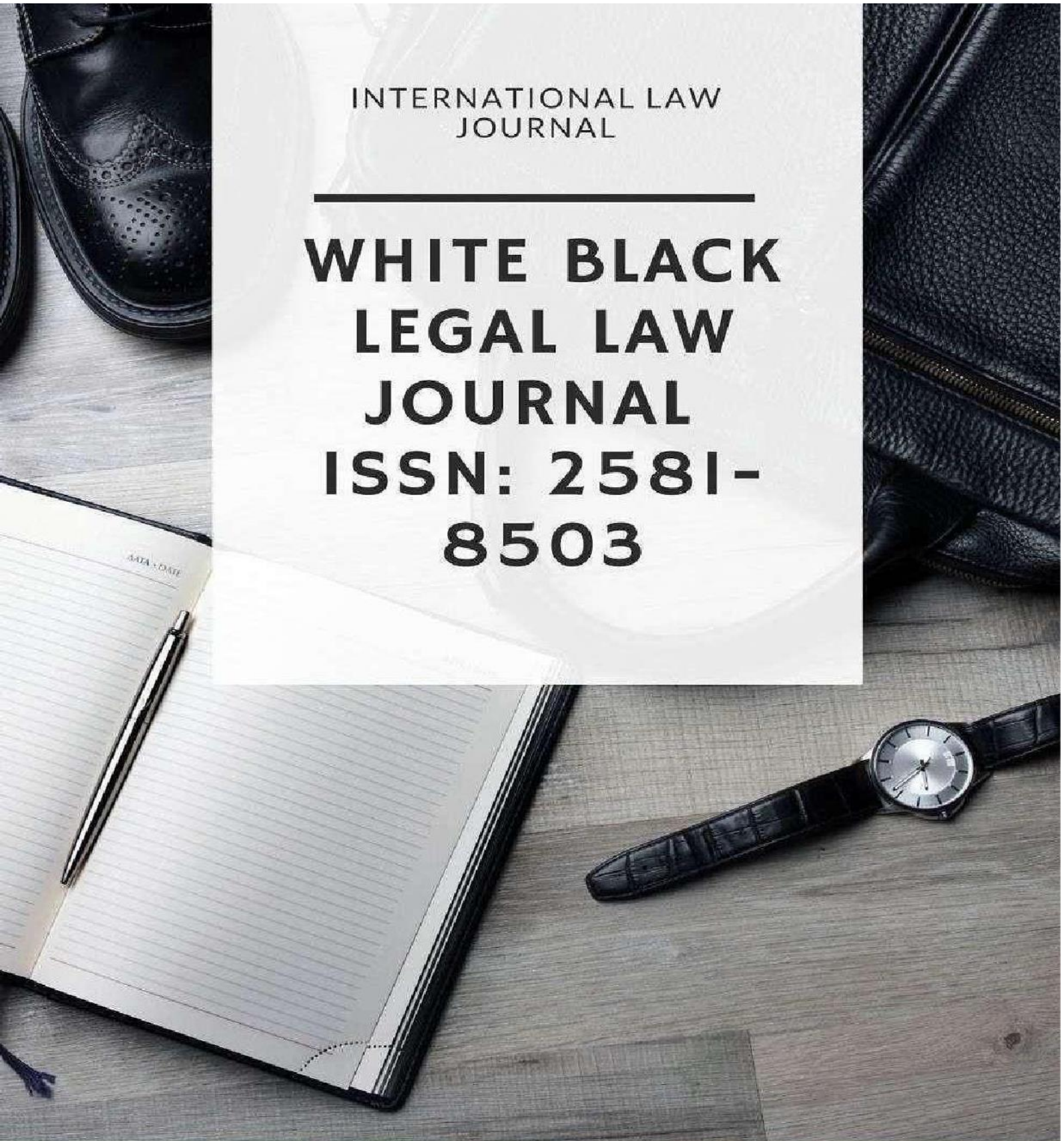




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# **"LEGAL PROTECTION OF MATERNITY BENEFITS FOR INDIA'S CONTRACT AND TEMPORARY WORKFORCE: AN ANALYSIS OF EXISTING GAPS"**

AUTHORED BY - ANNE PRISCILLA S & SRIVATHSAN N

## **ABSTRACT**

India's maternity benefit policy is a case study in contradictions. The Maternity Benefit Act, 1961 and its amendments up to the Maternity Benefit (Amendment) Act, 2017 provide twenty-six weeks of paid maternity leave, which is significantly higher than most of its global counterparts. However, this comprehensive period of protection is predicated on an almost utopian position of single-continuous-employment for a large chunk of the Indian female workforce. It does not account for the prevalence of contract labour, fixed-term appointments, daily wages, muster-roll system, outsourcing, online gigs, and honorarium-based government jobs, among others, wherein lies an entire universe of vulnerable and precarious women workers, who are unable to access the benefits of this seemingly progressive legislation.

This paper endeavours to highlight the lacunae in India's maternity benefit policy by first briefly discussing the statute and its insertion within the Constitution through various amendments to the Code of Social Security, 2020 and the relevant fundamental rights, particularly Articles 14, 15(3), 21 and 42. Subsequently, it traverses through the evolution of jurisprudence on the subject matter starting from *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* and leading up to *Dr. Kavita Yadav v. Secretary, Ministry of Health and Family Welfare*, interpreting the notion of continuity of service in a discontinuous employment scenario. The paper then proceeds to cover the administrative machinery, the funding mechanisms of such a scheme (in comparison to similar schemes abroad), the employer vs state liability, and the procedural hurdles in accessing maternity benefits for the abovementioned categories of workers, before finally suggesting a solution to bridge this unfulfilled mandate. All acts, statutes and reports have been cited with footnotes for convenience, while a list of all statutes, cases and references have been provided in the end.

