyse it. As discussed above, the code on social Security consolidated various labour laws; however, it was pre-determined. The Union Government has created schemes that could be classified as either

³¹ Standing Committee on Labour (2019–20), *Report on the Code on Social Security, 2019* (Lok Sabha Secretariat, 31 July 2020) paras 14.3, 14.6 <https://eparlib.nic.in/handle/123456789/13>

³² Neetha N. and Rajni Palriwala, 'Misconstrued Notions and Misplaced Interventions: An Assessment of State Policy on Domestic Work in India' (2021) 64(S1) *Indian Journal of Labour Economics* 147 <https://pmc.ncbi.nlm.nih.gov/articles/PMC8351567/> accessed 19 March 2025.

³³ *Deepika Singh v PGMER, Chandigarh* (2023) 13 SCC 681

fully funded by the GoI or shared between the State Fund and the Central Fund.

The Unorganised Workers Social Security Act (UWSSA) stipulates the formation of national and state-level Social Security Boards to recommend schemes for unorganised Workers.

4.1 Pradhan Mantri Matritva Vandana Yojana

‘Mission Shakti’ is a nodal scheme aimed at strengthening interventions for women's safety, security and empowerment. It seeks to realise the Government's commitment to “women-led development” by addressing issues affecting women on a life-cycle continuum and by making them equal partners in nation-building through convergence and citizen ownership. In addition, the existing schemes, the National Creche Scheme and PMMVY, fall under the umbrella of the Integrated Child Development Schemes. The Government of India implemented the Pradhan Mantri Matru Vandana Yojana (PMMVY) on 1st January 2017³⁴. The PMMVY Scheme is being implemented as per the provisions under Section 4 of the National Food Security Act (NFSA), 2013, which provides financial support to pregnant and lactating mothers³⁵ to improve the health and nutrition of the mother and child, as well as compensation for wage loss, if any.³⁶ The PMMVY grants Rupees 6000 along with Janani Suraksha Yojana (JSY), a conditional cash transfer to reduce maternal and neonatal mortality by promoting institutional delivery among pregnant women. The single most damaging phrase in the Government's own formulation is **"on average."** Section 4(b) of the NFSA³⁷ does not say "on average, a woman shall be entitled to Rs. 6,000." It says every pregnant woman and lactating mother shall be entitled to "maternity benefit of not less than rupees six thousand." It thus creates a mandatory provision and not a statistical division across the population. This is the issue with JSY: the advantages change based on the state and the type of service. JSY doesn't pay Rs. 1,000 to rural women in Category B states; instead, it gives Rs. 700. For women in cities, it pays Rs. 600. So, a woman living in a city gets Rs. 5,600, which is less than the NFSA floor even according to the government's own convergence theory: Rs. 5,000 (PMMVY) + Rs. 600 (JSY urban). Using

³⁴ Ministry of Women and Child Development, PMMVY <https://pmmvy.wcd.gov.in> Registration and Login Account <https://www.seminaronly.com/news/https-pmmvy-wcd-gov-in-registration-and-login-account/>, Accessed at 31st March, 2026

³⁵ Evolving Policy Landscape of Social Protection for Platform Workers in India | by OMI Foundation | Medium, accessed 31st March 2026.

³⁶ Mission Shakti Guidelines, (Integrated Women Empowerment Programme) Umbrella Scheme for Safety, Security and Empowerment of Women Scheme Implementation Guidelines Ministry of Women and Child Development Government of India New Delhi

³⁷ Sec. 4(b) National Food Security Act, 2013

<https://www.indiacode.nic.in/bitstream/123456789/2113/1/201320.pdf>

"on average" is not required by law; it's just a statistical way to hide regular underpayment.³⁸ Under NFSA, all pregnant and lactating mothers are entitled to Rs. 6,000, not just mothers of first-borns and the PMMVY programme's restriction to mothers of a first living child was opposed by NITI Aayog itself, though that opposition was overridden by cost considerations.³⁹ The Scheme further creates a distinction between a girl child and a boy child: the payment from the average of 6000 will decrease to 5000 for a boy child, contrary to NFSA section 4(b). JSY is a part of the National Rural Health Mission and not a wage-compensatory mechanism. The PMMVY also mandates registration for availing benefits for the second child; registration during pregnancy shall be mandatory. This would contribute to improving the Sex Ratio at Birth and to preventing female foeticide.⁴⁰ It serves as an alternative to the informal women under the Maternity Benefits Act; however, it still creates problems with the average term used to determine compensation. The government should implement a clear-cut diversion and not mix rural schemes with maternity wages. The government can legitimately argue that Parliament itself contemplated scheme-based delivery rather than direct individual entitlement.⁴¹ PMMVY operates on a conditional scheme rather than a rights-based one for informal workers.