**Keywords:** Maternity Benefit Act, 1961; contract labour; fixed-term employment; Code on Social Security, 2020; Article 21; reproductive justice; informal sector; indirect discrimination.

## **1. Statutory Framework**

The principal legislation governing maternity leave entitlements in India is the Maternity Benefit Act, 1961. This was enacted to make provisions for the regulation of women's employment in factories and other places of employment around the time of childbirth and to secure maternity benefits and related matters. Section 2 extends the Act, with variations, to every factory, mine, plantation, government establishment, and shop or establishment employing ten or more persons<sup>1</sup>. This threshold number of employees, which has remained unchanged since the Act's enactment, is the first of several filters examined in this paper: establishments employing fewer than ten persons are, with a few notable exceptions, excluded from its scope. The Maternity Benefit (Amendment) Act, 2017, which came into force on 1 April 2017, substantially augmented maternity leave benefits, as discussed later in this section. Section 5 of the Amendment Act of 2017 provides for a period of twenty-six weeks' paid leave for women who have had less than two surviving children, of which no more than eight weeks shall be before expected delivery, and twelve weeks' leave for women with two or more surviving children.

Section 5(4) of the 2017 Act makes a further addition to maternity benefits: twelve weeks' paid leave is sanctioned for adopting mothers with infants below three months, as well as for commissioning mothers in surrogacy arrangements. Furthermore, Section 5(5) of the 2017 Act allows for the possibility of working from home after maternity leave. According to Section 11A of the 2017 Act, which came into force on 1 July 2017, an establishment employing fifty or more persons shall provide crèche facilities for nursing mothers. Section 12 proscribes a woman employee from being discharged or dismissed during her absence under the Act. Finally, Section 27 of 2017 states that the Act prevails over any other agreement, which is of particular relevance to contract workers, as discussed in Part 2<sup>2</sup>. Eligibility to avail of the benefits provided under the Act is specified in Section 5(2) of the Maternity Benefit Act, 1961. It provides that a woman shall be entitled to maternity benefit under this Act if she has worked for not less than eighty days during the twelve months preceding her expected delivery<sup>3</sup>. This single sentence, determining that a minimum of eighty days' employment with the same establishment in the year preceding birth confers eligibility to twenty-six weeks' or, for a second or subsequent child, twelve weeks' paid leave, is arguably the most consequential phrase in the Maternity Benefit Act. It is reasonably simple to satisfy this condition of eighty days' employment for women working in an ongoing, year-round capacity with one employer. For women in a more precarious position, such as those working on short-term contracts or

seasonal employment, fulfilling this condition is substantially more difficult, and as discussed in Part 2, may not be desirable. The Employees' State Insurance Act, 1948 provides an alternate route to maternity benefits under specified conditions. An insured woman employee earning wages of up to ₹21,000 per month who has contributed to the Employees' State Insurance Corporation for at least seventy days during the two contribution periods preceding confinement is entitled to twenty-six weeks' maternity benefit, payable by the Employees' State Insurance Corporation from its general fund<sup>4</sup>.

India's own laws, then, provide a concrete example of the social-insurance model proposed in this paper. Through the Employees' State Insurance scheme, maternity benefit is available to women workers falling under the category of insured persons. The same might be extended to contract and casual labour, as discussed in Part 3. The most significant innovation to emerge in this area of law in recent years is the Code on Social Security, 2020, which consolidates the Maternity Benefit Act with eight other social security laws, including the Employees' State Insurance Act and the Unorganised Workers' Social Security Act, 2008. In turn, Chapter VI of the Code, particularly Section 60, supersedes the Maternity Benefit Act, 1961 in most respects. It mostly retains the twenty-six weeks' maternity benefit, the eighty-day eligibility criterion, and the threshold number of ten employees, however, as discussed later in this section. It commenced on 21 November 2025, and the Ministry of Labour and Employment notified the Social Security (Central) Rules, 2026 on 8 May 2026. Several states were in the process of adopting their own rules as of mid-2026<sup>5</sup>. Sections 113 and 114 of the Code on Social Security, 2020 make a historic insertion by formally recognising gig and platform workers for the first time and directing appropriate welfare schemes relating to maternity for this category, which awaits further clarificatory notifications<sup>6</sup>.

## **2. Contract and Temporary Workers:**

Definition and Judicial Recognition 'Contract and temporary worker' is not a monolithic category. At least four of its varieties are directly relevant to the discussion of maternity benefits. Contract labor in the sense of the Contract Labour (Regulation and Abolition) Act, 1970 (soon to be subsumed under the Occupational Safety, Health and Working Conditions Code, 2020) refers to employment through a contractor for the benefit of the principal employer, subject to limited welfare conditions (ss 16–19)<sup>7</sup>. Fixed-term workers are directly hired for a specified period, and while they formally qualified only from 2018 according to the amended Industrial Employment (Standing Orders) Rules, they now have rights to statutory

benefits on a par with permanent workers doing the same work under the new codes<sup>8</sup>. Casual, daily-wage, and ‘muster-roll’ workers are typically hired on an ad-hoc basis without a formal contract, often for public work. Ad hoc and scheme-based workers, residents, project staff, and honorarium workers are other categories of temporary workers, particularly in health and welfare services to the government.

The first significant judgment on the entitlement of contract workers to maternity benefit came in *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*<sup>9</sup>. Women employed by the Corporation on a muster-roll basis digging trenches, laying roads, and doing conservancy work were denied maternity leave by the Corporation on the grounds that they were not regular employees. The Industrial Tribunal ruled in the worker’s favour, and the Supreme Court affirmed the decision, interpreting the Act considering the Constitution’s Articles 39 and 42 and the Convention on the Elimination of All Forms of Discrimination against Women, 1979<sup>10</sup>. India ratified in 1993. It ruled that female workers performing the same work as regular employees could not be denied maternity benefits under the Act merely because their service was not regular and continuous, effectively creating an obligation of continuous employment for the purpose of maternity benefit. The same reasoning was used in other jurisdictions for casual, daily wage and ‘muster roll’ workers<sup>11</sup>. In *Dr. Kavita Yadav v. Secretary, Ministry of Health and Family Welfare Department*<sup>12</sup>, the appellant, a pathologist, had been hired on a one-year contract with the possibility for renewal for another two years. When she applied for maternity benefit on the eve of the contract’s expiration, her benefit payments were terminated. The Central Administrative Tribunal and, in 2019, the Delhi High Court agreed with her employer that continuing maternity benefit payments past the termination date would constitute an unwritten extension of employment. However, a three-judge Bench of the Supreme Court delivered its opinion in August 2023, finding that once a claimant had satisfied the eighty-day requirement of Section 5(2), further payments were due under the Act regardless of her status as a contract worker. In particular, the termination of her service at the end of the contract was still a ‘discharge’ under Section 12(2)(a), and the employer’s terms and conditions violating Section 27 were void<sup>13</sup>. The ruling continued the trend of the Supreme Court reading a fiction of continuous employment into the contract worker’s position for the limited purpose of maternity benefit, explicitly citing the earlier *Muster Roll* decision. The Delhi High Court in *Government of NCT of Delhi v Rehmat Fatima*<sup>14</sup>, building on *Dr. Kavita Yadav*, extended the benefit of continuous employment to a contract worker whose services had expired. Similarly, the Madras High Court in *MRB Nurses Empowerment Association v. Principal Secretary*, also relying on *Dr. Kavita Yadav*, extended the same reasoning to Nursing Officers employed under

the National Rural Health Mission<sup>15</sup>. Earlier similar decisions were delivered in *Anindita Mishra v. State of Odisha*<sup>16</sup>, regarding a contractual medical officer and *B.S. Rajeshwari v. State of Karnataka*<sup>17</sup>, regarding an outsourced sanitation worker. The question of what to do in cases when a woman's employment falls significantly short of continuous employment fiction is not answered by any of these cases. In all reported cases, the worker's services had expired or had been terminated by the employer at the time of the dispute. Courts have consistently ruled in favour of the worker on the ground that her services had been continuous for the purposes of maternity benefit, rather than finding that she had not met the continuity requirement. This is also the reason why a woman on intermittent or very short-term contracts does not benefit from these decisions – if her employment has not been continuous, she is not entitled to maternity benefit under any of these rulings. This matter is taken up in the sections on enforcement and reform below, as it appears to be the most pressing issue in terms of women's access to maternity benefit.

### **3. Constitutional Analysis:**

Articles 14, 15 and 21 Article 14: The right to equality before the law does not prohibit "reasonable classification" but forbids "arbitrary classification"<sup>18</sup>. This was the issue in pregnancy related employment discrimination case of *Air India v. Nergesh Meerza*<sup>19</sup>. The company's service rules provided that a female air hostess on marriage has to retire at the age of 35 if she has been in service for a period of four years or if she gets pregnant during service and then resumes service, whichever happened first. This did not apply to their male counterparts.

The Court upheld this differential retirement age on the ground that female and male air hostesses could be treated as two "socially heterogeneous groups" with an "intelligible differentia". It took a different view of pregnancy related employment termination. The termination of pregnancy employment on the grounds of pregnancy itself was held as "an extreme step without any consideration of any lesser available alternative". Thus, the Court held that this particular policy of terminating employment on pregnancy was "irrational" and hence violative of Article 14 of the Constitution. Similarly, in the same case, the Court held that pregnancy-based termination as violation of Article 14 was because pregnancy must be treated as a temporary phenomenon rather than as a permanent disability. This is the same reasoning as embodied in the Maternity Benefit Act itself. Article 15 (3): The Constitution allows "special provision" for women and children, and this is what the Maternity Benefit Act

is. This very feature of the Maternity Benefit Act protects it from being challenged as discriminatory on the ground of sex. Unless discrimination is shown to be beyond the “special provision” contemplated by the Constitution, such laws generally cannot be successfully challenged. Article 21: The right to life and liberty under Article 21 has been interpreted very broadly by the Courts and the right to privacy is part of this fundamental right. There cannot be any law that adversely affects the life or personal liberty of citizens of India. One of the earliest cases to recognize the right to privacy in the context of maternity benefit is *Neera Mathur v. Life Insurance Corporation of India*<sup>20</sup>. In this case, the respondent organization cancelled the probationary services of the petitioner on the ground that she had concealed pregnancy in her application for employment.