4.2 Welfare vs Enforceable Rights

In case law, *K. Umadevi versus Government of Tamil Nadu and Ors.*⁴² Bench of Justices A.S. Oka and Ujjal Bhuyan held that maternity leave is a facet of reproductive rights under Article 21; Maternity benefits and population control policy are "not mutually exclusive" and need to be harmonised; service regulations that limit leave to mothers with fewer than two surviving children cannot be administered in a mechanical manner. Maternity leave is not a fundamental right, according to the Division Bench, yet this was clearly refuted. The entire section's constitutional basis. Establishes maternity benefit as an Article 21 right, creating the doctrinal tension with PMMVY's conditionality architecture that the section explores. In Assam, Bihar, and Maharashtra, document-related issues have persisted since the scheme's start. During the

³⁸ *National Rural Health Mission, JSY Guidelines (MoHFW, 2005)*
https://nhm.gov.in/images/pdf/programmes/jsy/jsy_guidelines.pdf

³⁹ T Beria, "Maternity Benefits for Building and Other Construction Workers in India: A Regulatory Quagmire", *Journal of Indian Law and Society* (2022).

⁴⁰ Jungari, S., & Paswan, B. (2019). Does the National Rural Health Mission improve the health of tribal women? Perspectives of husbands in Maharashtra, India. *Public Health*.
<https://doi.org/10.1016/j.puhe.2019.02.019>

⁴¹ Department of Women and Child Development, Govt. Of NCT of Delhi- Pradhan Mantri Matru Vandana Yojana (PMMVY)

⁴² *K Umadevi v Government of Tamil Nadu, 2025 INSC 781 (SC).*

first two visits to the selected districts, i.e., the first and second quarters, women prioritised the issue of the updated Aadhaar card. These women informed us that frontline workers asked them to update their Aadhaar Card (incorporating husband's name). In Maharashtra, women reported that updating their Aadhaar cards is a troublesome process because it requires additional documents, such as a marriage certificate, a ration card, and proof of residence. Further, to obtain the marriage certificate, additional proofs are required, i.e., the marriage invitation card, a witness to the marriage, stamp paper, etc. This lengthy process delayed the enrolment of women in the scheme. The women mentioned that they have spent hours updating their Aadhaar cards. In areas of Assam and Bihar, issues with the MCP card (Mother and Child Protection) arise when proof of Aadhaar or PAN is missing, preventing implementation of the PMMVY third instalments. Furthermore, opening a zero-balance account was difficult, as women in Bihar argued. In Maharashtra, to open such an account, one needs 1000 rupees. No authority to check these gaps created to meet the required objectives addressed by such schemes.⁴³

4.3 Comparative study

- **South Africa**

India's Labour Law does not encompass a comparative limitation due to its status as a developing country, but rather reflects a structural choice to confine the employer-employee relationship. South Africa's Basic Conditions of Employment Act, 1997 (BCE) ⁴⁴extends maternity leave for anyone who works more than 24 hours per month, without imposing a minimum threshold of 80 days of work.⁴⁵ Financing is provided by the Unemployment Insurance Fund, with workers contributing up to 66% of their prior earnings for four months.⁴⁶ A critical structure in Indian legislation under the South African Model is that once the hours threshold is met, registration follows; in India, registration is a gateway to benefits, thereby leaving women in the informal sector. Further, ILO Convention 2000 (No. 183), which India has not ratified yet, mandates a minimum of fourteen weeks of maternity leave where funding

⁴³ T. V. Sekher and Manoj Alagarajan, International Institute for Population Sciences (IIPS), Mumbai, Study Commissioned by UNICEF for NITI AAYOG. 2019.

⁴⁴ Department of Labour, "Basic guide to Maternity Leave", Republic of South Africa, available at <<https://www.labour.gov.za/DocumentCenter/Pages/Basic-Guide-to-Maternity-Leave.> >, Accessed 31st March, 2026

⁴⁵ Basic Conditions of Employment Act 75 of 1997 (South Africa), s 25 read with s 3

⁴⁶ Unemployment Insurance Act 63 of 2001 (South Africa), s 24-25; amended by Unemployment Insurance Amendment Act 10 of 2016.

comes from ‘Compulsory Social insurance or public funds’, thereby reducing the burden on the employer. The Maternity Benefit Act, 1961, makes employment establishment contingent on the existence of a formal employer in the first place. As of 2025, only 34% of ILO member countries followed the above principles.⁴⁷ India lags behind in employer-financed and threshold-limited models, while the international standard has moved decisively toward socialised, universal provision.