The application contained questions asking the female applicants to furnish information about their menstrual history and any pregnancy in the past. The Supreme Court held that these questions were “discriminatory and derogatory” to the female applicants on grounds of dignity and directed that such questions “shall not be asked”. It was further held that the probationer’s services could not be terminated on these grounds. This case shows that even before the recent spurt of privacy rights jurisprudence, Courts have been very careful not to permit invasion of personal privacy, even in the name of employment conditions. Thus, when pregnancy is considered part of the personal privacy, pregnancy-related employment terms and conditions cannot be imposed without the consent of the pregnant employee. Article 42: This article falls under the category of Directive Principles of State Policy. It says “the state shall make provision for securing just and humane working conditions and for maternity relief”. It has no direct justiciability, but whenever any case pertains to maternity benefit, this is the law that Courts refer to while interpreting statutes. As already discussed earlier in the *Muster Roll* case, this is what the Courts used while interpreting the Maternity Benefit Act, 1961. Another case in this regard is *Deepika Singh v. Central Administrative Tribunal*<sup>21</sup>. The Court held that pregnancy related leave cannot be denied if the female employee has already taken childcare leave for her husband’s children from his first marriage. This was held as “an unduly harsh interpretation of the maternity benefit statute” by the Supreme Court. The Court reasoned that such rigid rules should not be applied “with regard to the family as a whole and in a manner consistent with modern social norms”. Thus, the Court took a broad view of the concept of family to uphold maternity benefit rights. However, there is one caveat with regard to rights conferred by Part III of the Constitution. The word “State” as defined in the Constitution refers to “the government and Parliament of India” and “the government of the States” and other authorities as enumerated under Article 12 of the Constitution. In other words, the rights conferred to the

citizens by Part III of the Constitution have to be applied only against “State” unless the law specifically mentions otherwise<sup>22</sup>. Almost all the cases cited above pertain to government or government owned entities. In many of these cases, the employer was a municipal corporation or a government hospital or a government run company such as Air India. In fact, the most covered cases involve private insurers and public limited companies. Therefore, the position of the woman worker in private employment is not as protected by the Constitution as her counterpart working for a company that comes under the “State” as defined by the Constitution. This is a critical limitation since most women employees in India today work for private employers. For them, the protections are only indirect and through the interpretations of statutes, but they do not have a “fundamental” right against such employers.

#### **4. Administrative and Enforcement Gap**

Statutory entitlement is only as good as the machinery available to enforce it; India’s weak labor inspection apparatus has long been noted, even by the government, as being miniscule in relation to the workforce. Further, several States have adopted computerized, risk-based or self-certification inspection regimes in recent years, all of which have the effect, for better or worse, of reducing the number of inspections undertaken by authorities. Routine inspections by labour officials are therefore less likely to discover instances of the denial of maternity benefit to contract and casual women workers, who typically do not possess the wage register or appointment letter required for a labour inspector to take action under the Act. Even in respect of such women, enforcement of the Act’s own machinery is largely reactive, with an inspector responding to a particular grievance rather than systematically scrutinising the eligibility of contract workers at large. The first-order problem stems from India’s principal-contractor-worker trinity unique to contract labour. The contractor who directly employs the worker is often a transient entity with limited resources and/or physical presence, while the principal employer who reaps the reward of the worker’s labour frequently has no responsibility to respond to a complaint, since it regards the contractor and not itself as the “employee” for purposes of labour law. The response to this issue has been for courts to routinely pierce this corporate veil, most recently in Karnataka, where the High Court held in *B.S. Rajeshwari v. State of Karnataka* that “the government cannot absolve itself of its responsibility to provide welfare services merely because such services are entrusted to an agency.” However, such judicial activism is necessarily sporadic and confined to instances where a litigant successfully demonstrates that the principal employer is willfully evading its responsibility, despite the

contractor's lack of capacity to comply with requests for information or payment. An even more widespread norm is for the principal employer to structure its contract-renewal cycle to ensure that the worker's employment is terminated shortly before the expiry of eighty days or twelve months, the two statutory thresholds for maternity benefit – a practice noted in academic literature on contract labour, but rarely acted upon by authorities. Finally, the Union government's e-Shram portal, launched in August 2021 to create a National Database of Unorganised Workers, contains upwards of 31.7 crore registered workers as of mid-2026, of whom over fifty per cent are women and who can access social-security schemes through the portal<sup>23</sup>. This suggests that the informational infrastructure to target this category of workers, both casual and formal, is in place. Nevertheless, e-Shram primarily serves as an information repository and not as an adjudicatory forum, with no formal linkage to the entitlements under the Maternity Benefit Act, for the duration of the pregnancy or otherwise. A related challenge is one of awareness, with most of the maternity-benefit judgments referenced in this paper concerning government employees or those working in government-owned or government-funded institutions, where formal processes and access to legal aid are readily available. Women working in non-formal, contractual or household employment are far less likely to know of judgments such as that of Kavita Yadav and even fewer are likely to be aware of the specific entitlements in the Maternity Benefit Act, let alone have the standing to question their employer's refusal to grant maternity benefit or register them for such entitlements. In other words, the number of women who know that they have been denied maternity benefit far outnumber those aware of their legal recourse to claim the same.

## **5. Comparative Law**

The maternity protection convention, 2000 (no. 183) of the International Labour Organization, recommends a minimum of fourteen weeks' leave and cash benefit of at least two-thirds of previous wages with the financing coming from compulsory social insurance or public funds, and not the responsibility of the individual employer, unless by his/her decision (article 6)<sup>24</sup>.

India has not ratified convention no. 183, which has only been ratified by forty or so states, and is currently considering measures under its own twenty-six-week entitlement, which is already higher on paper than the recommended standard. This is even though a significant number of Indian women are working in the informal or unstable sectors, for whom the liability of the individual employer rather than the general funds of the social security or unemployment insurance schemes may be less desirable. South Africa's unemployment insurance fund, which

is financed by a two percent contribution from both employers and employees and makes maternity benefit payments for up to seventeen weeks at thirty-eight to sixty percent of earnings depending on length of service, illustrates the other option, which is to make maternity cash benefits a function of contributions to the unemployment insurance scheme. Domestic workers have been covered since 2003, and casual workers who have worked for as few as twenty-four hours a month qualify for some payment<sup>25</sup>. The shift from the responsibility of the individual employer to the general unemployment insurance fund means that attachment of the benefit to ongoing employment is not required – a worker who has worked intermittently may qualify based on contributions. The United Kingdom is another country with a duality in the system, in that Statutory Maternity Pay, which is for up to thirty-nine weeks, is employer-based, whereas the Maternity Allowance, which is a benefit paid by the state through national insurance contributions, is for women not eligible for Statutory Maternity Pay. The latter category includes self-employed, agency workers, and mothers who are out of work and satisfy a condition of having worked twenty-six weeks out of the sixty-six weeks preceding the expected week of confinement in any employment (or a combination thereof)<sup>26</sup>. In practice what this means is that the Maternity Allowance represents a portable workers' benefit, which follows the employee through different jobs, rather than being attached to the current single employer. This is an option available to India as well as employer-based Maternity Benefit Act and Social Security Code because it would cover women without ongoing formal employment relationships, such as casual intermittent contract workers, for whom cash benefit is currently not available under the Maternity Benefit Act or the ESI scheme. The U.S. is probably the most negative example in this respect, as it does not have a program of maternity cash benefit at all; the Family and Medical Leave Act only provides for twelve weeks of unpaid leave unless the employee has worked for an employer with fifty or more employees within seventy-five miles, and has completed twelve months of service with one thousand and twenty-five hours of work during the twelve months preceding the leave<sup>27</sup>. Such conditions obviously restrict eligibility to part-time and temporary workers, while the coverage extends to less than twenty percent of the population. Employer size and worker tenure as conditions for access to social insurance benefits are therefore not answers, as similar conditions in the U.S. Federal Leave Act produce outcomes comparable to the ones in India.

## **6. Employer Liability versus System Responsibility**

Outside the ESI scheme, Section 5(1) of the Maternity Benefit Act - reproduced as Section 60

of the Code on Social Security - imposes the liability to pay the wages due during maternity leave on the employer hiring the woman at the time of her confinement<sup>28</sup>. It is obvious that, if the worker has a choice of employers, this creates a direct disincentive for taking up or retaining a pregnancy; the larger the share of the burden falling on the employer, the greater the disincentive. This will affect small establishments and thin contractors more severely than large employers who can spread the cost over a wider payroll. An employer unable to screen out pregnant women during hiring may react to the situation by refusing to renew a short-term contract held by a woman worker, or preferring men for short-term contracts over women, a form of indirect pregnancy discrimination discussed in Part 7. The alternative to such employer-level disincentives is embedded in the ESI scheme, which finances maternity benefits out of a pooled insurance fund and not out of the wage purse of any employer. It represents a practical response to the objection, noted above, to a system-level maternity benefit being “unadministrative” in the Indian setting. In fact, the administrative capacity exists and is demonstrated by the ESI’s ability to collect contributions from, and make payments to, each assesses within the scheme - even if the level of coverage and the contribution rates leave much to be desired in terms of protecting contract and casual workers. Normatively, the continuity between the ESI and the proposed Code is misleading in another respect. By retaining the liability for maternity benefit largely at the level of the direct employer, Section 60 of the Code perpetuates the same set of administrative and fiscal challenges. Sections 113 and 114 of the Code, in relation to gig and platform workers, propose something different for these workers: a scheme of fund-based benefits payable by aggregators who contribute to a reserve for workers’ benefits, which are in turn administered by an appropriate government authority. However, even then, the content of maternity benefit remains scheme-specific and dependent on the interplay between the aggregator and the fund, rather than a universally payable entitlement as this paper considers it. In the meantime, courts have developed a useful interpretive work-around for the lack of administrative machinery at the level of contractors and labour agencies, discussed in Part 4. In the absence of an actual ongoing employment relationship capable of supporting a claim for continuation of wages - say, for workers in insecure employment or for domestic workers - the fiction of continuity of employment as a worker with the same principal as before allows such a worker to hold her employer to the same obligations as a continuing employee for the period of employment during pregnancy. Notably, such a reading requires, as a preliminary condition, the existence of an identifiable and payable employer in the first place - a criterion which is not met in many insecure, informal or digital employment relationships.

## **7. Indirect discrimination and intersectionality**

Indirect discrimination takes place when an apparently neutral rule disproportionately negatively affects a protected group, and the eighty-day continuity test, the ten-employee threshold, and the short-term structuring of engagements are neutral in this precise sense: they do not explicitly mention sex but interact with the concentration of women in casual, contract, and small-establishment work to produce a disparate impact. Periodic Labour Force Survey data from the government show that the female labour-force participation rate in India rose steadily from roughly 23 per cent in 2017-18 to around 40 per cent in 2025-26, representing a veritable rise<sup>29</sup>, but a large part of this increase has taken place in rural self-employment and casual labour, while regular and socially secure salaried employment has remained the domain of men; women continue to earn significantly lower wages than men, both in salaried and casual employment, with the gender wage gap being largest in the latter. The same rise in female labour-force participation thus disproportionately affects women in employment categories that the Maternity Benefit Act does not reach. Gender intersects with other sources of disadvantage, such as caste and migrant status, since women from Scheduled Caste and Scheduled Tribe communities are overrepresented in the most casual and physically demanding forms of contract labour, which include sanitation, construction, and brick-kiln work, and inter-state migrant workers, who constitute another vulnerable category, encounter a portability problem in that switching from one worksite to another or from one state to another breaks continuity of employment, as neither the Maternity Benefit Act nor, until recently, the Code on Social Security make any provision for aggregating service with different employers for the purposes of maternity benefit eligibility<sup>30</sup>.