- **United Kingdom**

The UK’s two-tier system is architecturally more beneficial than India’s. It operates on a two-tier model: Statutory Maternity Pay (SMP) for employees in formal employment, and Maternity Allowance (MA) as a publicly funded fallback for those who do not qualify for SMP, including self-employed, recently employed, and irregularly employed workers. The Social Security. According to the Social Security Contributions and Benefits Act, 1992⁴⁸, alongside the Statutory Maternity Pay (General) Regulations, 1986, SMP is paid for up to thirty-nine weeks at ninety per cent of average weekly earnings during the first six weeks, followed by £187.18 per week or ninety per cent of earnings, whichever is lower, for the remaining thirty-three weeks. Requirements for eligibility include a total of 26 weeks of continuous employment with the same employer by the 15th week prior to the expected week of childbirth, and average earnings at or above the lower earnings limit.⁴⁹ Importantly, zero-hours contract workers can qualify for Statutory Maternity Pay to the extent they meet the eligibility criteria, meaning wages are determined on an average basis rather than on a fixed-hours basis⁵⁰, a fundamental move away from the 80-day continuous single-employer condition in India, which structurally kills piece-rate and casual workers. The much more important comparative characteristic is the Maternity Allowance. Maternity Allowance is for employed women who do not have access to SMP, self-employed women, and those newly out of work, provided they have been paid no less than £30 per week for at least 13 weeks out of the sixty-six weeks before the due date, and, importantly, this need not happen in succession. This non-contiguity principle is the structural

⁴⁷ International Labour Organisation, “ILO Care Economic Brief”, available at https://www.ilo.org/sites/default/files/2025-07/EIIP%20and%20care%20guidance%20note%20EN_Final.pdf, accessed 3rd April 2016.

⁴⁸ Social Security Contributions and Benefits Act 1992 (UK), s 164–171; Statutory Maternity Pay (General) Regulations 1986, SI 1986/1960.

⁴⁹ Social Security Contributions and Benefits Act 1992, UK Public General Act, available at <https://www.legislation.gov.uk/ukpga/1992/4/contents>, Last Accessed 3rd April, 2026.

⁵⁰ HM Government, 'Maternity Pay and Leave: Pay' (GOV.UK, updated 2025) <https://www.gov.uk/maternity-pay-leave/pay> accessed 1 April 2026.

departure that Indian law has refused to implement. A seasonal worker, a domestic worker rotating between multiple households, or a UK home-based piece-rate worker can then gather in-cycle qualifying weeks across multiple employers and employment periods. For thirty-nine weeks, self-employed women who pay Class 2 National Insurance contributions for at least thirteen of the sixty-six weeks before their due date can receive up to £187.18 per week. Funding is drawn entirely from public funds administered by the Department for Work and Pensions, not from an employer per se. The UK model is not without drawbacks. Workers employed in agency work and casuals who are unable to meet the twenty-six-week continuous employment threshold are ineligible for Statutory Maternity Leave, which requires them to contribute only to pay, thereby disadvantaging the most vulnerable of their workers. Registration with HMRC and National Insurance contribution history remain prerequisites, an administrative burden analogous, though less severe, to India's e-Shram registration problem. However, the non-contiguous qualifying weeks of Maternity Allowance, aggregation across different employers, and public funding for the allowance together constitute the three structural changes this article suggests the government make in the Indian context.⁵¹ "The UK Supreme Court's unanimous judgment in *Uber BV v Aslam* [2021]⁵² UKSC 5 reinforces this framework, holding that statutory employment protection must be interpreted purposively to give effect to its protective purpose, and that contractual labels or, by analogy, legislative threshold classifications cannot be permitted to defeat the legislative intent to protect vulnerable workers."