This means that the disadvantage identified by the title of this paper is not distributed evenly across women workers but affects some groups disproportionately, namely, those who are already at the margins of the economy and society. India's ratification of the Convention on the Elimination of All Forms of Discrimination against Women in 1993 and the Supreme Court's reliance on Article 11 thereof in the *Muster Roll* case require it to take measures to prohibit dismissals on the ground of pregnancy or maternity leave and to provide for paid maternity leave or other social benefits without loss of employment, seniority, or social allowances. The indirect discrimination in eligibility rules, however, undermines this commitment to gender equality, as does the possibility of opting out of the maternity benefit regime by arranging for short-term and intermittent employment, which disproportionately affects women's ability to work in regular salaried jobs. Finally, by placing the entire cost of

maternity benefit on the employer, the Act creates a financial disincentive for hiring women in contract and casual employment, which constitutes a form of indirect discrimination akin to the one the Supreme Court sought to condemn in Article 15(3) of the Constitution.

## **8. Informal and Outsourced Work**

The great majority of India's working population remains employed in informal ways; according to recent Periodic Labour Force Survey results, regular salaried employment constitutes just a fifth or so of total employment, with self-employment accounting for over half. Within this context, 'contractualisation' subsumes a trend that nonetheless occurs within formal and public-sector workplaces: for tasks previously done by permanent staff, particularly in areas such as sanitation, guards, data entry, and – crucially – nursing under the national health- mission schemes, contractors and agencies or honorary appointments are brought in so that the employing institution remains at a remove from maternity-benefit liabilities. The series of cases on contractual labour from the Muster Roll to Kavita Yadav to the Madras nurses are, in part, illustrations of this tendency, in which a given institution sought to contract out a function and consequently distance itself from its own workers, only to be thwarted by a court. As the most obvious example of informal workers, domestic workers have, until recently, had no national-level legislation covering them at all. A Domestic Workers (Regulation of Work and Social Security) Bill, circulated in 2017, has yet to be passed, while scattered state welfare-board- level laws, such as Tamil Nadu's Manual Workers Act, 1982 and Maharashtra's Domestic Workers Welfare Board Act, 2008, continue to exist<sup>31</sup>. A Karnataka Domestic Workers (Social Security and Welfare) Bill, 2025, circulated in October 2025, includes maternity assistance among its proposed benefits<sup>32</sup>. The Supreme Court, in its order dated 29 January 2025 concerning a criminal case on trafficking, described domestic workers as a group "in a legal vacuum" and directed the Union Government to constitute an expert committee in this matter, since "the State in its role of *parens patriae* has a responsibility to take action to protect such persons<sup>33</sup>." The findings of this committee are reported to have suggested that none of the four labour laws was necessary, spurring criticism from labour-rights groups, for a woman domestic worker continues to lack any explicit legal entitlement to maternity benefit, even as the Court's order provoked this review. This lacuna has remained largely untouched, despite the intervention of the Court<sup>34</sup>. A similar exclusion concerns women who are employed under a government 'honorarium' rather than on any regular salary. Anganwadi workers and helpers – who provide services concerning nutrition, health, and pre-school education under

the Integrated Child Development Services scheme – for years remained formally unentitled to any maternity benefit on precisely this basis. Under the *Maniben Maganbhai Bhariya v. District Development Officer, Dahod* case, in which the Supreme Court – in 2022 – held that Anganwadi centres were indeed ‘establishments’ under the Payment of Gratuity Act, 1972, and workers and helpers were ‘employees,’ they consequently entitled to the benefits under this Act<sup>35</sup>. The Court’s expansive reading of the word ‘establishment’ demonstrates the method by which such gaps might be plugged, while its limitations are evident in this very case – for it took a decade of litigation to cover this ground.

Gig and platform workers constitute the newest entrants to this category of workers. The Code on Social Security, 2022, particularly Sections 113 and 114, covers them for the first time and provides for separate social-security contributions to be made by aggregators, but the details of such contributions and schemes have yet to be worked out since the Code’s central rules were notified only in May 2026. Before such measures can take effect, the main nationwide entitlement for women workers not covered by the Act, in terms of maternity benefit, continues to be the Pradhan Mantri Matru Vandana Yojana. This conditional cash transfer makes payments of up to ₹11,000 to women, for their first two children, and has the virtue of targeting nutrition support to poor pregnant and lactating mothers<sup>36</sup>. As a cash benefit, however, it represents a different model from wage-linked maternity benefits provided to women who are covered by the Act, exemplifying the two-tier system this paper has sketched.

## **9. Procedural Barriers and Retaliation**

Despite the protections of Section 12, which prohibits discharge or dismissal on account of a woman’s maternity absence under the Act, the very cases to which this provision is most relevant – contract and fixed-term employment – have the most to gain from circumventing it. The simple expiry of a contract on its due date bears little substantive difference to the termination of a temporary worker on completion of her probation period, save that the case of *Kavita Yadav* demonstrates pregnancy-related dismissals to also fall under the definition of “discharge.” There is no automatic remedy for such a dismissal besides legal action, whose costs, procedural hurdles, and long timelines are prohibitively expensive to a worker who is, in the present moment, earning zero income. Even proving the link between pregnancy and non-renewal in many cases can be challenging, for a contractor or placement agency can offer a plethora of “objective” reasons for terminating a contract on expiry, which a single worker would be hard-pressed to prove evaporated simultaneously with her pregnancy without

supporting evidence. In the case of a permanent employee, her or his chances of success in litigation might be bolstered by the ability to cite years' worth of uninterrupted service with consistent terms and conditions, with comparable workers serving as witnesses. Contract workers, on the other hand, can be shuttled between jobs with varying levels of oversight over their terms and conditions, and the very lack of a documented, continuous employment history hurts their credibility as plaintiffs. The long, winding road back from such a dismissal is also hardly conducive to the goals of maternity benefits. For one, the worker who filed a claim in the first place is likely to be denied at every level, starting with the Inspector and moving, if the case proceeds, to a civil or labour court and, ultimately, the High Court and the Supreme Court (as was the case for Dr. Kavita Yadav). The earliest such a dismissed worker could expect to see the fruits of her litigation would be, if victorious, a few weeks before the end of her pregnancy and the beginning of her entitled maternity leave. There is no mechanism, built into the law or otherwise, for providing such a worker with even a fraction of her lost income during the pendency of litigation. Even if she is successful in court, her victory may come too late to provide any substantial relief aside from moral damages. And yet, many such workers would not even bring a claim in the first place, due to both practical and systemic obstacles. Contract and informal-sector workers do not always enjoy the organisational and legal support provided to permanent, unionised employees, and the threat of being blacklisted by a placement agency or contractor may outweigh the potential benefits of a successful litigation. Moreover, a large proportion of contract and informal workers are likely to be migrant workers, for whom the prospect of navigating the vicissitudes of the Indian judicial system represents a far more daunting prospect than confronting a single employer. It is notable that most of the cases reviewed in this paper involved women in formal-sector employment, and those that did not concern entirely private contractors or households were far fewer in number.

### **10. Reform Proposal**

- There are three broad ways in which statutory maternity benefit policy can bridge the gap between promise and practice – financing, eligibility, and enforcement. The following reforms are proposed in that sequence.
- Decouple financing from the individual employer outside the ESI scheme. By building upon the ESI model already incorporated in Indian law, as well as the fund-based approach to maternity benefits for gig and unorganized workers proposed in the Code on Social Security itself, a contributory maternity-benefit fund of wider coverage,

drawing upon both employer and – where applicable – aggregator contributions, would be better positioned to deliver the cash benefit without the disincentive identified in Part 6 for a single recruiter; this would follow the pattern set out in Part 5 by South Africa and the United Kingdom.

- Aggregate eligibility across employment stretches. By replacing the eighty-day test for a single employer with a cross-contractor and cross-establishment calculation based on an Aadhaar- and e-Shram-linked account, the migrant worker who switches jobs repeatedly (or works simultaneously for multiple contractors on different short-term contracts) can carry her entitlement forward from one engagement to the next without penalty.
- Lower or remove the establishment-size threshold for the cash benefit, particularly. While facility-based benefits such as crèches may legitimately be calibrated to the scale of an establishment, there is no *prima facie* reasoning for denying the maternity benefit itself to a woman who works in an establishment with fewer than ten employees.
- Operationalize the Code's provisions on gig and platform workers. In so far as Section 113 and 114 of the Code on Social Security, 2020 touch upon maternity benefits, these should be complemented by an immediate notification specifying the contribution rules for aggregators, as well as a maternity-specific benefits notification, in turn giving effect to the Code's innovation in relation to this category of workers.
- Enact a national domestic worker framework. Even if the expert committee constituted in 2025 and due to report in 2026 is correct in its assessment that the existing labour codes are sufficient, it is evident at present that no registration or contribution mechanism reaches down to the domestic worker. The Karnataka Domestic Workers Bill, 2025, which contains a maternity-assistance-specific chapter, can be taken as a model for such a national framework.
- Enhance enforcement and grant interim relief. By creating a time-bound remedy – possibly through an existing portal such as e-Shram or Shram Suvidha, to be specified in a separate notification – within three months of a claim being denied, a pregnant worker can be placed on a provisional payment schedule of her own choosing until the grievance is decided. During the period of pregnancy or the statutorily protected post-natal maternity leave period, a denial or withdrawal of contract by an establishment or contractor must trigger a rebuttable presumption of prohibited discharge under Section 12.

- Ratify ILO Convention 183. Even though India's existing entitlement well exceeds the fourteen-week minimum specified by the convention, ratification of the latter would obligate India to adhere to Article 6 on social-insurance financing, as well as the convention's general principles of non-discrimination, providing a useful normative underpinning for the proposed reforms to financing as well as eligibility for domestic workers in particular.
- Apply incentives and disincentives. By introducing a compliance credit or relief on contribution payments for extended maternity benefit claims for establishments that demonstrate demonstrable retention of pregnant workers beyond the first trimester and up to the birth of the child, the adverse financial terms identified in this paper for the recruiter can be offset from both sides by enhanced carrots and sticks.

## **11. Conclusion**

India's maternity-benefit regime is a curious paradox. By any objective standard, the twenty-six-week entitlement it provides is generous, having significantly exceeded the twenty-week threshold recommended by the International Labour Organization. By another standard, its very design is based upon an assumption of perpetual single-employer service with no interruptions, which a significant majority of India's female workforce in formal employment does not encounter on account of working on contract, temporary appointments, day labour, outsourcing, honorarium-based government jobs, and, with increasing prevalence, digital platforms. The jurisdiction's own judicial responses to the problem of qualifying for maternity benefits in the face of such realities - beginning with *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, 2000, and culminating in *Dr. Kavita Yadav*, 2023 - have done much to alleviate the problem, being guided by the principles of Articles 14(2), 15(3), 21 and 42 of the Constitution. However, as this paper has endeavoured to demonstrate, while such interpretation may well provide redress to a female worker who has already passed the threshold of continuous service - thereby allowing the identification of a specific, solvent employer who has hired her at the time of pregnancy and can be compelled to pay - it fails to reach those who find themselves in discontinuous service, unable to meet the threshold of eligibility as determined by the employer or continuity of service tests. The Code on Social Security, 2020, which came into force in January 2023 but will be fully implemented through 2026, represents another potential avenue of recourse for such female workers. As things stand, it is difficult to say whether this new Code will merely reiterate the principles articulated in this paper or extend

the fund-based maternity-benefit scheme it has already introduced for gig and unorganized workers to encompass such categories of employment as outsourced, contract, temporary, and honorary service. It is for policy to decide, but it is for the law to catch up.