- **Mongolia**

It provides an interesting example compared to other countries. Unlike the United States, which reveals the threshold at which a framework focused solely on formal employment results in widespread exclusion of informal workers, this system provides comprehensive maternity protection through various mechanisms. Formal employees are required to be enrolled in social insurance and receive a replacement rate of 100% of their covered wages for 4 months. Self-employed individuals, herders, and informal economy workers may voluntarily participate in this scheme, allowing them to receive maternity cash benefits for 4 months at a replacement

⁵¹ Maternity leave policy, available at https://assets.publishing.service.gov.uk/media/5a7a1fe1ed915d6d99f5d52e/maternity_leave_policy_april2013.pdf, Accessed at 3rd April 2026.

⁵² *Uber BV and others v Aslam and others* [2021] UKSC 5 (UK Supreme Court, 19 February 2021, Lord Leggatt) https://supremecourt.uk/uploads/uksc_2019_0029_judgment_19c9de2253.pdf accessed 1 April 2026.

rate of 70% of their chosen reference wage after making contributions for 12 months. Additionally, under the Social Welfare Scheme, all pregnant women and mothers of infants are eligible for maternity cash benefits regardless of their social insurance contributions, employment status, or nationality. This benefit amounts to approximately \$20 per month (as of 2015) and is granted from the fifth month of pregnancy for a total of 12 months. Maternity care is accessible through a universal health care system funded by taxes. Furthermore, since 2007, these benefits have been provided through One Stop Shops (OSS), an integrated service delivery model encompassing social welfare, social insurance, employment counselling, and civil registration. To cater to the needs of rural and nomadic women, OSS services are now available in all provinces and most districts across Mongolia.⁵³

5. RECOMMENDATIONS

The above sections analyse how women in the informal sector remain outside the purview of Maternity benefits in India. The following proposals are intended to repair the design, not supplement it.

1. Section 5 of the Maternity Benefits Act, 1961, should be amended to also remove the ten-employee establishment threshold for maternity entitlement. The threshold doesn't do any welfare work; it acts only as an exclusion mechanism. Its removal would make the Act consistent with its own constitutional basis found in Articles 14, 15(3), and 42.
2. The operationalisation of Section 114 of the Code on Social Security, 2020 requires notifying a mandatory maternity benefit scheme for unorganised workers through a statutory instrument within a reasonable time period without conditionality for prior registration. The fact that nothing has been done by successive authorities in four years since the Code's announcement demonstrates and reinforces the need for a mandatory notification obligation, as there is no hope or intention of any voluntary discretionary scheme-making.
3. The 80 days of continuous employment must be replaced to satisfy the conditions under section 5 of the Maternity Benefit Act with an aggregated contributions model where women can accumulate qualifying days across employers. Over a rolling twelve-month period, as shown on the e-Shram portal. This change directly addresses the structural impossibility faced

⁵² International Labour Office (ILO), "Maternity Cash Benefits for workers in the informal economy" p. no. 6, 2016

by piece-rate workers, seasonal agricultural workers, and domestic workers who do not have continuous single-employer engagement as part of their work, but rather as an administrative fiction.

4. A dedicated, tripartite statutory board for informal workers' social security should have the power to enforce the law, not the Ministry of Labour. Rights that don't have ways to enforce them are just statements, not rights.

5. India should start the process of ratifying ILO Convention No. 183. This would change how maternity benefits are paid, shifting the cost from individual employers to public funds. This would eliminate the one thing that makes the current system structurally unfair to workers without a formal employer.

6. CONCLUSION

The invisible mothers discussed in this paper are not invisible due to their absence from the law. They are mentioned in the introduction to the Maternity Benefit Act, in Chapter IX of the Code on Social Security, in the goals of the PMMVY, and in the hopeful language of CEDAW and ILO Convention No. 183. They are invisible because every law that names them also makes a system of rights that they can't use. The 10-employee limit, the 80-day continuous employment requirement, the registration requirement, and the scheme-making discretion that has not been exercised in four years collectively constitute what this paper calls a "legislative gesture without institutional architecture." The constitutional requirements in Articles 14, 21, and 42 do not allow the State to meet its duty by making a gesture. Maternity protection is not a welfare benefit dependent on registration portals or executive goodwill; it is, as the Supreme Court stated in *K. Umadevi v Government of Tamil Nadu*, an aspect of the right to life. To make that affirmation a reality, we need rights-based statutory inclusion, not charity that depends on a scheme. A comparative study of the UK and Mongolia serves as an example of how India could adopt their models to ensure employer-employee relationships and provide state-funded Maternity allowances. This Paper attempts to provide a rights-based scheme, with a comparative study of other countries and India, to amend its provisions so they fit the unorganised sector without curtailing it with minimum thresholds and registration requirements.

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