<sup>1</sup> The Maternity Benefit Act, 1961, s 2.

<sup>2</sup> The Maternity Benefit (Amendment) Act, 2017 (Act No. 6 of 2017); the Maternity Benefit Act, 1961, ss 5, 5(4)–5(5), 11A, 12 and 27.

<sup>3</sup> The Maternity Benefit Act, 1961, s 5(2).

<sup>4</sup> The Employees' State Insurance Act, 1948, s 2(1), read with the wage ceiling and contribution conditions prescribed under the Employees' State Insurance (Central) Rules, 1950.

<sup>5</sup> The Code on Social Security, 2020 (Act No. 36 of 2020), ch VI, s 60; Ministry of Labour and Employment, Government of India, notifications on commencement with effect from 21 November 2025, and the Social Security (Central) Rules, 2026, notified 8 May 2026.

<sup>6</sup> The Code on Social Security, 2020, ss 113–114.

<sup>7</sup> The Contract Labour (Regulation and Abolition) Act, 1970 (Act No. 37 of 1970), ss 16–19; the Occupational Safety, Health and Working Conditions Code, 2020 (Act No. 37 of 2020).

<sup>8</sup> Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018; Industrial Relations Code, 2020 (Act No. 35 of 2020), read with the Code on Social Security, 2020, provisions on fixed-term employment.

<sup>9</sup> Municipal Corporation of Delhi v. Female Workers (Muster Roll), AIR 2000 SC 1274 : (2000) 3 SCC 224.

<sup>10</sup> Constitution of India, arts. 39 and 42.

<sup>11</sup> Convention on the Elimination of All Forms of Discrimination against Women, 1979, art. 11 (ratified by India, 1993).

<sup>12</sup> Dr. Kavita Yadav v. Secretary, Ministry of Health and Family Welfare Department, 2023 SCC OnLine SC 1067 : (2024) 1 SCC 421

<sup>13</sup> The Maternity Benefit Act, 1961, s 12(2)(a).

<sup>14</sup> Government of NCT of Delhi v. Rehmat Fatima, Delhi High Court (applying Dr. Kavita Yadav v. Secretary, Ministry of Health and Family Welfare Department).

<sup>15</sup> MRB Nurses Empowerment Association v. Principal Secretary, 2024 SCC OnLine Mad 5801

<sup>16</sup> Anindita Mishra v. State of Odisha, 2022 (III) ILR-Cut 438.

<sup>17</sup> B.S. Rajeshwari v. State of Karnataka, W.P. No. 10677 of 2020 (Karnataka High Court).

<sup>18</sup> Constitution of India, arts. 14, 15(3), 21 and 42.

<sup>19</sup> Air India v. Nergesh Meerza, AIR 1981 SC 1829 : (1981) 4 SCC 335.

<sup>20</sup> Neera Mathur v. Life Insurance Corporation of India, AIR 1992 SC 392 : (1992) 1 SCC 286.

<sup>21</sup> Deepika Singh v. Central Administrative Tribunal, 2022 SCC OnLine SC 1088 : (2022) 7 SCR 557.

<sup>22</sup> Constitution of India, art. 12.

<sup>23</sup> Ministry of Labour and Employment, Government of India, e-Shram portal registration statistics (data as of July 2026).

<sup>24</sup> ILO Maternity Protection Convention, 2000 (No. 183), arts. 4 and 6; International Labour Organization, ratification data for the Convention.

<sup>25</sup> Unemployment Insurance Act 63 of 2001 (South Africa); Unemployment Insurance Contributions Act 4 of 2002; Department of Employment and Labour (South Africa), Unemployment Insurance Fund maternity benefit guidelines.

<sup>26</sup> Social Security Contributions and Benefits Act 1992 (UK), s 35; UK Department for Work and Pensions and HM Revenue and Customs, Statutory Maternity Pay and Maternity Allowance guidance.

<sup>27</sup> Family and Medical Leave Act of 1993, 29 U.S.C. § 2611 et seq. (US); United States Department of Labor, FMLA guidance.

<sup>28</sup> The Maternity Benefit Act, 1961, s 5(1); the Code on Social Security, 2020, s 60.

<sup>29</sup> Ministry of Statistics and Programme Implementation, Government of India, Periodic Labour Force Survey (2017–18 and 2025–26 rounds).

<sup>30</sup> The Maternity Benefit Act, 1961, s 5(2); the Code on Social Security, 2020, s 60, contain no express provision for aggregating a woman's service across multiple employers for eligibility purposes.

<sup>31</sup> Domestic Workers (Regulation of Work and Social Security) Bill, 2017 (not enacted); Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982; Maharashtra Domestic Workers Welfare Board Act, 2008 (Act No. 27 of 2008).

<sup>32</sup> Karnataka Domestic Workers (Social Security and Welfare) Bill, 2025 (draft, published October 2025).

<sup>33</sup> Supreme Court of India, order dated 29 January 2025 (Surya Kant and Ujjal Bhuyan, JJ.).

<sup>34</sup> Press reports on the conclusions of the Union Government's expert committee on domestic workers (July 2025); conclusions publicly contested by labour-rights organisations.

<sup>35</sup> Maniben Maganbhai Bhariya v. District Development Officer, Dahod, AIR 2022 SC 2119; the Payment of Gratuity Act, 1972 (Act No. 39 of 1972).

<sup>36</sup> Ministry of Women and Child Development, Government of India, Pradhan Mantri Matru Vandana Yojana scheme guidelines.

